

David Stephens

Dear Mr Elliot

I have read the consultation document in the context of the Home Office Statistical Bulletin "Asylum Statistics United Kingdom 2007", from which I note that:

- of those whose claim was rejected on initial assessment, about 80% (roughly 13935 out of 16890) decided to appeal against that decision;
- of those eventually granted refugee or similar status, about 50% (roughly 3205 out of 6540) had to appeal against the initial decision in order for that status to be acknowledged;
- the initial assessment reduced the workload of the appeal courts by less than 50% (14935 cases to hear instead of 23430 if it did not exist).

It is very clear from these figures that the initial assessment process is extremely ineffective. If you proposed a quality control process that rejected 50% of good products or required 50% retesting, I doubt any industry would consider it seriously. In a context where the consequences of rejecting a claim may be so much more serious (sending an innocent to face imprisonment, torture, or murder) it certainly cannot be considered acceptable.

It is also clear from the proportion appealing that the initial assessment process is widely seen as unfair. It would certainly appear from the statistics that it is far more reliable at ensuring that unfounded claims are rejected, than that well founded claims are granted. This presumably was not the original intent, but whether it is due to media/political pressure, an imbalance in performance measures applied to case officers, inadequate legal advice and representation, or other causes, it seems to be how the system actually operates. Therefore, the excessive use of the appeal process must be considered an integral part of the asylum process as currently set up, in order to avoid systematic, gross miscarriage of justice.

The figures also give reason to doubt the fairness of the whole process. Any judge or tribunal hearing an appeal will inevitably take into account the findings of the first assessment and will naturally be inclined to accept that decision unless it is shown to be at fault (i.e. the burden of proof is on the appellant). If this is so, then many of those whose appeal was rejected would probably have been granted asylum status had they gone directly to the higher courts.

Therefore, I cannot but conclude that tinkering with the appeal process is misguided: the problem is in the initial assessment process and it is the initial assessment that must be made more robust. That might include measures such as:

- providing more effective help for asylum seekers to understand the process, get good legal representation, and gather and marshal their evidence;
- modifying guidance for case officers to encourage them to treat gaps in an asylum seeker's case as something to be investigated further rather than grounds for rejection;
- allowing more time for the assessment to reach the right decision rather than a quick one;
- evaluating performance primarily based on proportion of decisions upheld or not appealed.

If this was done thoroughly, it would remove from the higher courts' workload not only most of those cases that are in fact well-founded, but also many cases that are

currently rejected on appeal, since the initial assessment would not usually be contested if it were not regarded as unfair.

I trust you find this evaluation helpful.

Yours sincerely,

David Stephens

Debbie Grue

Dear Sir/madam,

I work with young people in inner city manchester, many of whom are refugees and asylum seekers. I would like to see the home office treat our client group, many of whom have mental health problems, more understandingly. I believe that their human rights have been ignored, and for even those who have eventually been allowed to remain, I have observed long term effects on clients within a couple of years of the the whole traumatic experience of dealing with the Home Office. I am also aware that many clients, through their traumatic experiences abroad, their young age and mental health problems, having been unable to fully put their case, both at their entry to the UK and throughout the appeals process etc.

Yours faithfully,
Debbie Grue (Case Worker)

Drew Murray

The very notion of removing judicial review from Scottish courts constitutes an attack upon the Scottish Legal Tradition and an affront to the dignity of our Nation. This move signals a willingness to abrogate the Treaty of Union. Have you considered the consequences of that.

Drew Murray

Emmanuel Amponsah Yorke

I wish to add my contribution to the new immigration appeals system that is going to be implemented soon.

My small contribution is in respect to the time that it takes for the United Kingdom Border Agency to forward decided cases that has not been appealed against to the British diplomatic missions abroad as that seem not to have been addressed or captured in the new immigration appeals proposals. The United Kingdom in my view is the citadel of freedom, fairness, justice, human rights and the rule of law, but my perception of his great country is fast changing because of the experience that me, my family and a lot more Ghanaians are going through from the current immigration appeals system currently in-place.

An appeal against the British High Commission, Accra-Ghana to refuse me a settlement visa to join my wife was allowed by the Asylum And Immigration Tribunal in March of this year after it had taken the court over one year to hear our case. But after six months the British High Commission, Accra-Ghana are yet to receive their copy of the tribunals decision and so therefore cannot go ahead and issue the appropriate entry clearance. I will say i am not the only Ghanaian going through this kind of problems as on my numerous visits to the high commission to inquire about progress on my case i have met different people on each occasion complaining of similar problems with some having their allowed cases outstanding for up to nine months.

So looking at my experience and that of others i think a careful look needs to be taken into the time frame that i takes for decided cases that has not been appealed against by the UKBA to be forwarded to the UK's missions abroad and for that matter Accra-Ghana to enhance the delivery of justice. As in my view justice delayed is justice denied.

Thank you very much for this great opportunity.

EMMANUEL AMPONSAH YORKE

Faisal Haseeb

Respected Sir,
I really appreciate this stance if this practically implemented.

But please think why cases go to appeal?

Because more often Entry Clearance Officers do not review cases thoroughly and make hasty decisions. I would also like to bring your attention towards countries where a courier service is used to submit visa application.

It is said that their staff is trained but they have hardly any clue which application form to use for which category and what check list of document to be provided to support application. Me and my wife are still waiting for her appeal hearing date since 11 March 2008, and the reason behind refusal of her visa is that we were given wrong check list of documents to support application by courier company staff that receives application. Not only this, the Entry Clearance Officers states in refusal that my Bank statements do not reflect my salary coming into my bank account though it clearly shows with Compny name. However Entry Clearance Officers was able to see my mortgage deduction from my account and that makes him believe that this is not my account.

Its funny that when you apply for visa it takes 21 days to get one, but only 3 days to get refusal. Hope you'll look into this side as well to provide
FAIR DECISION & FASTER JUSTICE.

Many Thanks
Faisal Haseeb

James Hanratty, RD

Dear Mr Elliott.

I have just seen the consultation document. I am a former President of the Council of Immigration Judges but write in a personal capacity and can be recorded as a consultee. I am grateful for the opportunity to comment.

The problem identified is the number of immigration cases overburdening the Administrative Court and the Court of Appeal. The reconsideration process was supposed to operate by such reconsideration cases being heard by a Senior IJ usually with a panel. Owing to the heavy workload they are usually sent back to be heard by another IJ sometimes less experienced than the IJ who originally heard it. Then a further appeal from this sometimes inexperienced IJ goes directly to The Court of Appeal. It is therefore unsurprising that Lord Justice Henry Brooke in the Court of Appeal annual report about three years ago complained about this.

In order for the new system to work the Upper Tier will have to hear Reconsideration cases not merely send them back down again. You will have to find ways of assuring Parliament that a judicial review would not be necessary because the Upper Tier is of high quality. You will recall the controversy about the "Ouster clause" If you lose this battle the position as regards the Admin Court would not be greatly assisted. But I recognise the efforts being made.

Frankly much of this laudable effort to improve the judicial process is otiose if the system creaks elsewhere. The decision making at case worker level and at overseas posts is often weak with word processed papers sometimes with little relevance to the case. Bundles are more often than not incomplete from overseas posts. Transcripts of Interviews are routinely not included.

In the AIT we often have to deal with no Presenting officer. I had one two weeks ago where a family of six wished to visit from Bangladesh and it was obvious that this was just a family migration exercise. If I had allowed the appeal and I would have properly done so if it was well founded it would have cost the taxpayer a significant sum a year in benefits, housing, health and education. Yet the Home Office did not even produce a Presenting Officer. I had to hear the case tactfully, fully and fairly with a courtroom packed with eager family relatives who were looking forward to this family joining them. The pressure on me as judge was unacceptable. I could not and would not cross examine. I had to remain impartial and be seen to be impartial throughout.

The problems you are rightly seeking to address are not caused by the court system. As the paper points out valiant efforts in the AIT and especially at Field House have removed backlogs. Then just when hard pressed judges working as we nearly all do at weekends see the light at the end of the tunnel it reveals itself as the light of an oncoming train as the Home Office suddenly announces it has found another 450,000 cases called "Legacy Cases" going back years which have to be considered.

But the main problem which is only partially addressed is the poor enforcement of decisions. The failure to remove people who simply should not be here has in part caused the backlog of about 33,000 cases in the Home Office where applicants claim that they have been here, albeit illegally for 14 years and are therefore entitled to

ILR. I have had several cases where Sri Lankans have lost appeals years ago but have stayed on illegally. They then mount an Article 8 ECHR family life case. They are now settled with a business. They own their house and pay taxes and are respected locally. The children have been born here. I usually allow such appeals because it is not my business to wreck family lives.

Officials at the Home Office have told me that the enforcement people were diverted to finding the "Foreign Criminals" as part of "Operation Scully" and were then refused weekend working and overtime for budgetary reasons. This does not inspire confidence.

It is the job of the immigration judiciary to hear cases impartially, fairly and timeously. There must be no cynicism. Each case must be considered on its own merits guided by statute law and cases from the higher courts here, the ECHR and the European Court of Justice. The pressure is unrelenting and cases often complex. The standard of advocacy is low. But we are exceptionally well trained in house. It is a pleasure and privilege and can be very emotional to allow a genuine appeal of a frightened asylum seeker. Just like I did when the Home Office wished to send a terrified young girl back to Guinea where the objective evidence was that she had a 90% chance of being mutilated by FGM. But the unfortunate fact is that the bulk of our cases are not well founded often based on fraud and with the connivance of unqualified representatives. In such cases for the Home Office to take no enforcement action whatsoever to remove such people not only brings discredit on the AIT but undermines respect for the administration of justice itself. It also adds to the court backlog as there is every incentive for the unworthy to mount unfounded cases. So much of your laudable efforts in proper consultation with the senior judiciary would be wasted unless effective, prompt and fair enforcement is achieved.

I hope this is helpful,

James R. A. Hanratty

John Smith

Dear Sirs,

I am writing regarding your latest consultation on immigration appeals process which I have read the proposals and the reasons behind them.

for the last couple of years, I have been studying the asylum system to see what is going wrong, why the system has caused so much of anger to the general public and what I have found is not far from the reasons behind these proposal but a different approach..

This is how I can summarise the consultation with its own words: "The limited resources of the higher courts are stretched and we believe that much of the work of the higher courts could be done more effectively by a tribunal. This would Aid the proper administration of justice by freeing up higher court time for more complex Cases and allowing a quicker conclusion of unmeritorious cases."

Surely there are problems in this statement.

One the problem is how many immigration tribunals do we need? Do we have the money to run them? Is it the solution on the edge of recession?
The answer to these questions is "NO"

It is true that the limited resources of the higher courts are stretched
But it is not true that this is because of the applicants who want to delay removals

**According to our research asylum system has caused anger to the general public because of the hundred of thousands of asylum seekers thrown on the street in almost one go, by a failure of the system which include the high volume of refused cases after a lack of fair decisions.
Therefore if the high court is overloaded with asylum cases seeking reconsideration, this is because asylum system has not been fit for purpose in the past few years, as the percentage of cases to grant asylum was to be kept as much as low as possible.**

This has resulted to a huge pressure in the high court as most of these cases were not decided properly.

Let us remember that asylum applicants are people who want to be protected from danger or any sort of persecution so they will fight for their lives as anybody would do in such circumstances. Whether this fit to our resources or not this is what happening to many countries and this should not be the reason why our justice system has to be motified. We do not want a weak justice in this country. If the High court which is the highest independent body accept that certain cases require more attention then we should not argue at all, otherwise we will be decision makers as well as judges.

We have to be honest or the problem will remain for a long time.

We have seen cases of applicants granted permission for a judicial review more than once.

At the first permission the UK Border Agency compromised to reconsider these cases but simply to refuse them again and eventually they returned back to the high court for another judicial review permission. These are the problems we need to address, if permission for a judicial review is granted then this case must

be considered as accepted and if asylum is not merit then discretion or another must be given to avoid backlogs. Also if a failed asylum seeker makes a fresh application for asylum, this can only be considered as fresh claim for asylum if the final decision will be a grant of leave.

And really this is how the limited resources of the higher courts are being stretched. Because if a case is granted permission for a judicial review then a leave should be granted automatically but if permission is refused then the applicant has to be fast tracked.

The statement seems to accuse the High court of being inefficient, which is not the case. Fair justice means any case has to be heard this is because we live in a civilised society and our country is committed to respect the Human Rights. In this way our country will avoid mistakes such as sending people to where they face persecutions and will be very different from countries such as China.

The longer cases are kept in backlog, the less any asylum system will be efficient.

The new asylum model seems to be good though but we still need to clear the old cases and quickly in order to reduce any pressure of any kind. The media is preparing to make asylum seekers treatment as the biggest headline among human rights issues in the UK.

John Smith

Jonathan Mitchell QC

Immigration Appeals and Judicial Review Proceedings

1) This consultation paper raises important issues as to the transfer of two classes of work away from the Court of Session: (i) immigration appeals and (ii) judicial review. It is apparent that the thinking behind it is that changes should be made in England, and it is then practically assumed that Scotland should follow. There is no separate consideration of issues in Scotland, where the issues are in reality very different; it is striking that the consultation ignored, until a very late stage, such significant interests as the Court of Session judiciary! The language of the paper is revealing, with such phrases as “their equivalents in Scotland” (paragraph 21) as if the author neither knew, nor could be bothered to discover, the right title.

INTERNAL APPEALS

2) The proposal is ill-timed for the following reasons:

- i) It seeks to pre-empt the Gill Review (which the Consultation Paper does not appear to have recognised as relevant in this context, as the mention in the paper of the Review at paragraph 40 is only in the context of judicial review)

1;

ii) It also pre-empts Lord Philip's final report, although the first report of the AJSG (of which the authors of the Consultation Paper seem unaware) left open whether such proposals as are made in the consultation paper are a preferable option;

iii) The proposal is to transfer a significant class of business to the new Tribunal before it has started, rather than allowing the Upper Tribunal to bed down first.

iv) There is no obvious demand for it; even in its submission of June 2008 to the Gill Review the Border Agency did not suggest this change, and no other body has ever suggested such a change.

3) It is however concerning that the proposal is to transfer a significant class of business away from a forum in which legal aid is available to a forum in which it is not. An undertaking has been given by the UK Government in respect of legal aid so far as English proceedings are concerned; but there is no parallel undertaking for Scotland. I am unaware whether this has even been considered, or whether the views of SLAB have been sought. Linked to this, the new forum will have a statutory 'wasted costs' jurisdiction, per section 29 of the 2007 Act, which is unheard of in Scottish proceedings for good reason and has been rejected as unsuitable for transplantation to Scotland. In the context of proceedings in this field, that is a jurisdiction in danger of being used for essentially punitive reasons and with the effect of discouraging representatives.

4) It is suggested that this proposal should be considered in the light of the Gill Review and experience in practice of the new Tribunal, as the Minister told the House of Commons when she said "we concluded that the judicially led review of the Scottish civil courts announced by the Minister for Justice in the Scottish Executive in March 2006 would be best placed to consider the detail of possible application for second appeals in Scotland"².

JUDICIAL REVIEW

5) The scheme of section 20 of the 2007 Act is on its face an unprecedented constitutional innovation, providing as it does for the Court of Session to be stripped of parts of its supervisory jurisdiction. When this was considered in Parliament (very much as a late after-thought to the English proposals) it does not appear that any attention was given to the Scottish dimension at all. Thus the committee of the House of Commons which considered this contained no Scots member; there was no discussion of section 20 in either House; and the amendment which introduced section 20 was done in such a way that the procedural safeguards of section 18(8) did not apply; on the face of the Act, while an English judicial review

¹ Although, when the 2007 Act was in the Commons, the Minister did say the Gill Review was 'best placed to consider' this question; which remains true:

(<http://www.publications.parliament.uk/pa/cm200607/cmpublic/tribunals/070315/pm/70315s02.htm>)

²<http://www.publications.parliament.uk/pa/cm200607/cmpublic/tribunals/070315/pm/70315s02.htm>

before the Tribunal may only be dealt with a judge equivalent to an English High Court judge, a Scottish judicial review may be dealt with by any Upper Tribunal member (Scots or not). Parliament was told that it was expected that “the power [will be] used comparatively rarely—dozens of times at most and certainly not in large numbers”³. The current proposal, however, is for a possible transfer of a very large class of case.

6) This is, accordingly, a provision to be viewed with considerable wariness.

7) It is generally objectionable for the reasons given relative to Internal Appeals, but it is a far more striking constitutional innovation. It is constitutionally unacceptable for the supervisory jurisdiction of the Court of Session, a national supreme court, to be transferred to a non-national body, and I find it extraordinary that this should be suggested so casually, for the first time indeed since the Acts of Union. If the proposal were that a Court of Session judge might at his or her discretion transfer a case, that might not be constitutionally improper, but it appears that what is considered is mandatory transfer in a class of cases. I doubt there is a supreme court in the world which is subject to a system by which applications to the supervisory jurisdiction can be mandatorily transferred to judges of a different jurisdiction.

8) There is no need for such a provision in Scotland. I do not believe that any respondent to the Gill Review consultation suggested that there was a problem here; the Border Agency itself suggested no such change, preferring a specialist administrative division of the Court of Session⁴. The numbers involved are relatively small; the consultation paper suggested there were 4000 immigration judicial reviews a year in England, but in Scotland there are only between 45 and 101 in recent years⁵ (140 a year according to the Borders Agency unvouched guess in the Gill consultation). There is no doubt that judicial review procedure in Scotland could be substantially improved, as discussed in the Gill consultation paper, but this proposal ignores and evades that. It is also to be noted that the “2%” success rate quoted in the consultation paper is inapplicable in Scotland, where research shows that (with far fewer cases being brought to the supreme court, due to a greater unwillingness as I believe to bring hopeless cases) the success rate is about 24%.

9) While it is apparent from the UKBA response to Gill that it generally believes that Scottish procedure should be ‘brought into line’ with England in the interests of respondents, it is equally apparent that there is no understanding that the Scottish system works as a coherent whole, with its own strengths and weaknesses, and that –albeit it is no doubt inconvenient for a London department to have to litigate so far away there are positive virtues in the Scottish system of a generalist court. Immigration judicial review forms a significant percentage of the Court of Session’s administrative law caseload, and its removal will have an adverse effect on its general ability to function as an administrative court.

10) The proposal infringes the Concordat between the DCA and the Scottish Government: Annex A, paragraph 3: because it precludes a unified system in Scotland as discussed by the AJSG.

³ Same reference

⁴http://www.scotcourts.gov.uk/civilcourtsreview/Responses_to_the_Consultation_Paper/U/U_K_Border_Agency.pdf

⁵ Gill consultation paper, page 102

11) As a general matter, whether or not section 20(5) of the 2007 Act were repealed, it is strongly suggested that there should be no mandatory class of cases to be transferred from the Court of Session under section 20 (3) but that any such transfer should be a discretionary decision of a Court of Session judge as a matter of principle. Even if this is not seen as a matter of principle, it would be wrong to make transfers of any class of case mandatory until there was substantial experience of how judicial reviews were in practice being dealt with by the new tribunal.

CONCLUSION

12) The proposals made in the consultation paper, insofar as they affect Scotland, are premature. They are, as they affect judicial review, of enormous constitutional importance in Scotland and deserve a full and mature consideration. This consultation, which as UKBA will be aware got off to a very bad start when important Scottish stakeholders were not initially consulted because UKBA did not think about them, is not such.

Jonathan Mitchell QC
Advocates Library
Parliament House
Edinburgh EH1 1RF

Louise Williams

This is the most ridiculous idea i have ever heard. Judicial review should be undertaken by a judge not a group of people whos only intention is to crunch numbers. Its called judicial review for a reason. The reason being judges reveiw the evidence.

Judicial review in scotland is not just used for immigration purposes but for important points of law or to challenge decisions by government agencies including councils. The court of session is where some human rights cases end up. european human rights law says that people should have used a court in their country before going to the human rights court in europe. How many cases will now end up in the european court of human rights if people do not have a court to take their case to.

How dare the government try to remove recourse to the law for the population of scotland. THIS IS WRONG.

This consultation has completely excluded scotland and the scottish aspect has not been properly thought out. How dare the government try to remove an aspect of scotlands justice system. This change should not apply to scotland in any way shape or form. Scotland is quite happy with its justice system kindly leave it alone. The act of union ensured that scotland had a seperate justice system and that this would be maintained this proposal is not maintaining it.

louise williams

Master of the Rolls

I have seen the response from the President of the Queen's Bench Division (PQBD) to the Consultation Paper dated 21 August concerning Immigration Appeals. I fully support the views set out in that paper, and would like to draw particular attention to the points highlighted in paragraph 8.

Since 2005 the Court of Appeal (CoA) has seen a 77% increase in applications for permission to appeal from AIT cases. As highlighted in the PQBD's response, the majority of these applications and appeals are from reconsiderations by ordinary Immigration Judges that raise no point of general importance. The influx of these cases has put significant pressure on the resources of the CoA both in terms of the numbers office staff and lawyers who must prepare the cases for the Court and perhaps more importantly, in terms of judicial time; it is wholly disproportionate for these cases to be considered by the most senior judges who sit in the Court of Appeal.

The proposal set out at paragraph 31 of the consultation paper which states that most appeals would be a substantive appeal from the Upper Tribunal is to be welcomed. This would undoubtedly reduce the volume of low level applications currently occupying the Court of Appeal's time. I very much hope that these changes will be brought about as swiftly as possible.

Sir Anthony Clarke

Mungo Bovey QC

I have seen the response submitted by Mr Jonathan Mitchell QC. I agree with what he says and wish only to add a few further observations.

1. It is but a short time since the immigration appeal system underwent a radical reform with the introduction of the Asylum and Immigration Tribunal. Parts of the transitional arrangements in relation to that tribunal are still in operation. This is against the background of hugely frequent changes to the law in this area. It is not in the interests of any person for the law to be in a permanent state of flux and it is certainly far too soon for the radical kind of change proposed.
2. The statistics cited under the heading THE BURDEN ON THE HIGHER COURTS relate only to one court, the Administrative Court of England and Wales. We are given no information as to the position in Scotland or Northern Ireland. This is a serious omission given that relieving the supposed burden is a major justification of the proposed changes.
3. It is one of the purposes of a Court to protect the individual from the state. Immigration is an area which of its nature brings individual into conflict with the state. It is entirely appropriate that the Court is engaged in dealing with such cases. What is there that could be more important than the liberty of the individual?
4. The figure of 2% whose cases are ordered by the Court to be reconsidered is unattributed as to the jurisdiction or period to which it relates. A more significant figure would be the percentage of applications for reconsideration granted. If the supervision of the Court were as insignificant as is suggested in paragraph 11, it is difficult to see that the proposed upper tribunal arrangements would be worth the effort.
5. The creation of United Kingdom courts is neither practical nor desirable. The threat to the independence of the Scottish legal system from such steps is substantial and continuing.
6. The term "superior court of record" is not one known to the law of Scotland. It appears to be a back door attempt to restrict the jurisdiction of the Court of Session. Restrictions on the jurisdiction of the Court are not to be implied nor are they desirable in the context in which this consultation is taking place.

Mungo Bovey QC
Advocates Library
Parliament House
Edinburgh
EH1 1RF

Name withheld

To whom it may concern,

Please accept this in response to the Immigration appeals: fair decisions, faster justice consultation.

Please note that, although there are many details contained within this response which may identify me, I would wish that my name be kept confidential.

For me personally, my experience before the Asylum and Immigration Tribunal was the most professional treatment I received at the hands of the UK government, and consequently, I am greatly concerned about the belligerent tone of the proposed changes to the immigration appeals process.

Superficially, the idea of reforming the appeals process so as to implement fast and fair decisions that are right the first time is very attractive. Outwardly, it would allow the UK Border Agency to appear in control, all the while maintaining the integrity of the appellate process. But that is illusory, it doesn't actually work like that. The nature and extent of immigration and asylum poses complex challenges, requiring specialist procedures, sensitive treatment and a high level of expertise (cf. paragraphs 20 and 22 of the consultation). Overly simplistic and unrealistic efficiency at the expense of justice besmirches the reputation of the government body responsible for building a safe, just and tolerant society.

Such ill-thought out notions of reform are found even further to be lacking, particularly when considered in its wider and appropriate context. Consider for example the consultation's proposed performance indicator of increasing the number of illegal immigrant and failed asylum seeker removals year on year. This antagonistic and corrosive policy suggestion fails to account for the fact that migrants will not be attracted to come to a country whose economy is in recession and with rising unemployment. Honestly, how could this be accomplished in an increasingly smaller pool of immigrants? Market forces and the needs of employers should be the main determinants in achieving the proper balance between emigration and immigration, without institutionalising unjust witch hunts to fulfil silly quotas.

An appeal is a calling to account before a legal tribunal, made by one who undertook under penalty to prove it. Unlike how it is portrayed in the consultation, I believe many of the parties to tribunal proceedings are acutely aware of the severity and finality of the court's determination. Yet many of us persevere in the process for we believe in the appellate's sanctity in amending unfair decisions, serving as an independent adjudicator to the UK Border Agency, limiting and counteracting its wrongful use of administrative power.

To illustrate this, I would like to use the example of my case before the Asylum and Immigration Tribunal as a legitimate cause for concern

should the appeal process be curtailed as proposed, for the volume of immigration cases of the higher courts is in fact less a reflection of people not accepting the UK Border Agency decision as final, but poor administrative decisions in the first place. Moreover, by personalising my experience, I hope you may be able to appreciate that each and every applicant that comes before a tribunal is a human being who exists with the same inalienable human rights that you do; we are not your lifeless labels.

In one way at least, I agree with the consultation: the Asylum and Immigration Tribunal was a success. As I said in my opening, my appearance before the Asylum and Immigration Tribunal was the most professional treatment I have thus far received; it was well structured and administered, and although I was concerned about the finality of its decisions, I was comforted by the transparency of the process. This is in great contrast to what I was subjected to before my appeal, or what I have experienced since.

On 20 June 2008, I was refused leave to remain within the country on account of providing insufficient documentation of my previous earnings to the Home Office to warrant leave to remain as a Tier 1 (General) highly-skilled worker. This is unfortunate, for I have twice been granted work permits in the past, conducting the same climate research at the University of Edinburgh as I applied an extension for, but primarily because I believe the burden of proof increased between the time I submitted my application and when it was assessed.

Although I don't have any conclusive proof, there was the suggestion that the instructive clarification on the UK Border Agency website informing applicants to provide each and every monthly payslip within the previous twelve month period, along with a similar number of corroborating bank statements, was added only after I had submitted my application (in fact, on the day my application was acknowledged: 30 Apr 2008).

As I was not entitled to an in-country administrative review, I appealed the decision to the Asylum and Immigration Tribunal. As there was nothing within the Immigration Rules specifying these newly articulated document requirements, at the time of application, I mistakenly submitted only two payslips, intending these to be documentation of my mean monthly salary (one at the beginning, and another at the end, of the previous twelve month period). Understandably, this was judged to be insufficient evidence of my annual earnings. Yet I believe, the discrepancy could have been easily clarified had the caseworker been able to exercise his discretion and initiative differently, as there was easily enough meaningful indications within my application that I had indeed earned what I had originally claimed, and was definitely in possession of the necessary documentation.

This is not the first time the UK Border Agency has let me down during the application process. For example, unlike for the majority of other work permits, there is (still!) no published service standards for handling Tier 1 (General) migrant applications. Thus, applicants are unaware of the minimum standards they should expect, both from the Home

Office, and what is required of us. This additionally includes how long applications should take, how long applicants should wait before requesting a status report, how applicants can make a complaint, or what to do if applicants disagree with the UK Border Agency's decision.

Helpfully, the Customer Help Centre provides quality, though general, assistance to would-be applicants. It was there that I learnt that I would have to wait a minimum of ten weeks before I could enquire about my application. As the Home Office website clearly states that 90% of work permit applications (including Tier 1s) are decided within 15 days, this caused me additional confusion and distress.

Regardless, approximately six weeks later, on 5 August 2008, I appeared before the Asylum and Immigration Tribunal in Glasgow where (fortunately) my appeal was upheld. Despite woeful treatment by the UK Border Agency and its petty bureaucrats, justice was finally done. I had somehow prevailed and can only thank the Asylum and Immigration Tribunal for the continuing privilege to live and work in this country.

Mine is but one example however. One would have to multiply the mini-tragedies of my experience many thousands of times to really appreciate the scale of the injustice which is systematically meted out to migrants (we meek migrants somehow seemingly deserve administrative rough treatment -- don't get me started on my previous application to become a highly skilled migrant!).

Not only did my experience before the high court vindicate me with the upholding of my appeal (the immigration judge, determining in my favour, adding "without a shadow of doubt"), but the UK Border Agency's adversarial disdain of applicants was apparent for all to see.

Notwithstanding the personal stress involved for the applicants, or the workload for the other participants, my experience of the appeal process was a total waste of everybody's time. But that was not the fault of the tribunal, it was because the job wasn't done correctly in the first place. If fast, fair and final decisions are indeed desired, the whole border protection and immigration system needs reform, from top to bottom, not piece-wise, just the appeal process on its own. Especially in the way proposed, by limiting the jurisdiction of judicial review.

Politicians should be open with the public about the complex nature and extent of migration. I cannot emphasise enough how distressed I am to hear that in an effort to reform the appeals process, less time will be given to good decision making by independent judges without the statutory right for judicial oversight. Like the superficial attraction of reforming the appeals process, the proper functioning of the immigration and asylum system is an illusion. If the reforms, as suggested, are implemented, it would undoubtedly prove deleterious to migrants. And for that reason alone you cannot diminish the scope of the higher courts, for the high courts are an important lifeline to applicants who have, in the majority, not been administratively treated justly.

While I earnestly do not believe the current appeals process is in need of reform, judging by the hostility of the immigration minister's recent comments, and the aggressive tone of this document, I am even more worried that this consultation of shoddy reforms is in fact just a sham, with its phony calls for consensus and reasonableness. Less than three years ago, the appeals process was reformed to provide greater scrutiny and transparency to the appellate process, whilst speeding up administrative review. Plainly speaking, are the proposed reforms genuinely warranted? Emphatically no. As the government body who has introduced new primary legislation almost annually, pandering to the prejudices of the tabloid media and not acting in the best interests of the UK (or according to the wishes of the majority of British people, as opinion polls show), are you listening? I dearly hope so.

I hope you share these concerns and the perception it can create in the minds of both British citizens and foreign migrants, active everywhere within our communities.

Yours faithfully,

Name withheld

You are asking for suggestions about for the appeals process.

My bad experience back in October 2003 may help for necessary improvements.

1. Time between Local decision and appeal was 18 months. – I suggest 6 months max.
2. BHC in Ghana turned me away because there was an appeal in place. The BHC should not be able to do this to appellant cases.
3. The Appeal I was involved in, the judge was useless, with his adjudication contained 7 (seven) MAJOR mistakes, most about “fundamental” issues concerning the case. I was advised by my lawyer not to appeal the appeal. There needs to be a “mis-trial” option for appeal without ramifications.
4. In my case, the home office representative (in court) and the ECO “breached immigrations rules/procedures”. This indeed was the decision of the adjudicator as well as the advice beforehand of my lawyer. If this is the case, an adjudicator should be able to overturn a decision where the home office breaches immigration rules, where the applicant/appellant did not. The home office upholding immigration law should be discouraged from breaching the law by this.
5. Where there is a need to appeal the appeal, if the decision is changed, there should be costs awarded where it can be shown that the mistake was not that of the appellant/applicant.
6. The ECO’s Explanatory Letter of the original decision was sent to us 12 months after the original decision, and was undated. The letter should be dated, and sent to the appellant swiftly. If there are any discrepancies (from a legal point of view) then the appellant should be able to get the case reviewed locally. In our case the ECO did not consider “Exclusion undesirable” and a review could have rectified this.

The whole point of an appeal is that a decision is felt to be wrong/harsh. However, the treatment to the appellant is that of “wasting the valuable time of the court”, and that one should accept the ECO’s original decision. A better balance needs to be struck as to whether the decision is a mistake or not. More complex procedures to tighter deadlines only puts off genuine appellants who can’t emotionally cope with the saga or the mounting costs of correcting the ECO’s potential error.

Another point that degusted me on the web was that the BHC in another case refused to issue a visa to an appellant that won an appeal. The visa should be issued as soon as the decision expires further appeal.

Two further suggestions about the appeal process in the courtroom.

1. The judge should go through the home office file and look at the evidence already on file before hearing further evidence.
2. The Home Office Representative should make “honest” arguments. Making arguments they know are false, or breach immigration rules should be discouraged.

As a professional, I can say I was extremely disappointed with the lack of integrity, the incompetence, the timeliness and expense required trying to correct the ECO’s harsh (at best) decision.

The appeals process seems to me to load the system in favour of the Home Office in order to reduce numbers of successful appeals. In reality, this helps the non-genuine people more than the genuine.

I have also been unable to get the IND(now BIA) or FCO to explain if "Exclusion Undesirable" covers childlessness despite 8 (eight) letters asking as such. For me it unfortunately cost me my marriage.

Best regards,

Pinalkumar Shah

Dear Sir/Madam,

As per my view, there must be a security deposit (in the form of penalty) before one appeals against any decision made by any immigration post/port. I do understand that justice should be free for all, but for better services and to avoid any unwanted appeal or challenge, a fee must be charged.

If one fails to comply with the immigration provisions, fees should be ceased by Home Office. And if appeal is allowed, Home office should refund the same. There should be some fess waiver provisions for certain class of people who really don't have any sponsors from UK. The provision of security deposit must be through electronic banking for payment & refund too.

Because free appeal procedure convince everyone to try their luck. Home office should stop such unwanted appeals which doesn't attract full right of appeal & doesn't have any legal base for appeal.

Or you may specify in the rejection letters or decision letters about the fees(security deposits) provisions. All the post should decide whether it attracts a free appeal or security deposit-appeal.

It is my view and that has been retrieved through my long working experience with visa applicants & their mentality.

Regards,
PINALKUMAR SHAH (B.Sc., L.LB.)

President of the AIT

Introduction

The President of the Asylum and Immigration Tribunal (AIT) broadly supports the proposals contained in the Consultation Paper issued by the UK Border Agency of 21 August 2008.

Whilst the AIT considers that it has worked efficiently since its creation in April 2005, there are sound reasons for a change, not least the change in Tribunal landscape and the burden the current system places on the higher courts, particularly the Court of Appeal, in relation to asylum and immigration appeals.

The AIT judiciary is committed to providing a just and efficient appeals process. To that end, it welcomes the integration of the Tribunal into the unified Tribunal's structure. It gives added coherence to the overall Tribunal justice system which is a crucial component of delivering Access to Justice (A2J).

Upper Tier Chamber

The main concern with the proposals is that the expertise of all AIT judiciary, especially at a senior level, is maximised. Leakage of appeals from the Upper Tier (UT) must not be permitted; mechanisms must be in place to ensure that appeals in the UT remain to be finally determined there. To that end, Designated Immigration Judges (DIJs) and the experienced and able Immigration Judges (IJs) of the First Tier (FT) should be recruited by open competition to sit as Deputies of the UT. This will provide for a career structure within the Asylum and Immigration Chamber, which will enhance morale.

The operational details of the UT Chamber will need careful analysis not least to ensure an appropriate workload for members of the UT and to assess what judicial resources will be required. Yet to be decided is whether the Upper Tier should be an Asylum and Immigration Chamber or be accommodated within the Administrative Chamber. Whilst there are obvious advantages and disadvantages in either option, on balance the President of the AIT considers that a specialist Upper Tier Chamber would maintain the expertise which is vital for the credibility and integrity of the UT's role in asylum and immigration. It may at a later date be sensible to merge the UT Asylum and Immigration Chamber with other chambers depending on how the system develops.

First Tier Chamber

In many ways the First Tier would carry on as at present – “business as usual”. Hopefully, a Chamber President would be appointed following a JAC competition within the first year. An interim arrangement will have to be agreed; if possible the Acting Chamber President of the First Tier should not be a candidate in the competition for the substantive post.

Timing and Implementation

With regard to the timing of implementation, preparatory work is already in progress to effect the necessary changes if proposals contained in the consultation document

are approved. It is to be hoped that integration will be completed by the summer of 2009 at the latest.

Circuit

One valuable benefit of the AIT as a single tier has been the integration and collegiality of its members, in particular its legal members. The historical tensions between IAA and IAT have evaporated. The SIJ circuit system has made a real contribution to greater sharing of best practice and building good working relationships. We would hope that this collegiality could be maintained in the new structure. Circuit work for the UT members can, in our view, continue to play a role in addressing the needs of Tribunal users/customers who reside out of London as well as safeguarding the integration of Tribunal members. Whilst there will be differences as a result of no longer being a single tier, the model adopted by the Administrative Court for sitting out of London could be adopted.

A New Tribunal

It is vital in any reform that the role for judicial review of decisions of the Upper Tribunal Asylum and Immigration Chamber is limited to very exceptional circumstances (paragraph 23).

The President strongly supports the proposal that legislation is brought forward so decisions of the Upper Tribunal should have equivalent status to those of the High Court (paragraph 24).

Statutory Appeals

The President supports the proposal to exclude the right of the First Tier Tribunal to review its decisions save for the correction of clerical errors or other accidental slips or omissions (paragraph 27).

In the absence of primary legislation changing the procedures in the First Tier appellants will be able to apply to the First Tier for permission to appeal (paragraph 29). Procedure Rules will be needed to ensure that such applications are dealt with swiftly. The President expects that the vast majority of such applications will be refused in the First Tier. In the County and High Courts permission to appeal applications are also in the vast majority of cases refused on application to those courts. The judges are generally confident in their own conclusions and leave it to the relevant appeal court to grant permission on any renewal if that court thinks it appropriate.

The President is confident that the First Tier asylum and immigration judges will work in a similar manner whilst permission applications are to be made to them. The preferred option is however to limit such applications to the Upper Tribunal alone as referred to in paragraph 29 of the Consultation Paper.

Applications for reconsideration have been dealt with entirely on the papers by senior immigration judges within the AIT. The system has worked well and robustly. Onward challenges to the High Court have been made in a small number of cases. But few such challenges have been granted and even fewer have resulted ultimately in any changed decision.

The President is confident in the quality of decision-making in this area by senior immigration judges in the AIT and considers the permissions to appeal should be considered on a single occasion on the papers by an Upper Tribunal judge and that this will work fairly (paragraph 30).

If however such a change is considered too draconian a possible alternative is to give the Upper Tribunal judge a discretion to direct a rolled-up permission to appeal/appeal hearing.

In any event the determining of permissions to appeal should be a primary role of the salaried Upper Tribunal Asylum and Immigration judiciary.

The level of challenge to appeal decisions in the asylum and immigration field has historically far exceeded such challenges in other jurisdictions. Any system which allowed for routine remittal of cases out of the Upper Tribunal back to the First Tier would be caught in this culture. Churning of cases as happened with the former IAT would be at risk of becoming once again standard.

The President regards it as important that once permission to appeal has been granted the case should routinely remain in the Upper Tribunal. So legal errors are corrected in the Upper Tribunal and if it follows that factual decisions need to be retaken that happens in the Upper Tribunal as well. The approach in paragraph 31 should be maintained. A similar approach operates on appeals from district judges to circuit judges in the County Courts. The Upper Tribunal judges in asylum and immigration (the current SIJs) are perfectly capable of both promoting sensible jurisprudence in the asylum and immigration field and deciding factual issues when needed. A number of deputy Upper Tribunal judges will be needed to support the work.

It may be necessary to adjourn cases where evidence is to be taken. But the need for that can be limited by robust and clear decision-making at application for permission to appeal level, coupled if need be with case management of those cases identified as potentially needing evidence to be heard.

Procedure Rules

The Consultation Paper highlights the government's objective to conclude asylum cases quickly and fairly. Regular amendment to Procedure Rules is available to ensure those objectives are pursued. Both the parties and the judiciary are required by the Procedure Rules in asylum claims at least to process cases with greater speed than is required in almost any other jurisdiction. The tight time limits are in general met, no doubt with some reluctance by appellants and their representatives. The asylum and immigration judiciary have responded highly effectively to the tough time limits imposed by the Procedure Rules. For so long as speed and fairness remain an objective in the public interest the President considers the judiciary can rise to the challenge and supports a continuation of the current system.

On the other hand the Procedure Rules in relation to service overseas, which largely affect immigration cases, contribute to unacceptable delays in handling such appeals particularly within the entry clearance system. Changes are needed in the interests of appellants to those aspects of the Procedure Rules.

Whilst there is much of the detail yet to be worked out, this note generally supports the proposals set out in the UKBA's Consultation Document.

Mr Justice Hodge,

President AIT, 14th October 2008

President of the Queen's Bench Division

1. This is a response to the Government's Consultation Paper of 21 August 2008 on immigration appeals. It is made by the President of the Queen's Bench Division.
2. The proposals in the Consultation Paper are strongly supported. The judges of the Administrative Court, the court most directly affected, were invited to provide an input into this response. The only reaction received from them has been one of warm endorsement of the proposals. There has been no opposition to the proposals.
3. It is agreed that the new tribunal structure created by the Tribunals, Courts and Enforcement Act 2007 provides a more appropriate and effective means of handling immigration appeals than the present system.
4. It is also agreed that a change of the kind proposed is needed in order to relieve the pressure on the higher courts. In particular, immigration work (reconsideration applications and judicial review applications) is placing a heavy and disproportionate burden on the Administrative Court, over-stretching its resources and giving rise to unacceptable delays across the whole range of the court's work. The Lord Chief Justice drew attention to this serious problem in paragraphs 5.70-5.72 of his *Review of the Administration of Justice in the Courts*, presented to Parliament in March 2008. There has been no let-up in the volume of immigration work, which continues to account for almost three-quarters of the cases lodged in the court. Despite strenuous efforts to deal with the problem, including extremely heavy listing of cases, the redeployment of High Court Judges from other areas of work (which has added to the pressures elsewhere) and the appointment of additional Deputy High Court Judges, the pressure on the court remains intense.
5. Reconsideration applications, running at about 4,000 a year in the Administrative Court, are an important part of the problem. In practice, the "filter" operated by Senior Immigration Judges in the Asylum and Immigration Tribunal has proved very effective and only a small proportion of the reconsideration applications that are pursued to the court have any substantive merit or justify a determination by a High Court Judge. But they take up a lot of judicial time, and the system involves a disproportionate use of the limited resources of the court. The

proposed new arrangements, under which reconsideration applications will be replaced by applications for permission to appeal to the Upper Tribunal, offer a sensible alternative. The judges of the Upper Tribunal, who will include Senior Immigration Judges with a High Court Judge presiding over the chamber and the possibility of other High Court Judges sitting as necessary, will be suitably qualified to determine such applications.

6. Much of the benefit of removing reconsideration applications from the Administrative Court would be lost if decisions of the Upper Tribunal refusing permission to appeal were subject on a routine basis to applications for judicial review. The points made on this at paragraphs 23-24 of the Consultation Paper, including the possibility of legislation, are noted. It would be wrong to anticipate the approach of the courts to such applications. This area of uncertainty does not, however, detract from the overall good sense of the proposals and should not be allowed to jeopardise their implementation.
7. The Consultation Paper contemplates at paragraphs 31-33 that, where permission to appeal to the Upper Tribunal has been granted, the case will generally be dealt with substantively in the Upper Tribunal rather than being remitted for a further determination by the First-tier Tribunal. The power to decide whether to deal with a case substantively or to remit it to the First-tier should lie with the Upper Tribunal, which will have to take into account the availability of judicial resources at both levels as well as the particular features of the individual case. But there are undoubted advantages in the Upper Tribunal determining an appeal substantively wherever possible: it should result in higher quality decisions and achieve finality more quickly.
8. Placing immigration appeals within the new tribunal structure should also alleviate the pressure on the Court of Appeal, as suggested at paragraph 31 of the Consultation Paper. Applications for permission to appeal, and substantive appeals, from the Asylum and Immigration Tribunal account for a substantial and growing proportion of the work of that court. One of the problems of the present system is that where reconsideration is ordered the only avenue of challenge to the decision reached on reconsideration is by way of appeal to the Court of Appeal, and the court has to deal in consequence with a large number of decisions of ordinary Immigration Judges that raise no point of importance. If the proposals are implemented, the general provisions of the 2007 Act governing

appeals to the Court of Appeal will apply. An appeal will lie only on a point of law, and with permission, from a decision of the Upper Tribunal on a substantive appeal. Decisions of the Upper Tribunal will have been taken by senior judges and are likely to be of a generally high quality, which should in itself reduce both the number of applications to the court and the number of successful appeals. It will also be open to the Lord Chancellor, under section 13(6) of the 2007 Act, to apply “second appeal” criteria to the grant of permission, so as to require that the appeal would raise some important point of principle or practice, or there is some other compelling reason for the Court of Appeal to hear the appeal.

9. Paragraphs 34-46 of the Consultation Paper raise an issue about the making of procedure rules if immigration appeals are placed in the new tribunal structure as proposed. Such rules should be the responsibility of the Tribunal Procedure Rules Committee. There is no sufficient justification for applying a separate rule-making system to immigration appeals.

10. The Consultation Paper raises a separate issue about the judicial review jurisdiction of the Upper Tribunal and proposes that the existing statutory bar on the transfer of immigration judicial review cases from the Administrative Court to the Upper Tribunal be lifted. That proposal, too, is welcomed. The number of immigration judicial review cases lodged in the court is over 4,000 a year and exceeds even the number of reconsideration applications. Some of them are plainly suited to the Administrative Court and should remain there, but a substantial number could be dealt with appropriately in the Upper Tribunal once that Tribunal had acquired an immigration expertise through the transfer of immigration appeals into the tribunal structure and the appointment of Senior Immigration Judges as judges of the Upper Tribunal. The 2007 Act confers on the judiciary the power to transfer non-immigration judicial review cases to the Upper Tribunal. The same power should exist for immigration cases. It would provide a further means of relieving the pressure on the Administrative Court and speeding up the work of that court. The proposed statutory amendment is therefore viewed as an important measure and it is hoped that its implementation will not be delayed.

11. As to the timescale for implementation of the proposals as a whole, the contents of paragraphs 41-42 of the Consultation Paper are noted. It is plainly in the interests of everyone involved in the administrative justice system that the

changes are made as soon as possible. This tells strongly in favour of implementing the bulk of the proposals without waiting for the additional statutory changes referred to. If a June 2009 date can be achieved, it would be an immense relief. Any slippage from that date should be kept to the minimum necessary.

Senior President of Tribunals

INTRODUCTION

1. I welcome full integration of the Asylum and Immigration Tribunal into the new First-tier and Upper Tribunal to be established later this year. I generally support the proposals in the consultation paper, although I will wish to review the detailed arrangements in the light of the responses to consultation and after discussion with the President and senior judges of the AIT.

The only specific issues on which I wish to comment at this stage are:

- There should be a separate asylum and immigration chamber in the First-tier Tribunal and, at least initially, a separate asylum and Immigration chamber in the Upper Tribunal.
- Any legislation brought forward by the Government should include provision in relation to the status of Upper Tribunal decisions.
- The Tribunal Procedure Committee should make procedure rules in asylum and immigration cases and for the jurisdiction on its transfer into the new tribunal system.

A NEW FIRST-TIER TRIBUNAL

CP: “It would be consistent with the wider implementation of the 2007 Act for an asylum and immigration First-tier chamber to be constituted under section 7 of the Act. The specialist nature of these appeals and the special procedure rules they have makes it desirable that these appeals are processed at this level within their own chamber, rather than as part of another first-tier chamber. ”

2. Under the Tribunals, Courts and Enforcement Act 2007 decisions on the organisation of tribunal functions into chambers are for the Lord Chancellor and Senior President to take jointly. My current view is that the first-instance asylum and immigration jurisdictions should be kept within a separate First-tier chamber, with its own Chamber President. The overwhelming reason for this is the size of the caseload in that jurisdiction, recorded as 181, 346 cases in 2007 to 2008.⁶ The Chamber President would also be a member of the Upper Tier and I would expect him or her to work closely with the relevant Upper Tribunal Chamber President on issues such as deployment, case-management and training.

A NEW CHAMBER IN THE UPPER TRIBUNAL

CP: “We think there is a case for a specialist chamber of the Upper Tribunal, which would be able to develop a high level of expertise in dealing with immigration cases.”

3. I agree that a separate chamber would be desirable in the Upper Tribunal, at least initially, rather than the work being assigned to the Administrative Appeals Chamber. It may be possible to review the position in the future when the new system is

⁶ By the Administrative Justice and Tribunals Council annual report for 2007 to 2008 available at http://www.ajtc.gov.uk/docs/Annual_Report_2007_8.pdf

established. I understand that the Lord Chief Justice would be willing to deploy a High Court Judge to act as the Chamber President, to ensure that the status of asylum and immigration work is preserved.

4. A specialist chamber in the Upper Tribunal will be able to work closely with the First-tier Chamber to develop efficient procedures for handling reconsiderations. My current view is that, as far as practicable, cases for reconsideration should be retained in the Upper Tribunal, or kept under the supervision of the Upper Tribunal. However, the practicalities of this are closely linked with issues of resources and decisions about the assignment of the existing judges. I will defer consideration of those issues until I have reviewed and discussed the responses to consultation.

5. The AIT also has two statutory Deputy Presidents. It will be important to retain their expertise within the Upper Tribunal. My general approach has been to preserve existing tribunal leadership roles within the new system, particular during any transitional period. I therefore envisage replicating the role of the Deputy Presidents in “Principal Judge” posts although there may need to be some change in their responsibilities as a consequence of the creation of a two-tier system.

STATUS OF UPPER TRIBUNAL DECISIONS

6. I have already indicated to the Lord Chancellor my support for legislation to confirm that decisions of the Upper Tribunal should have equivalent status to those of the High Court. Furthermore, provision for “leapfrog appeals” should be extended to the Upper Tribunal, so that it will be possible to appeal from the Upper Tribunal direct to the House of Lords⁷. In the present context, it could help to speed up the process of reaching a concluded view in contentious areas.

7. This is important if the Upper Tribunal is to achieve its objectives. At paragraph 10 of my First Implementation Review⁸ I said:

“Recent decisions of the House of Lords have emphasised the important role of the expert appellate tribunals in developing the law and practice in their specialist fields.⁹ The establishment of the new Upper Tribunal, as the normal route of appeal for most cases within the tribunal system, provides an unprecedented opportunity to build on the existing case-law of the different jurisdictions and to develop a more coherent approach to the many common themes of tribunal justice.”

PROCEDURE RULES

8. I am firmly of the view that the Tribunal Procedure Committee (“the Committee”) should be responsible for making rules for the jurisdiction on its transfer into new

⁷ Under section 12 to 15 of the Administration of Justice Act 1969, subject to specified conditions, an appeal may be brought direct to the House of Lords from a decision of the High Court in any civil proceedings.

⁸ <http://www.tribunals.gov.uk/Documents/SPImplementationClean7b.pdf>

⁹ See e.g. *Hinchy v Secretary of State* [2005] UKHL 16, [2005] 1 WLR 967 paras 29-30; *Gilles(AP) v Secretary of State* [2006] UKHL 2 para 36; *AH(Sudan) v Secretary of State* [2007] 3 WLR 832 para 30.

tribunal system. I see no reason to make an exception from the mechanism which has been judged appropriate for other tribunals.

9. The Committee is already established. It includes Tribunal Judges and Members, those appointed for their experience of practice in tribunals or advising persons involved in tribunal proceedings and a member of the Administrative Justice and Tribunals Council, under the chairmanship of a High Court judge nominated by me (currently Elias J). It has already carried out the formidable task of rationalising and reforming the existing tribunal rules for the new chambers, to produce a consistent scheme across the First-tier and Upper Tribunal¹⁰. In so doing it has demonstrated its ability to work effectively, taking account of the special needs of different jurisdictions.

JUDICIAL REVIEW

10. I also welcome the proposal to remove the statutory bar on the transfer of immigration judicial review cases to the Upper Tribunal.

CP: “The Upper Tribunal would need to be well-established before any such a provision on transferring judicial review applications would be commenced and any transfers could be made.”

11. The Upper Tribunal will be well established at the point these proposals are implemented. The Lord Chief Justice and Lord President have already directed the transfer of some non-immigration related judicial review to the Upper Tribunal from its inception. The necessary legislative change should be made as soon as possible to allow transfer of immigration related cases.

IMPLEMENTATION TIMESCALES

12. I note the proposed implementation date of June 2009 and consider it desirable for the proposals to be implemented in accordance with this timescale, with addition legislative amendments to follow as necessary.

**LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS**

¹⁰ See <http://www.tribunals.gov.uk/tribunalprocedurecommittee.htm#Pub>