

**IMMIGRATION LAW PRACTITIONERS' ASSOCIATION  
RESPONSE TO COUNCIL ON TRIBUNALS' CONSULTATION  
ON  
MODEL RULES OF PROCEDURE FOR TRIBUNALS**

ILPA responds to the consultation's questions as follows:

1. ILPA regards the proposed Model Rules as an extremely valuable resource. ILPA is concerned that recent immigration and asylum procedure rules weigh more towards speedy proceedings than fairness. We are able to use the proposed Model Rules in our lobbying activities on procedural proposals from the Lord Chancellor's Department, because the proposed Rules appear to us to retain fairness as an axiom of procedure in a way which has rather become lost in LCD proposals.

In particular:

In our response to the LCD consultation on the Immigration and Asylum Appeals (Procedure) Rules 2003, we cited the following proposed Model Rules:

- Model Rules 29(3) and 69, to support our contention that appellants ought to have a right to an oral hearing when requesting an extension of time for appeal to an adjudicator.
- Model Rule 81, to support our contention that the test for issuing a certificate of no merit should be vexatious or unreasonable conduct. We note that rule 24 of the Immigration and Asylum Appeals (Procedure) Rules 2003 does indeed now use the words 'vexatious or unreasonable'.
- Model Rule 2(2)(c), to support our contention that rule 24 of the 2003 Procedure Rules should be drafted so as to have equal gravamen for the Home Office as for individuals.
- Model Rule 81(4), to support our contention that costs should be assessed by a court with special expertise and structures for taxation of costs. We note that rule 25 of the Immigration and Asylum Appeals (Procedure) Rules 2003 does indeed now make provision for taxation of costs by a Supreme Court taxing master.

We have subsequently suggested orally to the Secretary of the select committee for the LCD that the Model Rules would be a useful tool with which to assess the overall fairness of proceedings before immigration adjudicators.

2. The Notes to the Model Rules are useful. However, we recognise that it is difficult to keep citation of case law up-to-date within the notes. We suggest that the notes include broad statements of principle and established case law.

3. The Immigration and Asylum Appeals (Procedure) Rules 2003, like their predecessors, contain an overriding objective. We would favour a section on overriding objective in the Model Rules, so as to give a yardstick for immigration procedures.
4. We have no particular comments on this question.
5. We have no particular comments on this question because immigration proceedings contain no scope for ADR.
6. The use of standard forms is well established in immigration proceedings. We do not oppose the use of standard forms, provided that they are not too onerous to complete.
7. We do not object to the Chair's powers in the Model Rules. However, we are concerned that tribunal proceedings should be as open as possible, so that interlocutory powers exercised on the papers should be as constrained as possible.
8. We believe that the Rules are in a useful format and that annexes would make the format more complex.
9. Yes, an index is desirable.
10. We would bring to your attention:  
*R v Immigration Appeal Tribunal ex parte S* [1998] Imm AR 252, [1998] INLR 168, on the consequences of failure to comply with directions

For further queries, please contact the ILPA office or Judith Farbey on 020 7405 8828.

ILPA, April 2003