Law Society of Scotland

The New Independent Appeals Body: Call for evidence

April 2026

Introduction

The Law Society of Scotland is the professional body for over 13,500 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society. Our Immigration and Asylum sub-committee welcomes the opportunity to consider and respond to The new Independent Appeals Body: Call for Evidence issued by the UK Government. The sub-committee has the following comments to put forward for consideration.

General Comments

5. How can the new Independent Appeals Body ensure parties to the appeal have fair access to legal or immigration advice, representation and the practical support required to participate effectively in the process? [Maximum 1000 words]

Our comment

The best way of ensuring fair access to legal advice and representation is to ensure that legal aid is available for those who are otherwise unable to afford to pay for legal services. (Please note that we are using the term "legal aid" to also include "advice and assistance" and "assistance by way of representation", being the specific types of legal aid that are generally available for immigration applications and appeals in Scotland).

Obtaining effective legal advice and representation also takes time. Therefore, if appeals are rushed (e.g. in order to meet strict deadlines) it is likely that Appellants will find it more difficult to access adequate legal representation. We believe that cases should proceed expeditiously without being rushed. Requests for adjournments/extensions of deadlines in order to secure legal representation should be heard sympathetically. This should particularly be the case where there is a shortage of legal representation available to Appellants (as is sometimes the case in Scotland albeit this might well be a more pressing problem in other parts of the UK where legal aid is less widely available).

Ensuring parties have access to relevant paperwork timeously is also essential both for appeals to proceed expeditiously and for legal representatives to be able to assist Appellants effectively. Therefore, it would be welcomed if effective steps could be taken in order to prevent failing to provide appeal bundles or Respondent Reviews timeously (or at all).

In terms of practical support, continued free availability of interpreters at the request of Appellants should continue.

Appellants tend to be excluded from the process if matters are rushed, leaving little time for matters to be explained to them or for those unfamiliar with the legal process (which includes almost all Appellants) to keep up with what is happening in the court process. Therefore ensuring that cases are not rushed is also likely to assist Appellants to participate effectively in the court process.

6. Can you tell us of your experience of immigration and legal advice, including whether you have concerns around access, availability or capacity. [Maximum 1000 words]

Our comment

Our Immigration and Asylum sub-committee is part of the Law Society of Scotland, being the professional body for over 13,000 Scottish solicitors. As such all solicitors (including, of course, all solicitors who practise immigration or asylum law) in Scotland are members of the Law Society of Scotland. As such our collective membership has extremely extensive experience of providing legal advice in this sector.

In Scotland legal aid is available for immigration and asylum appeals (subject to a means tests). As a result, solicitors in private practice are generally available and generally have capacity to provide legal representation to most Appellants appearing before the Tribunal in Scotland.

At the same time, limitations on legal aid remuneration (i.e. poor rates of pay for legal aid work in Scotland) has resulted in legal aid work becoming less financially sustainable. As a result, there is a general decline in the number of solicitors providing legal aid work in Scotland. If this decline continues, it is likely that in the future there will be significant problems regarding availability of legal advice and representation for Appellants appearing before the Tribunal in Scotland.

In terms of capacity, there seems to be capacity amongst the legal profession in Scotland to provide representation for Appellants to the First-tier Tribunal (IAC) most of the time. However, due to the financial difficulties of operating legal aid, most firms operate at (or at times beyond) capacity in order to be financially sustainable. As such, the profession tends to experience difficulties with capacity from time to time (e.g. if there is a sudden increase in the number of appeals).

Whilst most legal aid issues are beyond the remit of the FTT or IAB, perhaps the best way that such appellate bodies can assist solicitors struggling with such issues is to adopt a sympathetic /understanding approach to solicitors who need adjournments/extensions – including when these are requested due to occasionally being forced to operate beyond capacity.

7. Do you consider changes are required to ensure early legal advice is a core part of the system to avoid delays and late claims, and to lead to better decisions? Please include any suggestions on how legal advice or representation could be improved. [Maximum 1000 words]

Our comment

Widely available access to legal aid in Scotland does assist Appellants in obtaining early legal advice. This, however, is subject to the explanation (at Q.6 above) regarding the strain under which the legal aid system in Scotland currently operates.

One significant barrier for Appellants in obtaining effective early legal advice is the frequent failure of the Home Office to provide appeal paperwork (Respondent bundles and reviews) at an early stage in proceedings.

8. Drawing on the existing practices, procedural rules or approaches of the FTT-IAC, which do you consider could usefully be included, adapted or avoided in the design and operation of the new Independent Appeals Body? Please include any views on the current approach to publishing determinations. [Maximum 1000 words]

Our comment

Section 85 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002), which governs the matters which the Tribunal is allowed to consider has a significant impact on procedures before the FTT-IAC. Section 85(5) prohibits the Tribunal from considering "new matters" without the consent of the Secretary of State. The operation of this rule can undermine the principle of "one stop appeals" by forcing Appellants to only raise any "new matters" by way of additional applications for entry clearance/leave to remain (after an appeal on another basis has been refused). If such further applications are refused they tend to trigger further appeal rights, which causes Appellants to be "trapped" in the appeal system for years on end. The repeal of S.85(5) of the NIAA 2002 would reduce the workload of (and prevent delays in) the appellate system.

It should be added that there are further problems with Section 85(5) NIAA 2002, including that it undermines the effectiveness and independence of the Tribunal by granting one party (the Home Office) the power to decide what issues the Tribunal can or cannot consider in an appeal. This breaches the constitutional principle of the separation of powers and accordingly the rule of law.

We have no issues with the current approach to publishing determinations. However, one change that could save time/resources would be to publish written reasons for a decision only when requested by the party who lost the appeal. This could be achieving by modifying Rule 29 (particularly 29(3)(a)) of The Tribunal Procedure (FTT) (IAC) Procedure Rules 2014.

9. How should the new Independent Appeals Body accommodate specific needs or vulnerabilities, including by providing reasonable adjustments or tailored procedural support, to ensure fairness and accessibility? [Maximum 500 words]

Our comment

We have no comment to make.

10. How should expert evidence (including medical, country and technical expertise) be commissioned, quality-assured and used within the appeals process? [Maximum 1000 words]

Our comment

We do not suggest any change to the existing system whereby the party who wishes to rely on any particular piece of evidence has to obtain it.

11. What are your views on requiring parties to rely on a shared set of expert materials? [Maximum 500 words]

Our comment

It is difficult to see how any requirement that restricts an Appellant to relying only on evidence which has been agreed with the Home Office could ever comply with the requirements of a fair hearing (either under the common law or under ECHR Article 6).

We see no reason to change the existing procedure whereby the party intending to rely on certain evidence is under an obligation to obtain that evidence. With availability of appropriate legal aid cover this principle allows parties to obtain necessary evidence timeously and does not undermine timely case progression.

If the obtaining of expert reports and medical evidence is causing delays to appeals in certain parts of the UK (which would not reflect the sub-committee members' experience of appearing before immigration tribunal in Scotland) then this might be due to difficulties in accessing funding for such evidence (i.e. restrictions on legal aid) rather than any specific problems relating to the evidence itself.

Adjudicator recruitment, eligibility, impartiality and training

12. What recruitment criteria would best ensure adjudicator independence, impartiality and credibility in the new appeals body? [Maximum 500 words]

Our comment

We are concerned that the appointment of Judges without legal qualifications or experience would undermine the credibility of the new appeals body and refer to the decision in the European Court of Human Rights case Guðmundur Andri Ástráðsson v. Iceland [GC] - 26374/18 which held that "technical competence" is one of the main criteria on which judicial selection should be based. Following this

judgement, failure to select the most technically competent available (or reasonably available) judges could compromise compliance with ECHR Article 6. We note that in addition to deciding on cases relating to fundamental human rights, judges in the FTT(IAC) must also frequently consider significant legal complexity. If judges are appointed to the new IAB who lack the requisite technical, legal competence to determine such issues, then there is a clear risk that miscarriages of justice will result. Related to this is also a likelihood of a higher volume of appeals having to be heard by the Upper Tribunal and having to be remitted by the Upper Tribunal (i.e. to be reheard by the FTT/IAB). This is likely to increase (rather than reduce) the backlog of immigration appeals.
We are unaware of lay justices determining cases of comparable gravity (adjudicating cases concerning ECHR Articles 2 and 3, for example) in any other courts or Tribunals in Scotland. A Justice of the Peace is a lay magistrate who sits in Scotland. In court justices have access to advice on the law and procedure from qualified lawyers, who fulfil the role of legal advisers or clerk of court. Similarly the Legal Assessor is a legal adviser to the General teaching Council (Scotland) hearings: https://www.legislation.gov.uk/ssi/2011/215/schedule/4/made. If the new IAB were to follow a similar practice it would be likely to enhance the new body's credibility and to help ensure compliance with ECHR Article 6. Finally, on this point, and returning to the case of case of Guðmundur Andri Ástráðsson v. Iceland [GC] - 26374/18 we note that the Grand Chamber also held that failure to select judges by way of strict adherence to the correct legal criteria would also result in breaches of ECHR Article 6. In the current context we note that Part 2 of the Tribunals, Courts and Enforcement Act 2007, read alongside Part 5 of the Nationality, Immigration and Asylum Act 2002, guarantee that an immigration appeal in the UK will be heard by a legally qualified Tribunal Judge. Therefore, amendments to primary legislation would be required to enable non-legally qualified judges to hear such appeals. In relation to the same point, we note that whilst previous legislative arrangements might have allowed appointment of non-legally qualified adjudicators, this very rarely happened in practice.

13. What recruitment qualifications would best ensure adjudicator independence, impartiality and credibility in the new appeals body? [Maximum 500 words]

Our comment

Any appeals body is likely to have more credibility if the judge/adjudicator is legally-qualified (as in the present model).

Alternatively, the credibility of the new appeal body might also be enhanced (albeit to a lesser degree) by ensuring judges have the qualifications necessary to be a "qualified person" in terms of Section 84 of the Immigration and Asylum Act 1999. This would strike a balance between allowing non-legally qualified persons to be judges whilst also ensuring that judges have sufficient knowledge of immigration law in order to adjudicate upon the legal matters that come before them. It would also ensure that judges presiding over cases have the same level of qualification as is required to represent a party before the Tribunal. This might prevent the credibility of the Tribunal from being undermined.

As a third alternative, the credibility could be enhanced (albeit to a substantially lesser degree again) non-legally qualified judges should have a degree level qualification as a minimum requirement, possibly at a level of upper second-class honours.

14. What recruitment safeguards would best ensure adjudicator independence, impartiality and credibility in the new appeals body? [Maximum 500 words]

Our comment

There is a strong argument that Adjudicators who were previously employed by one of the parties to an appeal could be perceived to lack the necessary impartiality required for a fair trial (either under common law or ECHR Article 6). Case law provides examples of situations where a decision-maker who was previously employed by one party to a dispute was not seen to be sufficiently impartial. For example, SP v Secretary of State for Justice [2009] EWHC 13 (Admin) and R (Secretary of State for Communities and Local Government) v Ortona [2009] EWCA Civ 863.

These authorities might rule out former employees of the Home Office or others with close connection to the Home Office being able to decide appeals against Home Office decisions.

Furthermore, in light of the increasing political polarisation surrounding immigration law, it would seem desirable to have safeguards in place which would prevent individuals with extremist political views from becoming judges. Therefore, those with current or previous membership of extremist political parties or groups should be excluded. New definition of extremism (2024) - GOV.UK

In terms of defining "extremist political party or group" we are supportive of the definition provided by the English Ministry of Housing, Communities and Local Government in their paper of 14/03/2024 in this context: https://www.gov.uk/government/organisations/ministry-of-housing-communities-local-government ("New Definition of Extremism (2024)"). It is also arguable that if a judge has subscribed to views promoting abolition of the human rights act it might be difficult to see how such a judge could be regarded an impartial arbiter in any appeal regarding potential breaches of an Appellant's human rights. Similarly the endorsement of any view promoting breaches of fundamental human rights would be likely to fatally undermine the perceived impartiality of any adjudicator.

Independent checks should be made of these matters in respect of any prospective judge (i.e. that it would not be enough for individuals to simply "self-certify" that they do not hold any extremist views).

15. Which professional backgrounds or types of experience should be considered particularly valuable for adjudicators within the new appeals body? Why? [Maximum 500 words]

Our comment

We have no comment to make.

16. Which professional backgrounds or types of experience should be considered particularly unsuitable for adjudicators within the new appeals body? Why? [Maximum 500 words]

Our comment

For reasons explained in response to Q.12 any appeal heard by a current or former employee of the UK Home Office might not be seen as being either a "fair hearing" under common law principles or, for the same reasons, compliant with ECHR Article 6.

17. For adjudicators to be professionally trained, what should a training package include to support robust, professional, fair and high-quality decision-making in the new appeals body? [Maximum 500 words]

Our comment

We suggest a training package that culminates in adjudicators being able to pass the necessary competence assessments for Level 3 set by the Immigration Advice Authority. This would ensure that all adjudicators are of the necessary professional competence to become "qualified persons" in terms of Section 84 of the Immigration and Asylum Act 1999 (which would help to safeguard the credibility of the new IAB for reasons set out in our answer to Q.13).

Case management models

18. Are there any circumstances in which certain case types should have specialist processes? If so, what specialist processes or hearing models would be appropriate for these case types? Please explain. [Maximum 500 words]

Our comment

As a safeguard, it would be desirable to have panels/more than one individual appointed to adjudicate cases involving particularly vulnerable claimants. Examples of particularly vulnerable claimants might include children, those with learning difficulties, victims of trafficking, victims of treatment contrary to ECHR Article 3, etc.

It might also be possible for panels to be appointed in particularly complex cases. The definition of "particularly complex" could be determined either by the Tribunal on its own motion or else by cause shown by a party to an appeal.

19. What additional decision-making safeguards should the new Independent Appeals Body adopt to ensure consistency, quality and fairness? [Maximum 500 words]

Our comment

It is essential that onward rights of appeal (to the Upper Tribunal and higher courts) remain in place for these purposes. The necessity of this safeguard is likely to increase as a result of having non-legally qualified adjudicators.

Hearing methods, digital processes and efficiency

20. What are the challenges and opportunities for paper-based hearings? [Maximum 500 words]

Our comment

It is not possible to fairly assess a witness' credibility without hearing them speak or answering questions. We take the view that paper-based hearings would not be appropriate in any hearings where the credibility of an Appellant or any witness is in dispute.

Disputes about complex areas of law might be better settled by discussion rather than on paper.

21. What are the challenges and opportunities for virtual hearings? [Maximum 500 words]

Our comment

Virtual hearings tend to work quite well. The main challenge is that the technology can be difficult for some Appellants to navigate, especially those who have not had education or training in technology or who do not have access to appropriate technology.

Particular challenges include:

A. Difficulty of an Appellant or witness being able to see a document on which they are being cross-examined if the hearing is taking place remotely. This difficulty could be overcome by parties ensuring that they provide Appellants / witnesses with paper copies of any documents on which they will be cross-examined.

B. Difficulty in hearing and understanding an interpreter clearly when the interpreter and person in need of the interpreter are not in relatively close physical proximity (so that they can see each other's facial expressions, body language). Against this I understand that interpreter / translation costs might be cheaper when they do not need to include travel expenses.

An advantage provided by remote hearings is that it is easier for parties in remote locations (e.g. abroad or in remote rural parts of Scotland) to attend them.

22. What are the challenges and opportunities for in-person hearings? [Maximum 500 words]

Our comment

In general, hearings tend to run more smoothly when they are in person. It is easier to see and hear everybody. This is particularly the case for parties lacking in "digital literacy" skills. In the context of immigration appeals, communicating via an interpreter can also be more difficult when done remotely. It is easier for an interpreter to pick-up on non-verbal forms of communication when present in the same room as the person for whom they are interpreting. Some of these issues have been recognised in previous research such as the Scottish Government's "Civil Justice System – pandemic response – research findings" (https://www.gov.scot/publications/civil-justice-systems-pandemic-response/pages/2/).

Against this, travel to a hearing centre can be challenging for participants who live far from the centre. This can be a particular problem in Scotland where there is only one hearing certain in the South of the country (Glasgow) for what is a geographically large jurisdiction. The Scottish Government research paper referred to above also found that attending remote hearings can actually be easier for certain vulnerable groups such as children and victims of domestic violence. Also, it is understood that it can be easier to arrange remote hearings at relatively short notice. Hence it is also understood that the use of remote hearings might be helpful in trying to reduce the current backlog of cases before the Tribunal. Ultimately, allowing parties some input into the choice of hearing method (remote or in-person) seems likely to enable the appeals body (IAC or IAB) to take advantage of the benefits of remote hearings whilst ensuring that in-person hearings can still be available for those who reasonably need them.

23. What technology, infrastructure or operational measures are required to ensure that remote or hybrid (a mix of remote and in-person) hearings are fair, accessible and secure? [Maximum 1000 words]

Our comment

Up to date video-link technology, functional microphones and audio equipment and ensuring that all participants in a remote hearing have access to hard copies of any documents that they might need to see during the hearing.

24. What considerations should inform decisions regarding how and where appeals are heard in the new Independent Appeals Body, including alternatives to the existing appeals estate (buildings and locations) and other spaces? [Maximum 500 words]

Our comment

We have no comment to make.

Compliance, engagement, timeframes and prioritisation

25. What measures could improve compliance with directions and timeframes, and support effective engagement and attendance from appellants, representatives and the Home Office throughout the appeals process? [Maximum 500 words]

Our comment

Solicitors already risk severe sanctions (wasted costs orders and complaints to professional regulators) if they fail to engage with directions and timeframes. Moreover, the risk of losing an appeal due to non-compliance acts as a strong deterrent against Solicitors failing to comply with deadlines.

None of these factors operate in the same manner as deterrents to non-compliance by Home Office staff. Therefore, it might encourage greater compliance from Home Office/the Respondent to appeal if similar sanctions were introduced. For example, perhaps a Respondent's right to make submissions could be curtailed (e.g. restricted to written submissions or a shorter time) in a case where no Respondent bundle or Review has been provided. Perhaps Respondents should also be prohibited from raising new matters at a hearing (without the consent of the Tribunal) if it has not been raised previously in a decision under appeal or in a Respondent Review.

Currently available statistics regarding "non-compliance" might not reflect the specific situation in Scotland (where it might reasonably be hypothesised that the wider existence of legal aid helps ensure greater levels of compliance by Appellants). Practitioners in Scotland have requested such statistics for the Tribunal in Scotland but the FTT (IAC) has not yet been able to provide them.

26. What should constitute a reasonable timeframe for deciding cases? [Maximum 500 words]

Our comment

A reasonable timeframe for deciding cases really depends on the complexity of the case. In previous years, asylum appeals tended to be listed within 28 calendar days. This was not a realistic timeframe for obtaining the types of evidence (especially translations of documents, expert reports, and medical reports) that are typically required in such cases. As a result, adjournments were frequently required in order that cases could be presented properly and professionally. It is presumed that is why the 28-day listing deadline was abandoned.

Ultimately, around 12 weeks between an Appellant receiving a decision and the appeal then being listed appears to be a reasonable amount of time to allow

adequate preparation from all parties. However, this depends on the circumstances of every case (there will be occasions where more time is needed, and we would strongly suggest that reasonable requests for adjournments/extensions on this basis should be heard sympathetically).

27. In what circumstances should exceptions be permitted? [Maximum 500 words]

Our comment

Exceptions should be permitted in the following circumstances:

- Complex cases which need longer to prepare.

- Cases requiring medical evidence. Due to the various logistical steps involved medical evidence tends to take a long time to obtain. A highly respected medical charity (Freedom from Torture, formerly known as The Medical Foundation) has indicated that it usually takes their clinicians around 12 weeks to prepare a report, starting from the date of the first appointment, although in some cases longer is needed (Medico-legal reports for torture survivors | Freedom from Torture). It should also be noted that such an initial appointment cannot be arranged until legal aid funding is in place. Obtaining such funding requires lengthy prior correspondence between legal representatives, funding bodies (e.g. SLAB), and the medical practitioner. As such, in practice a more realistic timetable is usually more like around 12 to 16 weeks.

It should also be noted that due to funding restrictions it is often not possible to obtain (pay for) medical reports unless a case is going to appeal. In all of these circumstances extensions / adjournments for medical evidence should be heard sympathetically.

- Cases involving vulnerable witnesses or witnesses who are victims of trafficking/torture. Taking statements from vulnerable witnesses can take a long time. For example, requiring a victim of torture to recount details of their experiences risks retraumatising them. To reduce this risk such statements need to be taken slowly and sympathetically. It is extremely difficult to do this when deadlines are too tight. Therefore, it is hoped that requests for extensions in such cases should also be heard sympathetically.

28. What changes to the current system will ensure appeals are decided within a single appeal route? [Maximum 500 words]

Our comment

We note that the repeal of Section 85(5) of the Nationality, Immigration and Asylum Act 2002 is likely to reduce the need for multiple appeals in some cases.

29. How should the new Independent Appeals Body prioritise or accelerate cases, and should it adopt a more codified approach to case management than exists

in the current FTT-IAC? You may wish to comment on whether certain categories of cases might be appropriately prioritised or accelerated, and what safeguards, fairness considerations, or operational factors should be taken into account, and on reasonable timeframes for doing so. [Maximum 1000 words]

Our comment

It is difficult to set out general criteria that would merit a case being heard more quickly. Generally speaking, it would seem humane to have entry clearance cases based on ECHR Article 8 (i.e. cases where family members are having to wait in separate countries for their appeals to be heard) listed relatively quickly. Unfortunately, this is the opposite of how listing has traditionally tended to take place in such appeals (they usually take longer).

Beyond that a clearer, simpler and more transparent procedure for appeals to be listed more expeditiously (as decided in a case-by-case basis) would be desirable.

Accountability, transparency and oversight

30. What mechanisms should be in place to ensure accountability the new appeals body? [Maximum 500 words]

Our comment

There should be clear complaints mechanisms (for any complaints re the conduct of adjudicators or staff). There should be ombudsman oversight.

31. What mechanisms should be in place to ensure transparency of the new appeals body? [Maximum 500 words]

Our comment

Appeal hearings should be video-recorded (failing which the practice of audio-recording should be continued).

32. What mechanisms should be in place for effective oversight of the new appeals body? Please include in your response whether you consider it should be subject to a regulator or an ombudsman. [Maximum 750 words]

Our comment

Please see our answer to Question 30.

For further information, please contact:

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