

Appeals: First-tier Tribunal

This section looks at appealing a Home Office refusal at the First-tier Tribunal.

This is the first court you have access to if you have the right to appeal a refusal by the Home Office. You do not need to apply for permission to appeal at the First-tier Tribunal - if you have the right of appeal, you can go ahead and appeal.

If you have a lawyer, they will prepare and submit the appeal form for you, and represent you at court. The information in this section is intended to give you more information about the process, especially if you do not have a lawyer and will be appealing the decision yourself.

Right of appeal

Not all immigration decisions have the right of appeal.

There is currently only the right of appeal if the Home Office refuse an application based on:

- a human rights claim,
- an "international protection" claim (asylum or Humanitarian Protection applications),
- a decision to revoke refugee status or humanitarian protection
- a decision that you have no right to remain under European law.

If you made your application *before* 6 April 2015 you may still have the right of appeal if you are refused. See the Home Office website for more information:

<https://www.gov.uk/immigration-asylum-tribunal/applications-made-before-6-april-2015>

If your *application* was not based on protection, human rights or EU grounds, you may be able to claim a *right of appeal* on these grounds. For example, a refusal of a visitor visa may raise human rights grounds. This is not straightforward, however. Read more here:

<https://www.freemovement.org.uk/visit-visa-refusals-appeal-or-judicial-review/>

Not all applications based on protection grounds have a right of appeal. For example, you do not have the right of appeal in the UK if your asylum claim is certified and put in the "non-suspensive appeals" category. See the Toolkit section *Screening* for more on this.

If your claim is certified, you may be able to appeal the decision from outside of the UK.

See the Toolkit section *Removals* for information on appealing a deportation after a criminal sentence.

Grounds for appeal

The grounds for an appeal based on protection or human rights would need to be one of the following:

- that your removal or the revocation of your protection status (refugee status or humanitarian protection) would breach the UK's obligations under the Refugee Convention, in relation to persons eligible for a grant of humanitarian protection. Or under the Human Rights Act;
- or that the decision is unlawful under section 6 of the Human Rights Act (it is unlawful for a public authority to act in a way which is incompatible with a right protected by the European Convention on Human Rights).

No right of appeal

If you do not have the right of appeal, you may be able to apply for administrative review from the Home Office (see the Toolkit section *After a Refusal*) and/or apply for permission for a judicial review of the decision.

A judicial review is not the same as an appeal – an appeal looks substantively at the issues of your case. A judicial review looks only at how the law/policy has been applied to your case. (See the Toolkit section *Judicial Review*)

Submitting your appeal

Note - this section contains information for if you are representing yourself. If you have a lawyer, they will fill out the appeal form for you.

Time limit

If you are in the UK, your completed appeal form (and accompanying documents/evidence) must be received at the Tribunal no later than 14 calendar days after you are sent the notice of the decision by the Home Office

If you miss this deadline, you may be able to apply for an 'out-of-time' appeal but you would have to have good reasons for doing so, and explain these to the Tribunal. The Tribunal may refuse to consider your appeal.

The appeal form

FIRST-TIER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Form IAF5-5
Appeal against a post IA 2014 In Country [Asylum/Immigration] Decision

a. Do you want to have your appeal decided at an oral hearing or on the papers? (tick one box)

Oral Hearing You should tick the 'oral hearing' box if you want to have an oral hearing that you and/or your representative plan to attend. You will need to pay the appropriate fee for an oral hearing.

Paper Hearing You should tick the 'paper hearing' box if no one will attend and you want to have your case determined on the papers provided. You will need to pay the appropriate fee for a paper hearing.

b. If you have chosen to have an oral hearing, please mark the box of anyone who will be attending your hearing.

Sponsor Your representative
 Witness

c. Are you in receipt of legal aid funding, Asylum Support Funding or support under s.17 of the Children Act 1989? Please tick as appropriate.

Legal Aid Asylum Support
 Section 17 No (if no, complete payment details on page 1)

You should provide a reference and any supporting documents. Failure to do so may result in a fee being required.

Legal Aid/Asylum support Ref Number:

d. Are you paying for the appeals of any member of your family or anyone planning to appeal against an immigration decision? Yes (if yes, give details in the table below) No

You should note that the total fee you pay will be calculated by the Tribunal based on the information (continue on a separate sheet if required).

Name	Relationship	Appeal number, Post reference number

Please see page 1 for details of how to pay a fee

For Staff Use Only

Lord Chancellor's Certificate of Fee Satisfaction issued Date

No Lord Chancellor's Certificate of Fee Satisfaction issued Date

3

If the Home Office refuses your application they will send an appeal form (called IAF5-5) and guidance notes when they send you written notification of their refusal.

You can submit an appeal to the tribunal using the appeal form sent to you or an online form. If you are not sent an appeal form, you can find it on the Home Office website where you will also find the link for submitting your appeal form online: www.gov.uk/immigration-appeals

[asylum-tribunal/appeal-from-within-the-uk](http://www.gov.uk/asylum-tribunal/appeal-from-within-the-uk)

You can submit the completed appeal form by post, fax, or online. If you are filling in the hardcopy (on paper) appeal form, you can either fax it to 0870 739 4053 or post it to: First-tier Tribunal (Immigration and Asylum Chamber), PO Box 6987, Leicester, LE1 6ZX.

If you are posting your appeal, you should try and send it by recorded delivery or another service that shows proof of postage and acknowledgement of receipt.

Note: these details were correct at the time of writing. Before you submit your form, check where you should be submitting (“lodging”) the completed form by looking at the Home Office website: www.gov.uk/immigration-asylum-tribunal/appeal-from-within-the-uk

If you are handwriting on the pdf (hardcopy paper) of the appeal form, you should write your answers in BLOCK CAPITALS. You can also fill in the form on a computer, depending on which software you use (for example, if you download the form and use Adobe Reader software).

The online application form is a quick way to submit your appeal form, but it is not straightforward to use. For example, you cannot jump ahead to see what questions are coming up. Some questions are mandatory, which may be useful for making sure you don't leave out important information, but may also require an answer you cannot give. For example, one mandatory question is "If you have chosen to have an oral hearing, please say who will be attending your hearing" with options of “sponsor”, “witness” and “representative”. None of these options may apply to you. It is also not altogether obvious when you are at the point of finally submitting the form so be careful not to send it before you have finished!

If you are going to use the online form, make sure you prepare your answers beforehand, using the pdf available on the website.

If you submit your appeal online, you will need to send all your supporting papers (including your Notice of Decision) to the Tribunal by post at the address given on the Home Office website: www.justice.gov.uk/tribunals/immigration-asylum/appeals

If you are **detained** and have the right to appeal a refusal, you cannot use the online form to submit your appeal. You should be given an appeal form called IAFT-5(DIA) when you are given written details of your refusal. You should submit the form as per the instructions with this form.

ACTION SECTION

If you find writing English difficult, a friend or supporter may be able to help you to fill out the appeal form. You need to tell them what to write, and they write it on the form. They should read back everything they have written for you, to check it is correct.

You must send a copy of your Reasons for Refusal Letter and the accompanying Notice of

Decision document with your appeal form. You may also want to submit further evidence, witness statements or a detailed explanation of what you are challenging in the Home Office decision. See the Toolkit section *After a Refusal*.

If you are submitting documents with your appeal, all documents in other languages have to be translated into English. The documents should be signed by the translator to certify that the translation is accurate and the translation attached to the original document.

You may also find it useful to look at the 'Best Practice Guide to Asylum and Human Rights Appeals': www.ein.org.uk/bpg/contents This is a guide written by lawyers for lawyers, but you may find parts of it helpful or be able to ask someone with legal knowledge to help you go through the relevant sections about process and good practice (some of the information is only relevant to lawyers).

Questions in the form

- The form asks for payment details for paying the appeal fee. You do not need to fill this out if you do not need to pay the fee (see below).
- “Do you want to have your appeal decided at an oral hearing or on the papers?”. “On the papers” means the judge will read all the documents without you being present in the court. If you have your case heard in court (an “oral hearing”) you will be able to give evidence and speak to the judge who will be deciding your case – this is usually a better option than having your appeal decided on the papers.
- When the form refers to the “appellant”, this is you! The appellant is the person appealing a decision.
- You need to give your various reference numbers. You will find these on your Reasons for Refusal Letter from the Home Office.
- The “date of application to Home Office” means the date you made the asylum, human rights or other application for which you have now received a refusal.
- “Have you been served with a deportation decision?”. This is referring to deportation after a criminal sentence, not just “removal” (which there are questions about prior to this question).
- Grounds of your appeal - the form asks you to explain why your removal from the UK would breach the UK's obligations under the Refugee Convention; and the UK's obligations in relation to persons eligible for a grant of humanitarian protection. If you would be at risk of specific, individual persecution *and* serious harm that affects people more broadly, you can fill in both sections.
- If you have made an application for leave to remain on human rights grounds, or

have made an asylum/protection claim and you also have human rights grounds to stay in the UK, you need to fill in the section on “Human Rights Decision”.

- There are boxes relating to “Revocation of Protection Status Decision”. You only need to fill these in if the decision you are appealing is the Home Office revoking (taking away) refugee status or humanitarian protection that they have previously given you.
- “New matters” - the form so far has been asking you to give your reasons why you disagree with the Home Office decision on the application you made. New reasons why you should be given the right to remain in the UK may have arisen since you made that application. You should explain these in the “new matters” section.

This should be information you have already notified the Home Office of, as under section 120 of the Nationality, Immigration and Asylum Act 2002 (expanded by the 2014 Immigration Act) there is now an "ongoing duty to inform the Secretary of State as soon as reasonably practicable of any new or additional reasons the person should be permitted to remain or should not be removed." If you have not done this, the Home Office may certify your claim, meaning you lose the right to appeal in the UK.

You do not need to fit everything you want to say into the boxes on the form. If you have a lot of information or need to give a long explanation, you can write “see attached statement” and write your information/explanation on a separate sheet. Make sure you put the heading of the form section/the question you are answering at the top of your extra information.

Make copies of the completed form and all documents that support your appeal, keep the original documents and send copies with the completed form.

Fees

You **do not have to pay a fee** for your appeal if:

- your legal case is being paid for by legal aid
- you are in receipt of asylum support payments from the Home Office
- There are other circumstances in which you may be exempt from paying a fee. See the guidance on fees for more information:
www.hmctsformfinder.justice.gov.uk/courtfinder/forms/t495-eng.pdf

If you do have to pay a fee, it is currently £80 without a hearing (decision made 'on the papers') or £140 with an oral hearing. Note - these fees were hugely increased in October

2016, but reversed in November 2016 and are now under review. Read more here:

<http://www.righttoremain.org.uk/legal/first-of-the-huge-court-fee-increases-come-into-force/>

As was noted above, if you have your case heard in court you will be able to give evidence and speak to the judge who will be deciding your case – this is usually a better option than having your appeal decided on the papers.

After submitting your appeal

- After you have submitted (or “lodged”) your appeal, you will be sent a “**Notice of Hearing**”. This will tell you the time and date of the hearing, and where the hearing will be heard. It will also tell you if you will have a Case Management Review (CMR) hearing scheduled before the full hearing (see below).
- If you need an interpreter and did not say this in your appeal form, you must notify the Tribunal, informing them which language and dialect you speak.
- You can ask for a male or female judge if you think there are issues in your appeal that make it appropriate. The Tribunal will decide if it can do this.
- If you have **documents** you want the judge to look at, you should send copies to the Home Office and the Tribunal as soon as you can. The Notice of Hearing will tell you the deadline for doing this. You need to bring the originals of the documents with you to the Tribunal. These documents must be in English or be officially translated.
- If you are unable to attend the hearing, you must tell the Tribunal as soon as possible and ask for the hearing to be adjourned to a different date. If this is because you are ill or have a medical appointment you need to send evidence of this when you apply for an adjournment. A judge will consider this and you will be told whether the hearing date has been changed or not.
- You may not be able to take young **children** into the hearing with you - wherever possible, arrange childcare for the day of the hearing, and remember you may be at the Tribunal all day.
- If your address changes after you have submitted your appeal, you need to notify the Tribunal. You also need to notify the Tribunal if you change lawyer (or you no longer have a lawyer).
- Hearings are **in public**, so when you have your hearing there may be members of the public in the room too. If you do not want your hearing to take place in public, because you fear for your safety or because of the sensitive nature of your case, you can request that the hearing takes place in private. You should do this well in advance of the hearing.
- You can also request **anonymity directions** so that any materials about the

hearing in the public domain including the written record of the court's decision (which may be published publicly including on the internet) does not contain your name. You can find the application for anonymity and guidance here:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2877

- If you have included witness statements in your evidence, those witnesses should attend the appeal hearing if at all possible (if they are based in the UK). Read more here about witnesses in Article 8 appeals in the Toolkit section *Human Rights*.

McKenzie friend

If you want a friend or volunteer to assist you during this hearing (and the full hearing), you may be able to arrange this. This person is often called a “McKenzie friend”.

A McKenzie friend is usually an English-speaking friend, relative or volunteer who is not qualified to give legal advice, but may have experience of the legal system. They are not usually able to represent you but can assist you in gathering evidence to support your case, preparing witness statements and/or written legal arguments.

If you have a McKenzie friend to support you at a court hearing, they cannot answer questions for you but can assist you in making notes of what happens at the hearing, and in some cases can also give you assistance in making submissions to the court.

If you are using a McKenzie friend, you should tell the clerk at the Tribunal that you have someone with you to assist you. You should also ask the judge at the start of the hearing for permission to have assistance from such your McKenzie friend. The judge may ask what relevant experience (if any) the person concerned has, whether he or she has any interest in the case and that he or she understands the role and the duty of confidentiality that arises if consent is given.

Case Management Review Hearing

In *asylum* cases there may be a pre-hearing of the appeal case called a Case Management Review (CMR) hearing. At this hearing a judge decides whether you and the Home Office are ready to proceed with the full hearing a few weeks later.

If you need more time to gather important evidence, you can request an adjournment (postponing the date of the full hearing) at the CMR hearing. The judge may refuse this request. The Home Office may request an adjournment, or they may do this at the full hearing. Be warned – it is more common for the Home Office to be granted an adjournment than the appellant!

If you do not have a lawyer it is very important that you attend your CMR (if you have been notified you are due to have one - not all cases do). If no one attends the judge may decide to determine your case without a full hearing. If you need an interpreter you need to let the Tribunal know in advance.

Full Hearing

Your case will be listed for hearing at 10am on the date you are given on your Notice of Hearing. The judge will decide on the day the order in which the cases will be heard so you may have to wait until later in the day for yours to be heard.

The Tribunal clerk will keep you informed during the day about how long you may have to wait. You might want to bring some money with you in case you want to buy drinks or refreshments, although you will usually be provided with water in the hearing room once your hearing has started.

You should arrive early at the Tribunal - you may need to arrive more than 30 minutes or an hour early, depending on how busy the Tribunal is and how long it takes to get through security. You can ask someone at the Tribunal for advice about what time to arrive.

It's a good idea to visit the Tribunal location in advance, so you know how to get there and where you should go.

If you are representing yourself (you do not have a lawyer), remember to bring all the necessary documents with you. This includes your Notice of Hearing and any documents you want the judge to consider.

When the judge is ready to hear your case, the clerk will take you into the hearing room. If you have witnesses who will be giving evidence, make sure the clerk knows they are present. They will stay outside the hearing room until it is time for them to give evidence.

The hearing is usually held in a room with desks and chairs. The judge will sit at the front of the room (they will come in after you) at a desk or table and the other people sit at tables and chairs in front of him/her. The Home Office representative (Home Office Presenting Officer, or HOPO) will usually sit on one side of the room, and you will sit on the other side (with your lawyer, if have one). The Home Office do not always send a HOPO to attend. The hearing will usually go ahead anyway, with the judge asking more questions.

Your appeal will probably be heard by one judge. Occasionally, more than one judge will sit as a panel but this is unusual.

You may turn up for your hearing, and find out the Home Office are asking for an

adjournment for some reason. If this is granted by the judge, the hearing will take place at a later date. You can also ask for an adjournment, but it is less likely to be granted. It is best to request an adjournment at the CMR hearing (in asylum cases), if you can.

Mobile telephones must be switched off whilst in the hearing room. You cannot record the proceedings or take any photographs.

If you need an interpreter they will sit next to you. They will interpret the proceedings to you in a low voice or whisper, either while people are speaking or after a statement has been given.

You should call the judge 'Sir' (if they are a man) or 'Madam' (if they are a woman).

You will be asked to stand up when the judge enters the room. After that there is no need to stand until the end of the hearing when the judge leaves the room. You can stay sitting down when you address (speak to) the judge.

Making your argument

This information is for if you do not have a lawyer representing you. If you have a lawyer, they will address the judge and give the legal arguments, but you will also have to give evidence.

- You will normally give your evidence first as to why your appeal should be allowed.
- You will then be asked questions by the Home Office Presenting Officer and perhaps by the judge.
- The Home Office Presenting Officer will then address the judge and say why they think the appeal should be dismissed. It may be useful to take notes while they do this as you may want to respond afterwards to what they have said.
- You will then have the last word to explain why your appeal should be allowed (responding to what the Home Office Presenting Officer has said, if you can).

In advance, you might want to write down a summary of the key points of your argument, to remind yourself what you want to say. You can give a copy of this to the judge if you want, as long as you give a copy to the Home Office presenting officer as well.

If you have several points to make, make this clear. You can say "my first reason is", "my second reason is" etc. Try and stick to one reason at a time, without mixing up different areas of argument (though if the areas of argument are connected, you can say this).

You can't interrupt the judge, the Home Office presenting officer, or a witness if they are in the middle of talking. If you think the judge is moving on to the next part of the hearing and you haven't finished what you wanted to say, you can raise your hand.

ACTION SECTION

- You may be feeling nervous about going to court. You can ask a few friends or supporters (not too many) to sit in the court room in the public area, for moral support. They are not allowed to speak or make any interventions in the proceedings, but it can help to have a friendly face or two in the room.
- You may even want to practice by doing a pretend hearing with friends/supporters, with someone playing the judge and someone else the Home Office Presenting Officer.
- As hearings are public, you have the option to going to watch someone else's hearing in advance of your own. Think about whether you think this would be helpful or not.

The Decision

The judge does not usually decide whether or not your appeal has been allowed (successful) or dismissed (unsuccessful) at the hearing.

You will be informed the outcome of your case in writing after about three or four weeks. The judge may say in the hearing when you can expect to receive the decision.

If you change lawyer, or cease to have a lawyer after the hearing but before you are notified of the decision, make sure you notify the Tribunal. This is because they are likely to send the decision to the lawyer they have on record for you, not you directly.

If you receive a positive decision in your case, the Home Office may appeal. If they do not appeal, or they appeal and lose, the Home Office should reverse their decision and take the necessary next steps.

For example: the court has given you a positive decision, overturning the Home Office's refusal of your asylum application. The Home Office do not appeal this decision. They should then proceed to grant you refugee status and issue you with the documents to show you have this status.

If the Home Office are not taking the necessary steps, or are being very slow about it, speak to your lawyer (if you have one) and also consider asking your MP to intervene.

If your case is refused (“dismissed”), you may be able to appeal that decision at the Upper Tribunal. See next section, *Upper Tribunal*