ILPA response to the Immigration and Asylum Chamber, Upper Tribunal, Consultation on Float Lists

The Immigration Law Practitioners' Association (ILPA) is very concerned by the proposal to introduce a float list and by the indicated intention to abolish morning and afternoon listings at Field House and list everything at 10am. No consultation yet appears to have been issued on the abolition of this longstanding practice of providing at least morning and afternoon listings as an alternative to fully timed listings.

That the First Tier Tribunal Immigration and Asylum Chamber has a practice of listing all cases at 10am is not a reason for the Upper Tribunal to do so. ILPA has repeatedly pressed for timed or at least morning/ afternoon listings in the First Tier Tribunal to show consideration for the interests of litigants and in light of the pressures on representatives and the Legal Aid Fund. The Administrative Court, by contrast, makes some attempt to provide parties with timed listings. In addition, litigants in the Upper Tribunal are more likely than in the First Tier Tribunal to have had to travel long distances.

The proposal comes at a particularly inopportune time given the present Ministry of Justice consultation on abolishing legal aid for immigration appeals including human rights appeals (other than asylum).[1] The proposal for float lists together with the threatened abolition of 2pm listings means that parties and their lawyers required to attend at 10am may have to wait for six hours to be heard, with the attendant additional costs. The proposal to charge fees for the Upper Tribunal Immigration and Asylum Chamber[2] at the same time as proposing reducing the consideration for litigants' interests is also unfortunate.

ILPA recognises that it can currently be difficult to anticipate in advance the course that a Upper Tribunal hearing will take. ILPA's members also face difficulties. The biggest difficulty is the failure of the Secretary of State to make available in good time an official empowered to negotiate or even indicate a provisional view of the position they will take at the hearing. Also, the parties may be assisted in reaching agreement on some issues by the provisional view of the Upper Tribunal judge. This is currently not available until the start of the full hearing. The consultation letter states that

"It has proved difficult to estimate accurately the time needed for a hearing before UTIAC because often this will depend upon initial decisions made at the hearing on the merits of the challenge to the determination of the First-tier Tribunal."

Rather than implementing a system by which parties and their representatives are called to the Tribunal at 10am for a hearing that could begin at 4.30pm (since the consultation letter indicates that the Upper Tribunal sits until 5pm), other alternatives should be considered. ILPA would support a readier availability of case management hearings to be conducted by the immigration judge seized of the appeal. This would have the dual benefit of requiring the Secretary of State to provide a representative empowered to negotiate (assuming the Upper Tribunal takes effective steps to require this, which has not yet been the

[1] Ministry of Justice, *Proposals for the Reform of Legal Aid in England and Wales*, Consultation paper issued 15 November 2010
[2] Ministry of Justice *Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal*, Consultation paper issued 21 October 2010

case in the First Tier Tribunal) and enabling the judge to express any provisional view that may facilitate agreement as to disposal or directions. ILPA would be happy to discuss such alternatives further. While rules 24 and 25 of The Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2698/2008 as amended) provide for responses and replies prior to the hearing, the Secretary of State seldom produces those and ILPA assumes from the terms of the consultation that the current paper based case management questionnaire has proved inadequate.

The only basis upon which ILPA considers that the proposed float list would be reasonable is if it is restricted to cases where the parties 'opt in' to consideration for the float list. This would provide an option for those cases in which parties require a particularly speedy hearing and are prepared to, and if necessary have the funds to cope with a delay of several hours and the risk of not being heard at all. ILPA is wholly opposed the abolition of morning and afternoon listings. Those already mean that parties may be waiting two hours. But they show some regard for the need to balance the convenience of tribunal users against the convenience of the Tribunal. To abolish them, especially in the current climate, would be a very retrograde step.

ILPA

3 December 2010