Call for Evidence: The New Independent Appeals Body

Public Law Project's Response

6 May 2026

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The new Independent Appeals Body: Call for evidence - GOV.UK

Public Law Project's Response

Introduction

Public Law Project's ("**PLP**") response to the call for evidence is in three sections:

A. Executive Summary;
B. Overview of the proposal and our recommendations; and
C. Response to the questions in the "call for evidence" (within the maximum word limits).

(A) Executive Summary

The proposal for an Independent Appeals Body is ill-conceived and should be abandoned because:

- The proposals are lacking in detail and unsupported by evidence;
- It risks undermining judicial independence and the rule of law;
- Legally untrained adjudicators should not hear asylum appeals; and
- It will not achieve its aims of reducing delays, backlogs and multiple appeals.

PLP's recommendations for designing an asylum system that is **fair, effective and humane** and which **reduces delays, backlogs and multiple appeals** are:

- A whole-system approach – not just a narrow focus on judicial capacity;
- A fair and just system;
- Improving access to legal representation;
- Improving Home Office decisions; and
- Simplifying policy.

(B) Overview and Recommendations

About Public Law Project

1. PLP is a national legal and social justice charity that works for social justice using public law – the rules that govern how the state makes decisions on immigration, housing, welfare benefits and more. We work with those marginalised by the state or abandoned through systemic neglect, including migrants and people seeking asylum, racialised people, disabled people, those experiencing poverty, and survivors of domestic abuse, uniting lived experience with legal expertise to transform lives and drive systemic change. Through strategic litigation, research, public affairs, strategic communications, and convening events and training, we ensure that marginalised communities' rights are protected, everyone has access to justice and powerful state actors are held accountable.

2. PLP has long been concerned with and has specific expertise in access to justice and ensuring access to effective public law remedies, promoting good administrative practice, the protection of human rights, and securing the rule of law, for those who are part of marginalised groups or communities. PLP has experience in access to justice strategic casework, as a legal aid provider with an immigration contract and as a research organisation with a focus on the accessibility of legal aid.

An asylum system that is "fair, effective and humane"

3. The Prime Minister in his forward to the Asylum Policy Statement (Restoring Order and Control) endorsed the principle of an asylum system that is **"fair, effective and humane"**. We agree, but for the reasons given in PLP's response to the "call for evidence", the "new Independent Appeals Body" will not do this, nor will it reduce delays, backlogs or multiple appeals.

4. PLP's expertise is particularly relevant to the issues raised in this "call for evidence". Based on our expertise we are concerned about the proposals and have 5 recommendations to the government for an asylum system that is **"fair, effective and humane"** and which will **reduce delays, backlogs and multiple appeals**:

   (i) **A whole-system approach** is needed to bring real improvements to the system and address the capacity and quality issues that are affecting *all* parts of the system and at *all* stages. The Home Office proposal is narrowly focused on judicial capacity. However, the end-to-end capacity of the legal aid sector, Home Office, experts, interpreters, and other relevant parties and agencies are necessary to ensure that the system can function fairly, effectively and humanely. If the system is not properly resourced it will fail to address delays, backlogs and multiple appeals and the adverse impacts on those who use the system. As part of a whole-

system approach, those with lived/living experience of the system should be properly consulted in designing it.

(ii) **A fair and just system.** The Home Office must provide applicants with a fair and reasonable opportunity to put forward their case and act fairly when handling their case. If a case is refused there must be unrestricted access to an independent and impartial court. There must be safeguards that ensure the process is fair, there is access to legal advice and access to the court. Those safeguards must be effective and monitored to ensure they are being properly applied. The system should be able to fairly prioritise cases where necessary and ensure that they are fairly decided. Accelerated appeals should be avoided as they are unlikely to be effective in most cases and there are high risks of injustice.

(iii) **Improving access to legal representation.** There is a legal aid crisis and a substantial number of claimants are unrepresented. Applicants must have the opportunity to promptly access expert legal representation to enable them to effectively participate in the process. Expert legal representation which is readily and promptly available is vital for the system to function effectively. Access to good quality legal representation is likely to reduce unfairness, errors, unnecessary delay and multiple appeals.

(iv) **Improving Home Office decisions**. Measures to improve the quality of information gathered by the Home Office and the quality of decisions made by Home Office caseworkers will reduce the numbers of decisions that are overturned on appeal. This should reduce appeal delays, backlogs and multiple appeals by either reducing the number of appeals, or increase the effective disposal of appeals.

(v) **Simplifying policy.** The system is overly complex and subject to frequent and significant policy change. Reducing unnecessary complexity in the law, rules and policy and the application of a single low standard of proof in protection claims should reduce errors, factual and legal disputes and save time.

The new Independent Appeals Body is ill-conceived and should be abandoned

5. The Home Office proposal for the new Independent Appeals Body ("**IAB**") is ill-conceived and should be abandoned for at least 3 reasons:

(i) **Judicial Independence.** We have very serious concerns that the government's proposals for a IAB will undermine judicial independence and the rule of law. No detail is provided about how the IAB and its adjudicators will be independent of the Home Office and whether the existing legal framework of constitutional

guarantees for the First-tier Tribunal Immigration and Asylum Chamber ("**FTT**") will apply to it.

(ii) **Adjudicators.** Adjudicators are unsuited for hearing these appeals. They do not require any legal qualifications or experience. Immigration appeals are very complex, including the approach to factual matters. Compromising judicial standards and independence means there is a high risk of Adjudicator error and of the new IAB failing to provide the *"most anxious scrutiny"* of asylum appeals, or an effective legal remedy in the wide range of cases that it will hear.

(iii) **Backlogs, delays and multiple appeals will not be reduced.** The IAB is likely to result in a substantial increase in unlawful decisions, onward appeals, or individuals having to resort to judicial review or further submissions, if the IAB system cannot provide a fair and effective remedy. This will frustrate the policy objectives of reducing delays, backlogs and "multiple appeals". It is difficult to see how the IAB will restore public confidence in the system.

The "Call for evidence"

6. PLP values opportunities to contribute to the design and development of a fair, effective and humane asylum system which avoids unnecessary delays, backlogs and appeals. However, these proposals and this call for evidence exercise do not provide that opportunity.

A lack of evidence

7. To ensure that legislative and policy changes have the best chance of improving the whole asylum system the Government should follow the recommendations of the National Audit Office ("**NAO**") and ensure that they are supported by an evidence base and theory of change, including an assessment of expected costs and benefits across the end-to-end asylum system, and an evaluation plan[1]. **No evidence of such an approach has been provided with this proposal.**

8. There is little or no detail provided about: how the new IAB will be independent; the rationale for the proposals; their impact; their cost, how they are intended to address the problem of appeal backlogs and delays; and, how they would be an improvement on the current Tribunal system. There is no supporting material, impact assessments, forecasts, modelling or systems design work, costs benefit analysis or evaluation plan. **There is simply no evidence provided to justify the proposals or show how they meet the policy objectives in a way that is fair, efficient, humane and which respects the independence**

[1] See National Audit Office, 'An analysis of the asylum system', Session 2024 – 2026, 10 December 2025, HC 1517, Recommendation 15(e), page 10.

of the judiciary. Without this basic information, the justification for the reforms are wholly inadequate.

9. It is also unclear whether there will be a further consultation following the call for evidence and why only a period of just over 5 weeks, including the Easter and Spring Bank Holidays has been given for a response to such wide-ranging and significant proposals of constitutional importance.

10. PLP has pointed out these serious deficiencies to the Home Office soon after the call for evidence was published, requesting its suspension pending the provision of relevant information so that we could properly understand the proposals and provide a meaningful response. The request was denied.

11. PLP is very concerned that the Home Office will proceed with reforms without having conducted a fair and proper evidence gathering or consultation exercise, which will mean that the reforms will be ill-informed and there is a high risk that it will fail to take effective measures to address the causes of appeal delays and backlogs and reduce them to acceptable levels. We further note that the proposal for the abolition of the FTT(IAC) was made without consulting the senior judiciary[2].

Failure to identify the causes of asylum appeal delays, backlogs and multiple appeals

12. The Home Office in this proposal, fails to identify and address the root causes of appeal delays, backlogs and multiple appeals. In order to tackle these problems, the causes need to be identified. This approach has been criticised as a failure to take a "whole-system view" by the NAO in its recent report: *An analysis of the asylum system*.[3]

13. The Home Office proposal is reactive and narrowly focused on fixing an urgent problem in one area of the system in reaction to a large backlog[4] – precisely the same error that the NAO stated that the Government has fallen into in previous attempts to reform the asylum system. The warning from the NAO was that "*Increases in speed of processing have sometimes come at the expense of the quality of decisions, and improvements in one area have shunted problems elsewhere."*

14. For example, the NAO noted that a fourfold increase in asylum decision-making in 2023 *"shifted pressure into the appeals stage where constraints on legal and judicial capacity created another backlog"*[5] and that as a consequence of the Illegal Migration Act 2023

[2] Electronic Immigration Network, 'Lady Chief Justice: Judiciary given 'little to no notice' of plans to abolish First-tier Tribunal (Immigration and Asylum Chamber)' (2 December 2025).
[3] National Audit Office, 'An analysis of the asylum system', Session 2024 – 2026, 10 December 2025, HC 1517.
[4] Ibid., page 7, Figure 1 and page 8 at §13.
[5] Ibid., page 24 at §2.6.

and the failure of the Rwanda policy, asylum decisions were paused for individuals who arrived in the UK illegally since 7 March 2023 and resumed in July 2024, creating an additional backlog in asylum decisions. Both the President of the FTT(IAC) and the Lady Chief Justice noted huge increases in the number of appeals lodged in 2023/24[6].

15. The increase in the appeals backlog has also been driven by a combination of more initial decisions and a lower asylum grant rate, meaning that the number of refusals issued in 2025 rose by 79% to 62,000 applications[7].

16. However, there are serious concerns about the quality of Home Office decision-making, with 39% of cases succeeding at appeal and recent figures indicating that the overall success rate may be as high as 66% when Home Office reconsiderations are taken into account. The NAO noted that *"Decision quality remains a challenge, with 42% of sampled decisions in a rolling twelve months to May 2025 having significant or fail errors"*[8].

17. The Home Office have not provided any evidence of the measures taken by the Ministry of Justice ("**MoJ**")[9] to increase judicial capacity or an assessment of the impact of those measures, or what more could be done to increase judicial capacity within the FTT. Conversely, the Home Office has failed to provide any detail of how the new IAB will be in a position to address the backlog of asylum appeals. There are no forecasts of how judicial capacity will be increased, how long it will take for the IAB to function, or what will happen to the backlog in the meantime.

18. Moreover, there appears to be no forecasting or impact assessments in relation to other changes in the Asylum Policy Statement that are likely to result in significant increases in Home Office asylum decisions and potentially an increase in appeals – for example, the shortening of refugee leave to 30 months and individuals being subject to this temporary status for up to 20 years.

19. Aside from the serious concerns about the independence and lack of expertise of adjudicators, it is unclear whether the recruitment of the numbers of adjudicators needed to address the asylum backlog is a realistic prospect, for the very same reasons that it is proving difficult to recruit and retain FTT judges. Those factors include: the complex and taxing nature of asylum appeals work; frequent policy changes creating an additional

[6] Electronic Immigration Network, 'Lady Chief Justice highlights 'huge' 82% increase in First-tier Tribunal (Immigration and Asylum) cases in last quarter' (9 December 2024).
[7] The Migration Observatory, 'The UK's asylum backlog' (22 April 2026).
[8] National Audit Office, 'An analysis of the asylum system', Session 2024 – 2026, 10 December 2025, HC 1517, page 35 at §2.31.
[9] Ibid., page 36 at §2.32.

training burden; negative media attention and personal attacks in the press[10]; and criticism of Judges of the FTT by politicians[11].

20. The focus on judicial capacity disregards the fact that unless capacity is increased in *all parts* of the system then it will not function properly and delays and backlogs will continue. There is a dire shortage of expert legally aided representation due to years of underfunding and financial sustainability of legally aided practices, which the recent limited rate increases are unlikely to address in the short term. The capacity issues also extend to recruitment and retention of experienced caseworkers at the Home Office and maintaining quality standards[12].

21. Any serious proposals to reform the system must properly engage with these issues, taking a whole system approach. These proposals fail to do so and should be abandoned.

[10] National Audit Office, 'An analysis of the asylum system', Session 2024 – 2026, 10 December 2025, HC 1517, page 34, Figure 6.
[11] Electronic Immigration Network, 'Lady Chief Justice: Judiciary given 'little to no notice' of plans to abolish First-tier Tribunal (Immigration and Asylum Chamber)' (2 December 2025).
[12] National Audit Office, 'An analysis of the asylum system', Session 2024 – 2026, 10 December 2025, HC 1517, page 7, Figure 1.

(C) Public Law Project: Response to the Call for Evidence

Access to justice, fairness and procedural safeguards

Q5. How can the new Independent Appeals Body ensure parties to the appeal have fair access to legal or immigration advice, representation and the practical support required to participate effectively in the process?

1. The matters referred to in Q5 are minimum standards that must be observed in a court or tribunal, otherwise it would not be operating lawfully. The rule-making powers given to the First-tier and Upper-tier Tribunal judiciary to *ensure that parties to the appeal have fair access to legal or immigration advice, representation and the practical support required to participate effectively in the process* are provided in the Tribunal, Courts and Enforcements Act 2007 ("**TCEA 2007**") and are to be exercised by the Tribunal Procedure Committee ("**TPC**"). At s22(4) of the TCEA 2007, the TPC's power to make Tribunal Procedure Rules is to be exercised with a view to securing that, in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done and that the tribunal system is accessible and fair.

2. The Tribunal Procedure Rules together with the First-tier Tribunal and Upper-tier Tribunal's body of Practice Directions, Practice Statements, Guidance and Caselaw[13] give Tribunal judges the necessary case management powers, with guidance as to how to exercise them. These case management powers allow judges the discretion and flexibility to ensure that proceedings are fair and that appeals do not proceed until parties have had a fair opportunity to access legal representation and participate effectively in the process. These are the "*measures, processes, standards and safeguards"* that are intended to ensure that the Tribunal system complies with its legal obligations and "*provides a fair, accessible and just process for all users",* otherwise it would be acting outside its powers and unlawfully.

3. There is no detail provided as to how the IAB will be independent and impartial from the Executive or the Home Office or that it will be able to provide access to justice and fair proceedings. This raises grave concerns about judicial independence of the IAB. A system that compromises judicial independence and impartiality risks breaching standards of fairness, accessibility and justice. In a system where IAB adjudicators do not require the same legal expertise or experience as FTT judges, or any legal expertise at all, the systemic risks of the IAB restricting fair access to legal advice and effective participation in the appeal process seem very high indeed.

[13] Courts and Tribunals Judiciary, 'First-tier Tribunal Immigration and Asylum Chamber Rules, Guidance and Forms' (updated November 2025).

4. This should provide a complete answer to Q5. However, the Restoring Order and Control ("**ROAC**") asylum policy statement, states that the *"new appeals body…includes independent legal advice"*. In the call for evidence document it states *"the new Independent Appeals Body...enables access to…legal advice or representation"*. It is unclear if the intention is for the IAB to assume responsibility for arranging for legal representation to be provided to appellants. This responsibility currently rests with the Lord Chancellor, who has a statutory duty to make these arrangements and the Director of Legal Aid Casework, where they are eligible for legal aid. If the IAB is to replace the current system of legal aid in asylum appeals then there is no detail about how it will do so. Decisions about legal aid funding are made independently of the Home Office and the Tribunal system. Applicants are required to make confidential and legally privileged assessments of merits for the Legal Aid Agency in order to obtain funding. In view of the concerns over the IAB's independence we have serious concerns about its role in this process and how it will be able to undertake this role independently.

Q6. Can you tell us of your experience of immigration and legal advice, including whether you have concerns around access, availability or capacity.

Concerns around access, availability and capacity

1. People need legal representation to meaningfully participate in their immigration and asylum appeals.[14] Yet, one in five appellants are without it at their hearings.[15] The proposed IAB, and its unqualified adjudicators, will be ill-equipped to deal with unrepresented appellants – so the following concerns will prevent the IAB from operating fairly or effectively.

Availability: immigration legal aid is not available to those who need it.

2. Immigration legal aid is not available for those who need it – up to and including appeal stage. Time and again, government and Parliamentary investigations have reached this same conclusion.[16]

3. PLP's report 'An ocean of unmet need' demonstrates that the immigration and asylum legal aid sector has collapsed:

   (i) **Providers rely on mixed funding from private practice and charitable funders**: Wilsons Solicitors, for example, indicated that their lawyers had to take on a

[14] As the Court of Appeal concluded in *Gudanaviciene & Ors, R (on the application of) v The Director of Legal Aid Casework & Ors* [2014] EWCA Civ 1622 at [72].
[15] HMCTS Freedom of Information data sent to Dr Jo Wilding.
[16] See, e.g. National Audit Office, 'Government's management of legal aid' (2024) HC 514; Public Accounts Committee 'Ministry of Justice Follow-up: Autumn 2025' (2026) HC 1240; Ministry of Justice 'Review of Civil Legal Aid: Overarching Summary Report' (2025).

private case paying £88 p/hr, to subsidise each legal aid case paying £52 p/hr, as their break-even cost was around £70 p/hr.

(i) **Providers' capacity is saturated:** Only 1 in 16 of research participants' referral attempts to legal aid providers were successful.

(ii) **Providers face a large, unremunerated administrative burden in maintaining a legal aid contract**: complex files can be scrutinised repeatedly, at substantial cost to the Legal Aid Agency, and significantly delaying payment – research participants reported compliance costs of up to £200,000.

Capacity: recent proposals will not improve providers' capacity.

4. The MoJ proposes to increase the sector's capacity by (i) increasing fees; and (ii) potentially changing the legal aid contract to make it easier for providers to do work remotely in areas with limited provision.[17]

5. MoJ's decision to increase fees immigration legal aid work is welcome. However, on its own, the increase will not be enough increase capacity in the sector:

   (i) **The new rates were not designed to do so**: MoJ's purpose in setting the new rates was to enable profit against current costs to maintain current levels of provision.[18]

   (ii) **MoJ calculated the new fees using a flawed methodology:** (i) MoJ used cost estimates that did not assess costs for immigration providers; and (ii) MoJ assumes that costs will stay at the same, unsustainably low level.

   (iii) **Providers continue to be paid the old hourly rates**: the new rates only apply to cases that have been opened since they have come into effect – asylum cases are often open for years before they can be billed.

6. PLP's report 'Remote immigration and asylum advice' shows that remote legal services are not suitable for everyone – so, on its own, substituting in-person for remote capacity will only have a limited effect on the sector's capacity as a whole. In fact, doing so risks making some existing challenges in accessing legal aid worse in a context where providers are already under intense commercial pressure.

Access: desert areas and out-of-scope appeals.

[17] Ministry of Justice, 'Civil legal aid: Towards a sustainable future' (2025) CP 1268, Chapter 2.
[18] Ministry of Justice, 'Civil legal aid: Towards a sustainable future, consultation response' (2025) CP 1333, page 15.

Desert areas

7. Large parts of the country lack local provision of immigration legal aid.[19] MoJ have acknowledged a particular problem in the South West procurement area.[20] PLP's report 'Access to immigration legal aid in Southwest England 2024' concluded **only 11% of providers listed on the immigration providers south west support directory had capacity for asylum appeals.**

Out-of-scope matters

8. PLP's research has consistently shown that the administrative burdens associated with the Exceptional Case Funding ("**ECF**") scheme (for out-of-scope matters that engage individuals' fundamental rights) systematically disincentive providers from supporting people to make ECF applications.[21] Immigration matters make up about two-thirds of applications for ECF and three-quarters of ECF grants.[22] In 2024-25, 88% of applications for immigration-related ECF were successful.[23] These eligible individuals will struggle to access legal aid.

Q7. Do you consider changes are required to ensure early legal advice is a core part of the system to avoid delays and late claims, and to lead to better decisions? Please include any suggestions on how legal advice or representation could be improved.

1. Early legal advice is essential if the asylum system is to function fairly and effectively. Yet, in PLP's experience, people rarely have access to early immigration advice when they need it. The central reason for that is the under supply of publicly funded legal advice (as described in our answer to question 6).

Commercial pressure makes it harder for providers to offer their services at an early stage

Lack of advice generally

2. The main reason that someone might struggle to obtain advice early on in their claim is the under supply of publicly funded legal advice. On average, support organisations make someone 16 referrals to legal aid providers before their case is taken on.[24] As a result, people often wait months/years before they receive legal advice. In the meantime, their case will progress. A lack of legal advice may either mean that cases are delayed whilst a

[19] National Audit Office, 'Government's management of legal aid' (9 February 2024), HC 514.
[20] Ministry of Justice, 'Review of Civil Legal Aid: Overarching Summary Report' (2025).
[21] Summers, J. 'Misaligned incentives in the immigration legal aid scheme', (forthcoming, 2026), Public Law Project; Tomlinson, J. and Marshall, E. 'Improving Exceptional Case Funding: Providers' Perspectives' (2020), Public Law Project.
[22] In the financial year 2024-25: 64% of applications were for immigration matters (2,255 out of 3,518), as were 77% of grants (1,982 out of 2,565) – Legal Aid Agency 'Legal Aid Statistics' (2025).
[23] 1,982 out of 2,255 – Legal Aid Agency, 'Legal Aid Statistics' (2025).
[24] Rourke, D., Cripwell, E., Summers, J. and Hynes, J., 'Access to immigration legal aid in 2023: An ocean of unmet need' (2023), Public Law Project.

person finds a legal representative[25], or cases go ahead whilst the person is unrepresented, which means there is a higher risk that the appeal cannot be fairly and effectively decided.

3. Further, where providers regularly have to turn people away, they are likely to prioritise those whose need for legal advice is most urgent – i.e. those individuals whose cases have already progressed.

Lack of early legal advice specifically

4. Referral organisations have documented how difficult it can be to access early immigration advice. Migrants Organise, for example, report that some providers sign up large numbers of clients but offer them limited support until the later stages of their case.[26]

5. To some extent, providers have a financial incentive to do this – and, because immigration legal aid providers are under intense commercial pressure, they might be highly sensitive to commercial incentives.[27] This incentive results from two things.

   (i) **First, slow initial decision-making disincentivises providers from offering early legal advice**. Once they take an asylum client on, providers are required to keep their file open until either the Home Office decides their asylum application, or the file has been open for 6 months. In December 2025, 53% of those awaiting an initial decision had been waiting for more than six months.[28] As a result, it is more likely than not that a provider will need to maintain someone's file for a long time if they open it at an early stage.

   (ii) Second, the legal aid means criteria disincentivise providers from offering advice at the earliest stages of someone's claim. Asylum seekers who are receiving section 95 or section 4 asylum support are 'passported' through the legal aid means assessment[29] because they have been assessed as destitute.[30] However, those in receipt of section 98 asylum support will not be passported. It is provided temporarily while someone awaits section 95 support. While recipients of section 98 support 'may' be destitute, they are yet to be determined as such. As a result, someone who receives section 98 support needs to prove that they are financially eligible to qualify for legal aid. In practice, this makes it harder for asylum-seekers

[25] *R (Karim) v Upper Tribunal (Immigration and Asylum Chamber) and SSHD* [2024] EWHC 438 (Admin).
[26] Migrants Organise 'Threadbare: The Quality of Immigration Legal Aid' (2025).
[27] See further Summers, J. 'Misaligned incentives in the immigration legal aid scheme', (forthcoming, 2026), Public Law Project.
[28] Home Office 'Immigration Statistics' (2026) - Asy_3a.
[29] Regulation 6, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.
[30] or likely to become destitute in a prescribed period (normally 14 days) - S.95(1) Immigration and Asylum Act 1999.

to obtain legal aid in the early stages of their claim: providers are incentivised to operate a 'passports only' model and only take clients who can easily prove their eligibility.

Early legal advice can reduce the demand for immigration/asylum appeals

6. It is easier to get initial decisions right where applicants have had the benefit of early legal advice: their applications are more likely to identify relevant evidence, legal grounds, and individual vulnerabilities, and (where appropriate) the individual is also more likely to have been referred to the National Referral Mechanism. As a result, initial decision-makers will have the information they need to determine someone's application – and the likelihood of someone submitting an appeal or fresh claim is significantly less.

7. This was recognised by the NAO, who highlighted that "*the lack of legal advice and representation can mean that issues which could have been resolved at the initial decision stage are instead pushed to appeal, increasing the appeals backlog*."[31] It has also been recognised by MoJ, who increased immigration legal aid fees (in part) because "*the investment will […] help to reduce the asylum backlog.*"[32]

8. Investing in access to justice will ensure that asylum decisions can be taken effectively, lawfully and fairly. The IAB proposal will not.

Q8. Drawing on the existing practices, procedural rules or approaches of the FTT-IAC, which do you consider could usefully be included, adapted or avoided in the design and operation of the new Independent Appeals Body? Please include any views on the current approach to publishing determinations.

1. PLP disagrees with the premise of the question that there should be a new body to hear asylum appeals. We support the continuation of the current system whereby asylum appeals are decided via tribunals and tribunal judges. We believe that this promotes high standards of independence and expertise which the Home Office's proposed system cannot replicate.

2. Both the tribunal judiciary and the TPC, which makes procedural rules for the tribunals, were created by Parliament to be independent from the executive and expert in immigration and asylum law. Given the high stakes of tribunal decisions – including and especially in asylum cases where absolute human rights may be at risk – this makes sense. It is essential for public trust, fairness, and constitutional propriety that asylum appeals

[31] National Audit Office, 'An Analysis of the Asylum System', Session 2024 – 2026, 10 December 2025, HC 1517, page 34.
[32] Ministry of Justice, 'Press Release: Multi-million Pound Investment in Legal Aid' (1 December 2025).

are decided by judges who are independent and are seen to be independent and by individuals who have experience and expertise in the field.

3. Section 1 of the TCEA 2007, for example, declares Parliament's guarantee of the independence of the tribunal judiciary. As the then Solicitor General explained to the House of Commons, the 2007 Act "*puts it beyond doubt that the tribunal judiciary are independent of the Executive, and that the tribunals themselves are independent of the Departments that make the decisions that the tribunals will review. It is right that that has happened, and it strengthens our commitment to increasing public confidence in tribunals*." (5 March 2007, Column 1296).

4. Moreover, in Schedule 5 of the TCEA 2007, which establishes the composition and powers of the TPC, it is a requirement for the TPC to be composed of judges or lawyers with experience of practicing in the tribunals.

5. PLP has serious concerns about the independence of the proposed IAB, with the consultation providing no evidence of proactive thought and assessment from the Home Office about how to guarantee independence from Ministers or from wider political pressures. Indeed, the consultation expressly envisages that individuals who are currently paid by the executive – civil servants and planning inspectors – and that individuals with elected office on a party political platform – such as councillors – could become adjudicators. This would represent an astonishing reduction in the independence of asylum appellate decision-making compared with the current model. The Home Office's proposals simply cannot replicate the degree of constitutional independence that the judiciary have from the executive, which is essential in these high stakes, high risk appeals.

6. Furthermore, by virtue of Schedule 2 of the TCEA 2007, tribunal judges must have at least 5 years' post-qualification experience. There is no evidence that the Home Office has thought-through how to guarantee expertise and experience in asylum law and practice in a similar way. Indeed, the very premise of the consultation is that adjudicators should have less expertise and experience than tribunal judges – despite appeal decisions potentially putting people's lives and safety at risk.

7. PLP is seriously concerned that these proposals will increase executive control, radically weaken independence, and reduce expert standards, in a system that ought to have the highest standards of independence and expertise. PLP cannot support the Home Office's proposals.

8. All this when the Home Office is unable to provide any empirical evidence that its plans will reduce the appeals backlog and, indeed, when other proposals will directly contradict that goal. For example, the Home Office's recent changes to the Immigration Rules

reducing refugee settlement to 30 months instead of the previous 5 years, will mean more decisions have to be reconsidered by the Home Office after that 30 month period and inevitably more decisions will be challenged on appeal.

9. To seek to abolish a whole tier of expert judicial oversight based on the evidence provided by the Home Office is the opposite of responsible and evidence-based policymaking.

Q9. How should the new Independent Appeals Body accommodate specific needs or vulnerabilities, including by providing reasonable adjustments or tailored procedural support, to ensure fairness and accessibility?

1. The existing legal framework, including statutory duties, procedure rules, practice direction, case management powers and guidance is intended to *accommodate specific needs or vulnerabilities* and is how the TPC must exercise its rule-making powers.

2. Moreover, the Public Sector Equality Duty ("**PSED**")[33] places a legal requirement on public authorities and organisations performing public authority functions to promote equality across all aspects of their operations (see the Equality Act 2010).[34] The obligations under PSED are both negative (do not discriminate) and positive (take proactive action to avoid unlawful behaviour).

3. Under the Tribunal current system, the broad case management powers of the Tribunal must be exercised in accordance with the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance; [35] and the Equal Treatment Bench Book ("**ETBB**").[36]

4. The ETBB is a 'living document' that is widely commended and regularly updated to reflect ever-changing realities. The ETBB forms the basis of judicial training. It is intended to inform judges on how best to embed fair treatment in practice, which constitutes the foundation of the judicial oath and responsibility.

[33] Public Sector Equality Duty: Guidance for Public Authorities (December 2023).
[34] See Equality Act 2010.
[35] Upper Tribunal Immigration and Asylum Chamber and First Tier Tribunal, Immigration an Asylum Chamber, 'Joint Presidential Guidance Note No 2: Child, vulnerable adult and sensitive appellant guidance' (October 2010).
[36] Judicial College, 'Equal Treatment Bench Book' (July 2024, February 2026 update).

5. The Senior President of Tribunals' Practice Direction[37] and Joint Presidential Guidance[38] define the categories that require additional procedural fairness and access guarantees, such as 'child,' 'vulnerable adult,' and 'sensitive witness,' and set out the safeguards necessary to ensure a fair hearing. Responsibility for identifying vulnerability lies with the parties, while the Tribunal ensures that the relevant provisions are in place to accommodate it. It is essential, particularly in relation to vulnerability, that an independent body, not connected to any party, makes the relevant arrangements.

6. It is critical that judges have the skills, expertise and experience to use and apply the powers and guidance available to them to accommodate specific needs or vulnerabilities. This includes case management that is appropriate, sensitive and ensures that proceedings are fair and that all witnesses are able to participate effectively. In view of the concerns we have set out about the independence of the IAB and the removal of the minimum requirements of legal skills, expertise and experience for IAB adjudicators, PLP considers there are substantial risks of the IAB being unable to ensure that vulnerable individuals or those with specific needs are fairly treated and will receive a fair hearing under that system.

Expert evidence and country information

Q10. How should expert evidence (including medical, country and technical expertise) be commissioned, quality-assured and used within the appeals process?

1. The Practice Direction of the FTT[39] contains detailed requirements for expert evidence and how it should be used within the appeal process. There is no evidence as to why there should be a departure from those requirements. FTT judges must make factual findings in relation to all evidence, including expert evidence – and this may be decisive in the outcome of an appeal. However considering, assessing and weighing of all of this evidence is a *legal* issue. Assessment of evidence in asylum appeals is usually a complex exercise and is best conducted by judges with legal expertise, otherwise there are serious risks of unqualified adjudicators making errors with potentially serious consequences and which may delay the resolution of appeals.

[37] The Senior President of Tribunals, 'Practice Direction: First Tier and Upper Tribunal: Child, Vulnerable Adult and Sensitive Witnesses' (October 2008).
[38] Upper Tribunal Immigration and Asylum Chamber and First Tier Tribunal, Immigration an Asylum Chamber, 'Joint Presidential Guidance Note No 2: Child, vulnerable adult and sensitive appellant guidance' (October 2010).
[39] The Senior President of Tribunals, 'Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal' (November 2024), Rule 9.

Q11. What are your views on requiring parties to rely on a shared set of expert materials?

1. The use of joint experts in immigration and asylum appeals was previously considered by the TPC in April 2023[40]. There is a power for other chambers of the FTT to direct the use of joint experts. The TPC considered that the FTT(IAC) should be permitted to order the use of joint experts where appropriate, but would neither require an order for joint experts, nor prevent parties seeking to rely on other expert evidence. Respondents to that consultation pointed out that in practice it would be difficult to utilise joint experts and / or that the use of joint experts should not preclude individual parties from instructing experts. We see no reason to depart from the TPC's findings and we can also foresee practical difficulties with the joint instruction of experts. We do not consider that joint expert reports will necessarily save time – particularly if there are only a small pool of joint experts.

Adjudicator recruitment, eligibility, impartiality and training

Q12. What recruitment criteria would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

1. The Home Office proposal to compromise on existing minimum standards for judges hearing immigration and asylum appeals, including the appointment of adjudicators with insufficient legal expertise, is likely to mean that they will not replicate the independence and impartiality of the existing Tribunal judiciary. Continuing the current system whereby asylum appeals are decided by tribunal judges appointed following a rigorous selection process by the independent Judicial Appointments Commission ("**JAC**"), best ensures independent, impartial, and credible decisions.

2. The Bangalore Principles of Judicial Conduct, which were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003, for example, state that "A judge shall...uphold and exemplify judicial independence in both its individual and institutional aspects" and that "Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made." The Bangalore Principles add that: "Competence and diligence are prerequisites to the due performance of judicial office."

3. It is crucial for asylum appeals to continue to be decided by tribunal judges for at least four reasons.

[40] Tribunal Procedure Committee, 'Consultation reply on possible changes to the First-tier Tribunal (Immigration and Asylum Chamber) Rules and the Upper Tribunal Rules arising from Nationality and Borders Act 2022' (April 2013), page 22 at §130.

4. First, asylum law is a complex and specialist area which requires lawyers of experience and expertise. In *Pokhriyal v Secretary of State for the Home Department* [2013] EWCA Civ 1568, for example, Jackson LJ commented that, in immigration law, "*provisions have now achieved a degree of complexity which even the Byzantine emperors would have envied*".

5. The Home Office itself concedes (in this proposal) of the need for legal qualifications and expertise by suggesting that adjudicators may need legal advice and mentoring to make decisions.

6. Through the Immigration and Asylum Act 1999, Parliament decided that individuals providing immigration and asylum legal advice should be properly qualified. Now, the Home Office proposes that individuals deciding asylum appeals should not even have this standard of qualification which Parliament is a bare minimum for proficiency in immigration and asylum law. This is indicative of the inconsistent, expedient, and political nature of these proposals.

7. Second, given the guarantee of the independence of the tribunal judiciary in section 1 of the TCEA 2007, judges can best guarantee the independence and, importantly, the appearance of independence, needed to make such high stakes decisions, carry public trust, fairness, and constitutional propriety.

8. Third, judges are uniquely skilled in deciding factual disputes and assessing credibility as they arise specifically in legal disputes.

9. Fourth, the absolute or otherwise fundamental human rights at stake in asylum cases make tribunal judges – with their independence and expertise – better placed to make these decisions. This will include but not be limited to: Article 2 (the right to life), Article 3 (the prohibition of torture), Article 4 (the prohibition of slavery), Article 5 (the right to liberty), Article 9 (freedom of religion), Article 10 (freedom of expression), Article 11 (freedom of assembly), and Article 14 (the prohibition of discrimination) of the European Convention on Human Rights ("**ECHR**").

Q13. What recruitment qualifications would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

1. PLP rejects the premise of the question and believes that asylum appeals should continue to be decided by tribunal judges.

2. Tribunal judges are currently appointed by the independent JAC, created by Parliament through the Constitutional Reform Act 2005. Parliament provided that members of the

JAC should be independent of the Government and Parliament and that only in very rare circumstances in appointments to the higher judiciary should Ministers have a veto over appointments.

3. There is no evidence that the Home Office's plans can replicate the independence or standards of this trusted framework. The Home Office expressly states that it contemplates that individuals who currently work for the executive branch of the government, such as planning inspectors and civil servants, and individuals with party political connections, such as councillors, could be considered for appointment as asylum adjudicators. This illustrates the extent to which the Home Office envisages radically weaker independence compared with the current judge-based system.

4. Further still, in making tribunal appointments, the JAC makes use of the Judicial Skills and Abilities Framework ("**JSAF**"). This Framework includes a requirement that judicial candidates demonstrate "legal skills and knowledge to the standard required for the role"; "Clearly understands what is required for a fair hearing"; and comply with the Bangalore Principle cited previously, including independence and impartiality.

5. In addition, by virtue of Schedule 2 of the TCEA 2007, tribunal judges must have *at least* 5 years' post-qualification experience. Given the complexity and constantly changing nature of asylum law and practice, PLP believes that at least this level of expertise and experience is crucial.

6. The level of judicial expertise required by the TCEA 2007 is in stark contrast to the evidence about the quality of training provided by the Home Office. In the Independent Chief Inspector of Borders and Immigration ("**ICIBI**") 2023 inspection report of asylum casework, the evidence is that the Home Office has a poor record of providing meaningful training to staff who are not legally qualified – as adjudicators will be. Fewer than half of initial asylum decision-makers who responded to the ICIBI survey responded that the Home Office's training had equipped them for their role.

7. Therefore, PLP cannot support the Home Office's proposal and supports the continuation of asylum appeals being decided by tribunals.

Q14. What recruitment safeguards would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

1. On the basis of the information provided about the IAB proposal, PLP does not accept that the IAB and its adjudicators will be independent, impartial or credible. The Home Office does not claim that the recruitment safeguards in the existing system fail to ensure

independence, impartiality and credibility, or justify the reasons for creating a system without those safeguards.

Q15. Which professional backgrounds or types of experience should be considered particularly valuable for adjudicators within the new appeals body? Why?

1. On the basis of the information provided about the IAB proposal, PLP has grave concerns about the independence of the IAB from the Home Office and the removal of the minimum standards required for judges of the FTT for IAB adjudicators. PLP considers that the current appointment system is appropriate and suitable for the selection of judges who hear immigration and asylum appeals and that the *minimum* requirement of 5 years post-qualification experience as a lawyer is one of the essential requirements for this judicial post. See also our responses to Q12 – 14.

Q16. Which professional backgrounds or types of experience should be considered particularly unsuitable for adjudicators within the new appeals body? Why?

See PLP's response to Q15.

Q17. For adjudicators to be professionally trained, what should a training package include to support robust, professional, fair and high-quality decision-making in the new appeals body?

See PLP's response to Q15.

<u>Case management models</u>

Q18. Are there any circumstances in which certain case types should have specialist processes? If so, what specialist processes or hearing models would be appropriate for these case types? Please explain.

1. The wide range of cases and issues that need to be determined in the FTT are complex, including the approach to factual matters. Judges must have the necessary legal skills and expertise to provide *an effective legal remedy* in *all* case types. There is a high risk that IAB adjudicators will not be able to do so.

2. For example, on the matter of bail, currently the Immigration Act 2016 enables an applicant to apply to the Home Office or the FTT for immigration bail. The Home Office also generally has a duty to refer individuals to the tribunal for consideration for immigration bail after 4 months of their detention.

3. It would not be appropriate to remove from the FTT the power to decide bail applications for four reasons.

4. First, bail hearings are adversarial and independence from the executive is, therefore, essential[41].

5. Second, immigration bail applications engage a person's fundamental right to liberty.

6. Third, the role of the FTT Judge at a bail hearing is to determine a question of law (whether immigration detention should be maintained), with reference to statutory criteria. This is a question of law which engages a person's fundamental right to liberty. Errors would have severe consequences for those affected.

7. This is a judicial function which requires legal expertise and independence from the executive who are detaining the applicant. Introducing unqualified adjudicators would risk increasing errors and would not provide an effective remedy.

8. Fourth, the consultation cites a policy objective of reducing backlogs, delays, and multiple appeals. However, there is no evidence that this aim would be achieved by replacing FTT judges with unqualified adjudicators. HMCTS is responsible for listing bail hearings, and this is, where possible, done within 3 working days of receiving an application. The Home Office has not provided evidence of a bail backlog.

9. Moreover, there is no right of appeal against a decision of an FTT judge to refuse an applicant's application for immigration bail. The only option is to wait for at least 28 days and submit a fresh application. In addition, there are already measures in place to prevent multiple applications[42].

10. A framework is therefore already in place to ensure swift processing and prevent repeated applications, which meets the policy objectives of this proposal. The proposals only risk increasing errors, the only remedy against which would be judicial review proceedings.

[41] This is reflected in the Home Office's statutory duty under paragraph 11 of Schedule 10 of the Immigration Act 2016, to make an automatic referral for consideration of immigration bail in certain circumstances. The Home Office's guidance, *Immigration bail,* Version 22.0, 12 June 2025, highlights this: *"The First-tier Tribunal is independent of the Home Office. This means that while the Home Office can oppose bail and/or propose conditions to be attached to a grant of immigration bail, the First-tier Tribunal is not obliged to follow the Home Office's wishes."*

[42] Paragraph 12(2) of Schedule 10 requires Tribunal Procedure Rules.

Q19. What additional decision-making safeguards should the new Independent Appeals Body adopt to ensure consistency, quality and fairness?

1. If safeguards for ensuring consistency, quality and fairness in judicial decision-making are ineffective then there is a systemic risk of decisions which are unfair, arbitrary and unlawful. In particular, cases which involve fundamental rights, which have procedural fairness guarantees and require an effective legal remedy under the Refugee Convention and the ECHR including Articles 2, 3, 4, 5 and 8.

2. In view of the concerns over the independence, impartiality and the lack of necessary expertise of IAB adjudicators, there is a high risk that any purported safeguards in the IAB would be inadequate and ineffective due to them not being applied properly, or at all.

3. This is why experienced lawyers, appointed following an independent and rigorous selection process, in a system with strong safeguards for their judicial independence are necessary in order to determine appeals and provide an effective legal remedy.

Hearing methods, digital processes and efficiency

Q20. What are the challenges and opportunities for paper-based hearings?

1. The proposal to have paper hearings for decisions which would dispose of proceedings would go against the current presumption against such hearings without the consent of the parties in the FTT's procedure rules[43]. If the existing Tribunal system were to switch from its current system where Appellants are generally given a choice of how their hearings will be conducted to the Home Office's proposal for most hearings proceeding on the papers or remotely then there would be serious risks that appellants would not be able to effectively participate in hearings and that errors will be made. A judge's ability to make fair and well-reasoned factual findings in the cases normally heard in the FTT is crucial for the fair and effective determination of hearings and for confidence in the appellate process – particularly given the serious consequences for appellants if errors are made. In an appeal where the material facts are disputed, a paper hearing will significantly restrict a judge's ability to assess witness evidence and credibility and make critical findings. Such a hearing is unlikely to be fair or provide an effective legal remedy.

2. The risks of appellants not being able to effectively participate in proceedings are likely to be very high if in-person oral hearings were the exception in the IAB in view of concerns about its independence and the appointment of adjudicators who do not meet the minimum standards that currently apply to FTT judges, including no requirement for any

[43] The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, Rule 25.

legal expertise. In view of this we consider there is a significant risk that the IAB will not provide a fair hearing or effective remedy if most of its proceedings were conducted on the papers or remotely.

Q21. What are the challenges and opportunities for virtual hearings?

1. Immigration and asylum appeals should not operate on an assumption that most cases will be determined remotely. **Remote hearings are not a 'one-size-fits-all' solution – they are inappropriate for a significant number of asylum seekers.**

2. PLP's conclusion to that effect is drawn from our research report 'Remote immigration and asylum advice: what we know and what we need to know.' The report's findings were drawn from interviews with refugees and asylum seekers who had experienced both in-person and remote advice. Although it focuses on remote advice, it has significant transferability to remote hearings: the challenges and opportunities it describes relate to the same population, and are a product of the same technology.

Challenges

3. In a significant number of cases, a remote hearing is likely to be inappropriate. Our research shows that remote provision is likely to be inappropriate where service users:

    (i) struggle to meaningfully participate remotely due to a mental health condition, for example where they need to describe past trauma;
    (ii) do not have access to the necessary technology to meaningfully participate remotely, for example where they have limited data on their phone; or
    (iii) have low quality internet connection, which can make it difficult to communicate with an interpreter.

4. PLP's research also indicates that, even where someone is able to meaningfully participate remotely, that remote services are qualitatively different from in-person services. Research participants valued in-person services as they found it easier to trust in their representative and convey emotion. Remote services can also negatively affect service users by making them feel isolated. Furthermore, some participants perceived a risk that they were less likely to be listened to remotely, so were less confident that their case would be handled fairly via remote services.

Opportunities

5. Remote services can be more convenient where someone would struggle to travel to in-person services, particularly for those who have medical conditions which make travelling difficult.

6. Although research participants valued the convivence of remote services, that was usually in the context of short-notice advice appointments. Appeal hearings, in contrast, are scheduled well in advance. Therefore, the opportunity for convenience should not be overstated in this context.

7. Where an appellant has been dispersed to a "legal aid desert" area, they might be more likely to obtain representation if the hearing is remote. They will not be limited to those few providers who practice within travelling distance of the hearing. Our evidence suggests, however, that remote provision has a limited impact on capacity because providers are already saturated. [44] Nevertheless, remote hearings might be more convenient for representatives.

Q22. What are the challenges and opportunities for in-person hearings?

1. As in our response to question 21, PLP's response to this question draws on evidence from our research report 'Remote immigration and asylum advice: what we know and what we need to know' – which is focused on remote legal advice, but has significant read across to remote hearings.

Challenges

2. The key challenge for in-person services is in ensuring that everyone is able to travel to them. This can prevent difficulties where individuals struggle to afford travel costs, or struggle to travel due to a vulnerability.

Opportunities

3. Research participants spoke at length about the benefits of in-person services over remote services:

    (i) In-person services provide individuals with a safe space in which to discuss difficult past events.
    (ii) Participants felt that their representatives could better offer them reassurance and emotional support if they were seen to in-person.
    (iii) Participants felt that they were more likely to be listened to if seen in-person – both because they were more comfortable sharing their story and because they could better convey emotion.
    (iv) Participants felt reassured that their case was being taken seriously if they were seen in-person.

[44] Hynes, J. and Summers, J. 'Access to immigration legal aid in Southwest England 2024: New depths of Unmet Need' (2024), Public Law Project.

Q23. What technology, infrastructure or operational measures are required to ensure that remote or hybrid (a mix of remote and in-person) hearings are fair, accessible and secure?

1. PLP's research report 'Remote immigration and asylum advice: what we know and what we need to know' concluded that they key measure to ensure that remote services are fair and accessible is **a genuine option of being seen in-person**.

2. Remote services are not suitable for everyone. There are a range of reasons why someone might not be suited to a remote hearing, so it is difficult to produce standardised criteria for being seen in-person. The impact of remote hearings on appellants and their outcomes is not understood. And, more generally, best practices for remote hearings are under-researched. Therefore, appellants should have the option of being heard in-person.

3. Research participants indicated that they were less likely to trust in remote services that were imposed on them. Service users worried that things were more likely to be missed remotely, and providers did not think it appropriate to ask for intimate details of their clients' lives (which risks re-traumatisation) remotely.

Q24. What considerations should inform decisions regarding how and where appeals are heard in the new Independent Appeals Body, including alternatives to the existing appeals estate (buildings and locations) and other spaces?

1. As is explained in PLP's response to question 23, **the key consideration is the appellant's own assessment of their needs.**

2. A presumption in favour of remote hearings is likely to result in unfairness: remote hearings are not suitable for everyone and are qualitatively different from in-person ones. Research participants' desire for choice reflects this difference: they often described it as necessary in the context of highlight emotional interactions, often involving very personal information.

3. One participant described how they valued in-person services in the following terms: "*I think the real life in person conversation is more effective because we're talking about energy as well and expression of people. So, you can feel the room, you can feel the person. You can see the suffering, can see the anger.*"[45]

[45] Hynes, J., 'Remote immigration and asylum advice: what we know and what we need to know' (September 2024), Public Law Project, page 23.

Compliance, engagement, timeframes and prioritisation

Q25. What measures could improve compliance with directions and timeframes, and support effective engagement and attendance from appellants, representatives and the Home Office throughout the appeals process?

1. The Overriding Objective[46] of the FTT's Procedure Rules ("**the Tribunal Procedure Rules**" or "**TPR**") is to enable the Tribunal to deal with cases justly and fairly. This includes *"avoiding delay, so far as compatible with proper consideration of the issues"*. It places a duty on the Tribunal to give effect to it when exercising its powers and interpreting the procedure rules. It also places a duty on the parties to further the overriding objective and to co-operate with the Tribunal.

2. The FTT has very broad case-management powers both in the TPR and its Practice Direction [47] to progress appeals and support effective engagement and attendance from the parties.

3. The guiding principles of the FTT's Practice Direction[48] impose a duty on all parties to ensure that they conduct cases with *procedural rigour*. At 1.2 it states:

> *"The parties must ensure they conduct proceedings with procedural rigour. The Tribunal will not overlook breaches of the requirements of the Procedure Rules, Practice Directions, Practice Statements and failures to comply with directions issued by the Tribunal."*

4. Where the parties fail to comply with those requirements Judges of the FTT have the power to impose powerful sanctions, including the exclusion of evidence[49], the disposal of an appeal at an interim hearing[50] or without a hearing[51]. If a party fails to attend a hearing the Tribunal has the power to proceed with the hearing in that party's absence[52].

5. No evidence has been provided by the Home Office that these wide-ranging powers of the FTT are being exercised in a way that does not further the Overriding Objective, including compliance with directions and effective attendance and engagement by the parties, or that it has caused unjustifiable delays and appeal backlogs.

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[46] Immigration and Asylum Chamber tribunal procedure rules, Rule 2.
[47] The Senior President of Tribunals, Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal (November 2024).
[48] Ibid., at PD 1.2.
[49] The Senior President of Tribunals, Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal (November 2024), at PD 5.3.
[50] Ibid., at PD 6.2.
[51] Immigration and Asylum Chamber tribunal procedure rules, Rule 25(1)(e).
[52] Ibid., Rule 28.

6. Exercise of the wide-ranging powers of the FTT to manage cases efficiently and effectively are best exercised by judges with legal expertise – as these decisions ultimately concern legal issues of procedural fairness and what is required in order for an appeal to be decided justly and fairly.

Q26. What should constitute a reasonable timeframe for deciding cases?

1. A reasonable timeframe needs to be considered on a case-by-case basis.

2. Some appeals may be able to proceed quickly and efficiently. However there are entirely legitimate reasons why appeals may not be ready for hearing. Immigration and asylum appeals can be factually and legally complex and appellants frequently have vulnerabilities or their personal circumstances may be unstable or precarious. These matters can increase the time required to prepare an appeal but there are many other variables, such as: (a) complex credibility issues requiring witness and expert evidence; (b) medical issues requiring medico-legal evidence and appropriate steps to ensure a vulnerable witness can give evidence; (c) changing circumstances in the country of origin during the course of an appeal; (d) late disclosure of evidence due to trauma or other justifiable circumstances; (e) the unavailability of legal representation. Whilst judges must make decisions promptly, they require time to review materials, make findings of fact, apply the law and write up a determination which effectively disposes of the appeal. This a has an impact on judicial capacity to hear appeals within standard timeframes.

3. The guiding principles are already set out in the Tribunal's Procedure Rules and Practice Directions. The TPC is already under a statutory duty to make rules that allow for appeals to be handed quickly and efficiently and the Overriding Objective requires the FTT to exercise its case management powers to avoid unnecessary delay.

4. The Tribunal under the guidance of its judges with legal expertise are able to exercise the broad case management powers at their disposal to decide what is a reasonable timeframe in the circumstances of each case. The Tribunal Procedure Rules, Practice Direction and Tribunal judges in the exercise of their powers require appeals to be determined without unnecessary delay.

5. Unnecessary delays should be avoided wherever possible as it is not in the interests of justice. However, the rigid use of a statutory timeframe is unlikely to address delays and the backlog, as it does nothing to improve any of the underlying issues such as, decision making, effective participation in appeals, narrowing issues in appeals, or increasing the capacity of judges, the Home Office, legal representatives, experts or interpreters.

6. The Nationality and Borders Act 2025 has introduced a statutory timeframe of 24 weeks for the determination of appeals of appellants who are either in receipt of asylum support or who are liable for deportation and not detained[53]. This measure has not yet been commenced, so its impact is not yet known.

7. However, it seems likely that IAB adjudicators would need *more* time to make fair and just decisions which effectively dispose of appeals. If appeals are to be determined within set timescales, then compromising on judicial standards will make it more difficult to achieve that.

8. We therefore do not consider that imposing statutory timeframes will address delays and the backlog. The IAB is likely to exacerbate the existing problems.

Q27. In what circumstances should exceptions be permitted?

1. See our responses to Q26 and 27. Exceptions should be permitted in accordance with the Overriding Objective in the Tribunal Procedure Rules – namely that appeals are dealt with fairly and justly and avoids unnecessary delay. This is an exercise of judicial discretion and judges require should be permitted to exercise their broad powers of discretion as they do at present.

2. We have concerns that the IAB will be capable of exercising judicial discretion to ensure that exceptions are applied justly, fairly and properly.

Q28. What changes to the current system will ensure appeals are decided within a single appeal route?

1. At the time of the NAO's report in December 2025, the MoJ did not hold reliable data on the level of repeated appeals and the Home Office could not provide data on the outcomes of further submissions[54]. No evidence is provided of the extent of multiple appeals, nor the reasons for them in this proposal. No detail is provided about the proposed single appeal route.

2. The current system *is* a single appeal route and it is unclear how the new IAB proposal will be any different. There are already safeguards in place to prevent vexatious or abusive repeat appeals, for example:

[53] Border Security, Asylum and Immigration Act 2025, sections 49 & 50.
[54] National Audit Office, 'An Analysis of the Asylum System', Session 2024 – 2026, 10 December 2025, HC 1517, page 32 at §2.24.

(i) Further submissions must meet the fresh claims test[55] and have a realistic prospect of success on appeal. Those who do not meet this test will be refused without a right of appeal.

(ii) There is a duty on applicants to raise all relevant matters to the attention of the Home Office.[56]

(iii) The Home Office have the power to certify matters that are raised late and which an applicant fails to raise in an appeal[57], meaning that the applicant has no right of appeal.

(iv) The Home Office has the power to certify a claim which is manifestly unfounded[58], meaning the applicant will not have a right of appeal.

3. The combined effect of these powers means that where applicants have a repeat appeal it is because it is accepted that they have legitimate reasons for making further submissions which result in a fresh claim, which they could not have made before and which is sufficiently well founded to have a realistic prospect of success before a judge.

4. It is therefore unclear what is meant by this proposal, why further changes are required, or how they would comply with domestic and international human rights obligations, particularly under the Refugee Convention and ECHR.

Q29. How should the new Independent Appeals Body prioritise or accelerate cases, and should it adopt a more codified approach to case management than exists in the current FTT-IAC? You may wish to comment on whether certain categories of cases might be appropriately prioritised or accelerated, and what safeguards, fairness considerations, or operational factors should be taken into account, and on reasonable timeframes for doing so.

Accelerated appeals

1. The categories for those who may be subject to prioritised or accelerated appeals to the IAB appears very wide.

2. Accelerated appeals such as the Detained Fast-track ("**DFT**") have already been found to be unfair and unlawful by the courts because "Speed and efficiency do not trump justice

[55] Immigration Rules - Immigration Rules part 12: Procedure and rights of appeal, at §353.
[56] Nationality, Immigration and Asylum Act 2002, s.120.
[57] Nationality, Immigration and Asylum Act 2002, s.96.
[58] Nationality, Immigration and Asylum Act 2002, s.94.

and fairness. Justice and fairness are paramount".[59] Accelerated processes pose high risks to fairness and access to justice, for all the reasons set out in the DFT[60] litigation and should not be introduced.

3. Since the DFT was suspended, the TPC has twice rejected proposals[61] by the Home Office to reintroduce accelerated appeals on the grounds that they would be unfair and ultimately they would not achieve the Home Office's objective of faster appeal decisions.

4. The TPC in its 2019 consultation response considered it inevitable that a substantial proportion of appeals would have to be transferred out of the fast track (with a fixed 28 working day timetable) due to (1) the SSHD placing all detained appellants in a fast-track process and (2) the practical challenges that were faced by appellants and their representatives in preparing and participating in an appeal process with a fixed 28 working day timeframe (§67 2019 TPC response). The TPC concluded:

   (i) *"The TPC has no doubt that many appeals involving detained appellants would not be suitable for resolution within 28 working days and would therefore need to be removed from any fast track system."* §67 2019 TPC response.

   (ii) *"There [is] a real prospect that a substantial proportion of detained cases that entered a 'detained fast track would need to be removed from the system as unsuitable."* §70 2019 TPC response.

   (iii) *An inevitable consequence of [robust] safeguards would be that many cases would be dealt with outside the fast track timescales, since the purpose of such safeguards would be to identify unsuitable cases and ensure they were dealt with differently."* §71 2019 TPC response

5. It is therefore very unlikely that most cases can be fairly heard within an accelerated timeframe and in practice the majority would need to be transferred out. The time taken by this process is likely to mean that resources are diverted and delays will be created elsewhere in the appeals system.

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[59] *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840 at [22].

[60] *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors* [2015] EWHC 1689 (Admin) and *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840.

[61] (1) Letter from the Tribunal Procedure Committee chairman, Mr Justice Langstaff to Rob Jones, Head of Asylum and Family Policy, Home Office (12 February 2016); (2) Response to the consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants, March 2019.

6. However, these risks in an accelerated system are likely to be significantly exacerbated in the IAB given that its independence is compromised and its adjudicators do not require legal expertise.

7. We are particularly concerned that the Home Office proposal for the IAB appears to circumvent the independent rule-making powers of the TPC in order to create an appellate process where speed trumps fairness and justice. The Home Office have not provided any information about how the IAB is to be independent or about the independence of the body responsible for its rule-making powers. These proposals should be rejected if they would create a body that does not have its procedures and rules made by the TPC.

Codification

8. We are unclear what is proposed in terms of codification of the case management powers. The proposals do not indicate where the problems lie in terms of exercise of those powers and where codification is needed to prevent arbitrariness or to improve the current system.

9. The TPC has said that one of the key features of a system that is fair and which can handle proceedings quickly and efficiently, is that judges retain flexibility to give appropriate case management directions which are tailored to the circumstances of the case.[62] We agree.

10. If there were to be codification it would be important not to fetter the discretion of judges to make case management directions. It is important that judges deal with cases justly and fairly, which includes without undue delay and have flexibility to make directions on a case-by-case basis. We consider there are serious risks of IAB adjudicators lacking the necessary skills and expertise to exercise the discretion properly.

Accountability, transparency and oversight

Q30. What mechanisms should be in place to ensure the accountability of the new appeals body?

1. Under the current system whereby tribunal judges decide asylum appeals, there is a well-established framework of accountability when judges make errors of law or behave inappropriately.

[62] Letter from the Tribunal Procedure Committee chairman, Mr Justice Langstaff to Rob Jones, Head of Asylum and Family Policy, Home Office (12 February 2016).

2. For complaints regarding inappropriate judicial conduct, complaints are heard by the independent Judicial Conduct Investigations Office ("**JCIO**"). The JCIO can issue a range of sanctions for complaints which are upheld, including advice, formal warnings, reprimands, and removal from office for judges below the High Court.

3. Where a tribunal judge has made an error of law, by virtue of Chapter 2 of the TCEA 2007, an appeal lies to the Upper Tribunal where the erroneous decision can be overturned and corrected.

4. Based on PLP's expertise and experience, this is the appropriate framework for accountability in asylum appeals. PLP rejects the Home Office's adjudicator proposals.

Q31. What mechanisms should be in place to ensure transparency of the new appeals body?

1. Under the current system whereby tribunals decide asylum appeals, transparency is guaranteed by the principle of open justice and by associated procedure rules which promote this principle.

2. In both the First-tier and Upper Tribunal, appeal hearings are held in public by default; the public may attend unless there are good reasons; journalists may report on hearings or decisions unless there are good reasons; and decisions are published on a publicly accessible website (tribunalsdecisions.gov.uk).

3. For example, Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 makes clear that by default First-tier Tribunal hearings must be held in public and a similar provision exists in Regulation 37 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of the Upper Tribunal.

4. PLP's assessment is that this system is more appropriate than the Home Office's proposals for the reasons provided.

Q32. What mechanisms should be in place for effective oversight of the new appeals body? Please include in your response whether you consider it should be subject to a regulator or an ombudsman.

See above at Q30 - 31

Ministry of Justice

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12 February 2016

Letter from the Tribunal Procedure Committee chairman, Mr Justice Langstaff.

Dear Mr Jones,

Tribunal Procedure Committee - Accelerated Detained Appeals Procedure.

The Committee has considered the request by the Home Office to introduce an Accelerated Detained Appeals Procedure. It would like to thank the Home Office for explaining what is envisaged, and the reasons for it, in meetings with the Immigration Sub-Group and in exchanges of correspondence.

As part of its consideration of this, the Immigration Sub-Group of the Committee met with Detention Action, the Law Society Immigration Sub-Committee and the Immigration Law Practitioner's Association to discuss appeals by detained appellants. Written observations provided by Detention Action, dated 13th January 2016 are enclosed.

The Tribunal Procedure Committee's approach

The Tribunal Procedure Committee's starting point when making rules is its duty under s22 of the Tribunals, Courts and Enforcement Act 2007. That requires it to make rules that ensure that:

(a) in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done,
(b) the tribunal system is accessible and fair,
(c) proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently,
(d) the rules are both simple and simply expressed, and
(e) the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

Though it is clear that fairness demands that Appellants should be detained for as short a period as possible, the other requirements of s22 must not be overlooked. Proceedings must

do justice to the parties (justice, it is obvious, is wider than minimizing the length of detention, though that is part of it) and the system must be both accessible and fair.

The TPC believes that it is right, following the decisions by the High Court and the Court of Appeal in the Detention Action litigation, to look carefully at the rules relating to detained appellants to ensure that they best express the aims under s22.

The TPC also believes that it is important to ensure that any rules that we make would withstand legal challenge. First, and most simply, we cannot make rules that we believe to be unlawful. Second, any successful challenge creates substantial, and expensive, disruption to the system both for the Home Office and the Ministry of Justice, together with a significant human cost to litigants, and defeats rather than aids the achievement of our statutory objectives.

The Home Office's request

The Home Office has asked the Committee to amend the Rules so as to create an ADAP, as an exception to the cohort of immigration and asylum cases dealt with under the general rules. In that way, it appears intended to be similar, though not identical, to the previous Fast Track Rules.

To have such an exception necessarily involves (a) the prescription of a cohort of appellant to whom the procedure will apply. If there is not one sole criterion - the simple fact of detention - the criteria would have to distinguish those within the cohort from those who are also in detention, but intended to be outside the cohort; and (b) the application of an accelerated and specific timetable to those cases.

The Committee understands that the Home Office would like those Rules to complement an administrative fast-track which the Home Office intends to establish to determine which cases fall within the cohort; that it proposes the same basic structure as that of the 'fast-track' which operated until July 2015; and, at least initially, that this would operate at the same two detention centres as did the Fast Track Rules - Harmondsworth and Yarl's Wood.

Until July 2015, the Home Office operated an "Administrative Fast-track" but suspended this because it accepted that there was "an unacceptable risk of unfairness to vulnerable or potentially vulnerable individuals".

The TPC understands from the meetings that the Home Office have been discussing with stakeholders the introduction of a new administrative fast-track. In the meantime, the Home Office operates a process called 'Detained Asylum Casework' ('DAC') at Harmondsworth and Yarl's Wood. The TPC is advised that this does not apply to all Home Office casework in detained asylum cases. It was also informed in those meetings that some 10 separate judicial reviews have been issued challenging the legality of DAC, amongst those challenges being a lack of clear rules for its operation.

Identifying a cohort of cases for an accelerated system

The TPC understands that the cohort previously fast-tracked contained cases where a "quick decision is possible", and where none of the "exclusion criteria" applied (see judgment of Ouseley J, Detention Action, 9 July 2014, para 41). Both these criteria were subject to further administrative guidance (see paras 43-47). That guidance, issued by the Home Office, stated "There is no requirement that an application be late and opportunistic." (See para 41).

The Home Office now proposes an ADAP limited to claims "to which Article 23(4) of the EU Asylum Procedures Directive 2005/85 applies". Article 23(4) contains 15 classes of person and indicates classes of case in which Member States may prioritise or accelerate the procedure. It is not directed to persons in detention, though these are not excluded. The Home Office explains that this reference is proposed to "focus on cases which, in general, appear to be unnecessarily late, opportunistic, abusive or highly likely to fail". It therefore contrasts with the cohort subject to previous Fast Track Rules

The TPC believes that there are three fundamental problems with this approach that make such the criterion that a case should be "unnecessarily late, opportunistic, abusive or highly likely to fail" undesirable.

(1) The TPC does not believe that there is a clear correlation between claims that are labeled weak, late or opportunistic and those that can be resolved fairly under an accelerated timescale. First, the decision as to whether a claim actually is "weak, late or opportunistic" cannot be taken administratively within the Tribunal system: it is for a judge to determine. Second, some weak claims can be fairly resolved quickly; but so can some strong claims. Some strong claims need more time — to assemble evidence or to prepare — but so do some weak claims. Third, this is further complicated by the fact that, in the asylum context, the weakest claims have already been removed by exercise of the statutory power to certify them as clearly unfounded, which means that an applicant has no right to an in-country appeal. If these cases are not being removed from the list, they should be.

The TPC therefore does not believe that the proposed criterion will achieve the aim of identifying those cases suitable for quicker resolution. They are "hit and miss".

(2) Even if it were true that claims meeting the criterion could be resolved more quickly than others, we do not believe that it could be applied effectively at the point that appeals are received by the tribunal. This is because deciding whether a case meets criteria requires careful consideration of issues which are often complex: for example, whether the applicant has made 'inconsistent representations which make a claim clearly unconvincing in relation to the claimant having been the object of persecution' (class (g)), or has not 'filed an application for asylum as soon as possible' (class (l)).

These are issues which immigration judges normally decide in their determination of the appeal, after full consideration of oral and written evidence and with the benefit of submissions. A typical asylum appeal usually involves an oral hearing of some 2-3 hours: asylum appeals are listed on the basis that each will take half a day to hear, with a further half day to write up the decision. The Committee is not persuaded that it would be efficient to consider and reach a preliminary determination on such issues, in order to allocate cases to a faster track. Such an approach appears not only inefficient for the tribunal — who would have to assign judges to make these decisions — but also for appellants and the Home Office itself, who would have to deal with these preliminary issues as well.

(3) The TPC is concerned that by applying criteria that relate to the merits of the appeal, the proposal would create a class of cases defined by their hopelessness with the appearance of prejudice to those appeals. Allocation to a fast-track adopting these criteria is apt to create an unfair bias within the system, for it may cause Home Office officials, appellants, representatives and judges to see the appeal outcome as inevitable. While, no doubt, all concerned will seek to deliver justice, the taint of a preliminary decision that a case is, for example, 'highly likely to fail', may prove an additional obstacle for an appellant to overcome at the fact-finding hearing in their first-instance appeal, and in any event give the impression

that this process is unfair. Systematising bias, especially by the choice of one party to the litigation risks undermining public confidence in the tribunal system.

Flexibility

An important aspect of justice is the ability of a judge to tailor make directions for the particular circumstances before him. Every case is different. Though some rules as to timetabling are inevitable in any fair system, they tend to be long stop provisions. To introduce particular timetables for classes of case within the broad scope which those provisions give as to time prescriptively prejudices the flexibility of response. This runs counter to the statutory obligation at s22(e) of the 2007 Act to confer *on members of the tribunal* the responsibility of ensuring that proceedings are handled quickly and efficiently. Moreover the TPC wonders what evidence there is that, taken case by case, judges have provided too generous an allocation of time with the result that the appellant concerned has spent unnecessarily long in custody. Prescribing a tight timetable for a particular type of case requires resource to be allocated to meet the tighter time-limits. This means that those resources are not as readily available for other cases, which may also concern those in detention.

The Home Office's view is that the Principal Rules 'have demonstrably failed to deliver, despite detained appeals having been prioritised'. While the TPC understands the Home Office's desire to deal with cases as quickly as possible, it does not think that there is the evidence from which this conclusion can properly be drawn.

First, it cannot be assumed that the Principal Rules are failing because they result in cases taking longer to resolve than the previous Fast Track Rules. Since the Fast Track Rules 2014 were struck down for imposing deadlines that were too short to be fair, any system that replaces them will on average take longer.

Second, it is too early and there is insufficient information yet to know how long cases will take under the Principal Rules, once they are operated by a full complement of judges and without a backlog arising from the abolition of the Fast Track Rules 2014. The Chamber President has said that, in line with other detained cases, detained asylum cases should have the highest priority for listing. Officials in HMCTS say that, at present, new appeals are being heard within 43 calendar days.

HMCTS aim is to move to listing at 28 days from lodgment of the appeal. This has not yet been achieved for a number of reasons. In July and August insufficient detained asylum cases were being received to utilise the three court rooms at Harmondsworth fully (the TPC understands that only half a court was required). Therefore asylum cases from Hatton Cross were listed there. When the number of detained asylum cases increased after September the court rooms had been committed to those Hatton Cross cases. HMCTS has told the TPC it is in communication with the Home Office in relation to the forecasting information needed in order to plan hearings effectively.

At the same time, the decisions which were set aside as a result of the decision in the Detention Action litigation have meant that a substantial number of cases have had to be reheard. The TPC has been told that 317 cases have required oral rehearing, but that the last of these will have occurred on the 22nd January 2016. Working through the resulting caseload has inevitably meant that cases have recently taken longer to resolve than they can be expected to take under normal circumstances.

It should be noted that procedures already exist within the Principal Rules which can be used to expedite cases. There is nothing to prevent the Home Office (or any other party) applying to the tribunal to shorten deadlines or list hearings more quickly.

The Home Office notes that, without amended rules, there is no "assurance of success" in achieving expedited consideration of appeals. If this concern arises from the use of court-room and judicial resource allocated to cases involving those in detention, listing is a judicial function and the appropriate way of resolving it (short of providing greater resource) would seem to be by exploring with the Chamber President any possible alternative approaches; the TPC would be happy to seek his views on this. If it is, rather, the way in which judges are exercising their discretion within the rules the TPC prefers to assume that the judges are acting properly as members of an independent judiciary. The decision to hold the 2014 Fast Track Rules unlawful was in part reached because the then rules fettered the discretion to do justice in individual cases to too great an extent.

Conclusion

For these reasons the TPC feels unable to propose to the public, as yet, that an ADAP be introduced, nor able to define its parameters even if persuaded in principle:
(a) the criteria for entry into the relevant cohort need to be clear and workable, but no such criteria have yet been identified;
(b) the departure from flexibility would have to be justified by evidence, but the evidence the TPC has seen so far does not do so; and
(c) it is far from certain that the Principal Rules are failing to deliver and will continue to do so.

The TPC promised all interested parties that it would keep the rules actively under review. It is concerned to keep periods spent in detention as short as possible, and conscious that in speaking to the Home Office, Law Society, Detention Action and ILPA it has focused only on some of those most likely to wish to express views and to have most to say about the best way of achieving this consistent with a fair procedure overall. In the Committee's view the time has now come publicly to honour its promise as to review, and to consult more widely on the operation of the Principal Rules. Doing so should help to see whether they are working well or need some – and if so, what – amendments, for instance as the Home Office suggests.

The Committee therefore intend to begin a public consultation as soon as possible on whether the Principal Rules are working well, or need adjustment, amendment or augmentation. It would welcome your contribution to that consultation; it is more than willing to engage fully with you in and around the Consultation to ensure that the greatest value is gained from it, with a view to securing an outcome that (insofar as it is possible) commands the respect of all interested parties. It naturally follows that if you would wish any particular questions to be asked as part of that consultation, the TPC will happily consider doing so; and if you are able to add to the information you have already supplied the TPC would welcome that too.

Yours sincerely,

(Mr Justice) Brian Langstaff
Chair, Tribunal Procedure Committee