JUSTICE

Independent Appeals Body: Home Office Call for Evidence response

6 May 2026

Introduction

1. JUSTICE is a law reform and human rights organisation working to create a fair justice system within everyone's reach.

2. At the outset, we would raise two issues with this call for evidence: (1) the short timeframe to respond to such an important change to the immigration appeal process (though we welcome the short extension of time); and (2) the limited detail provided about the proposed Independent Appeals Body ('IAB') to enable a proper response to the questions provided. We also note the judiciary were not properly informed before the change was announced, with the Lady Chief Justice given only 24 hours' notice about the decision to abolish the First-tier Tribunal ("**FtT**") (Immigration and Asylum Chamber).[1] We appreciate that consulting early in the development of proposals enables the consultation responses to genuinely have an opportunity to shape the proposals however, it is difficult to respond to the consultation when the very basics of what the IAB is intended to be has not been set out. For example, what procedural safeguards are necessary will vary depending on what type of body the IAB will be, where it will sit (within the judiciary or executive), and who the adjudicators are.

The Tribunal backlog

3. We share the Government's urgency in wanting to address the significant backlog of immigration appeal cases. However, the plan for a new appeals body risks exacerbating, rather than solving, the appeal backlog. For example, we note that recruitment of 30 new salaried FtT immigration judges (which would increase capacity) appears to be continuing, yet presumably these newly recruited judges, shortly after being appointed, will be adversely affected by these proposals.[2] Precious time and resources should be spent on reforming the present system, in conjunction with HMCTS and the judiciary.

4. Whilst the FtT could be more efficient, the FtT is not the cause of the backlog. A significant cause of the present backlog has come from the Home Office effectively pausing much asylum decision-making following the Illegal Migration Act, with the Government rightly now working to process these claims. We acknowledge that there has also been an increase in

[1] Bianca Castro, 'Judiciary not told of asylum changes, lady chief justice reveals' (Law Society Gazette), 26 November 2025

[2] Judicial Appointments Commission, 'Vacancy Details' (November 2025)

asylum claims in recent years too, though note there were equivalent numbers in the early 2000s and this stabilised without such drastic appeal reform.[3]

5. Home Office initial decision-making could be significantly improved, which would reduce the number of unnecessary appeals. The current grant rate for immigration appeals is 36%, but 32% of appeals are also withdrawn (the majority of which are likely due to the Home Office reconsidering their decision).[4] As far back as 2003, the Home Affairs Select Committee highlighted the key flaw in the system as being the quality of Home Office initial decision-making.[5] In 2023/2024, only 52% of asylum decisions sampled by the Home Office met their internal quality assurance process.[6]

6. UNHCR have raised concerns about the quality of Home Office asylum interviews stating that *'many decision-makers lacked the necessary skills to effectively formulate questions and elicit detailed, relevant information during asylum interviews'*.[7] The ICIBI has also found previously that *'routine quality assurance has also been sacrificed for increased productivity'* which *'has the potential to add to the appeals queue as a result of poor-quality refusals'*.[8] The Home Office should look at improving its own decision-making, to reduce the amount of unnecessary appeals, instead of drastically changing the appeals process.

Summary

7. The tension at the heart of these proposals is whether the IAB will be *'fully integrated into the wider immigration and asylum system',* which suggests that it is being set up to reinforce Home Office priorities particularly around faster removal action, or whether it will be truly independent, giving each appellant a fair opportunity to have their case re-considered by an expert. The Home Office state that the IAB will be a fair and effective remedy, have professionally trained adjudicators providing decisions of a high standard, be procedurally fair with access to translators and legal advice, and allow onward appeal to the Upper Tribunal on points of law. However, this is all presently possible through the First tier Tribunal system which is an effective oversight mechanism of poor Home Office decision-making.

Access to Justice, Fairness and Procedural Safeguards (q5 – q10)

8. One of our central concerns is whether the proposed new IAB adjudicators will be properly independent. The Restoring Order and Control ('ROAC') paper and this call for evidence are silent on much of the detail including in which branch of the state the new IAB will sit and

[3] House of Commons Library, 'Asylum statistics' (2 March 2026)

[4] Gov.UK, 'Tribunal Statistics Quarterly: October to December 2025' (12 March 2026)

[5] House of Commons Library, 'History of asylum appeals in the United Kingdom' (6 February 2026)

[6] Lizzie Dearden, 'Home Office says only half of UK asylum decisions meet its quality standards' (The Guardian, 8 December 2024)

[7] UNHCR, 'Asylum Interviews in the UK: Audit Findings and Recommendations' (March 2026)

[8] Independent Chief Inspector of Borders and Immigration, 'An inspection of asylum casework' (June – October 2023)

who will recruit the adjudicators. The Judicial Appointments Commission which currently deals with the recruitment of immigration judges is a key safeguard ensuring independence. Should the adjudicators be recruited directly by the executive this will lessen the independence of the new body. The statement that the IAB will be *"fully integrated with the end-to-end immigration and asylum system*" is not reassuring.

9. It has only been a few years since the Windrush Lessons Learned Review found that there was a *'risk of cases being processed without adequate quality control and safeguards'* and that there was a *'"target dominated" work environment and low-quality decision-making'*.[9] Much more needs to be set out as to how the Home Office will ensure true independence.

10. We understand that the new Independent Appeal Board will also handle immigration bail applications, which are the quickest and cheapest way to review detention. Independence is crucial in ensuring applications for an individual's liberty. Article 5(4) ECHR requires people deprived of their liberty to be able to take proceedings *'speedily by a court and his release ordered if the detention is not lawful'.* To be compliant with Article 5(4), the body must of 'judicial character' with procedural guarantees, including independence from the executive.[10] Poor quality immigration bail decisions also increase the likelihood of time-consuming and expensive judicial review claims of detention.

11. The ROAC paper refers to the Danish Refugees Appeals Board. Whilst we do not endorse the Danish model, the Danish appeal board consists of three members: an appointed judge (who sits as chairman), an appointment by the Ministry of Refugee, Immigration and Integration Affairs and a member nominated by the Council of the Danish Bar and Law Society.[11] In accelerated appeals, the cases are decided by the appointed judge alone. We would observe that this involves both a majority of the panel appointed separately from the Government department and an independent, legally qualified judge.

12. We agree that early access to legal advice should be an important focus. The increase in immigration legal aid rates last year was a welcome first step. But, 2024 research by the Law Society found 63% of the population did not have access to an immigration and asylum legal aid provider in their area.[12] Much of non-asylum immigration law is now out of scope for legal aid.[13] ILPA estimated that, in 2023/4, only 43% of asylum-seekers had access to legal aid representation.[14] It will take some time to properly rectify this and a rushed appeals process overhaul will not assist.

[9] Wendy Williams, 'Windrush Lessons Learned Review' (March 2020), p13

[10] ECHR, 'Guide on Article 5 of the convention'

[11] Flygtningenævnet, 'General information regarding the Danish Appeals Board'

[12] The Law Society, 'Immigration and asylum – legal aid deserts' (21 February 2024)

[13] Public Law Project, 'The case for broadening the scope of immigration legal aid' (April 2021)

[14] Dr Jo Wilding, 'Stemming the tide: the case for demarketising the legal aid sector' (ILPA), 6 November 2024

13. Whilst representation at the appeal stage is important, to make a difference in improving initial decision-making (and reducing unnecessary appeals), legal advice should be available much earlier. The Government should consider frontloading early legal advice for asylum cases as is done in Switzerland – with representatives able to attend the asylum interview and comment on a draft version of the Home Office decision – which has reduced delays and the number of successful appeals.[15]

14. The most effective procedural safeguard is to ensure full appeal rights to the Upper Tribunal. Whilst we welcome that rights of appeal to the Upper Tribunal on points of law will be 'preserved', we were concerned by reference in the ROAC paper to a 'single appeal route' and the limited appeal rights in the Danish system. The Home Office should confirm that grounds of appeal will not be limited from those which are presently permitted to the Upper Tribunal, including procedural unfairness[16], significant factual mistakes[17], the improper handling of evidence[18] and the duty to give reasons[19]. This is important to ensure proper legal accountability and quality oversight by senior Tribunal judiciary.

Adjudicator recruitment, eligibility, impartiality and training (q12 – q17)

15. Immigration law is one of the most complex areas of domestic law. The Law Commission has previously stated, when proposing much-needed simplification, that the cost of complexity is *'mistakes, slower decision-making and costlier administration, and an increased number of administrative reviews, appeals and judicial reviews'*.[20] For all parties, simplification of our immigration laws would be hugely beneficial and should be a higher priority.

16. The proposed new IAB adjudicators will have to quickly get up to speed with these rules and the wealth of complex case-law which has developed as a result. It is unclear why individuals such as retired police officers, planning inspectors and social workers are better placed to grip the issues in complex appeals than judges with experience of immigration law. Replacing 350 experienced immigration judges will not improve efficiency, but likely have the opposite effect.

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[15] Jonathan Thomas, 'Swiss Role Model?' (Social Market Foundation, March 2026)

[16] E.g. Hima v SSHD [2024] EWCA Civ 680, Court of Appeal. "Unfairness in the treatment of a party's representative will impact on the fairness of the hearing".

[17] E.g. FA (Iran) v SSHD [2024] EWCA Civ 149, Court of Appeal: "There are many spelling mistakes and other errors of expression in determination 1. In some cases, it is difficult to understand what determination 1 means".

[18] E.g. Hima v SSHD [2024] EWCA Civ 680, Court of Appeal. "...the cross-examination of the appellant was not a minor departure from ideal practice. In the context of this hearing, it demonstrated that the judge had entered the arena to an impermissible extent".

[19] E.g. MK (duty to give reasons) Pakistan [2013] UKUT 641. Quoting Lord Neuberger, the then President of the FtT said "decisions without reasons are certainly not justice: indeed they are scarcely decisions at all".

[20] Law Commission, 'Simplification of the Immigration Rules: Report' (13 January 2020)

17. At the very least, extensive and lengthy legal training would be required. By way of comparison, prior to March 2022, Home Office asylum decision-makers were given 22 weeks training (which was then reduced to around 9 weeks). The ICIBI heard from decision-makers that training was *'inadequate'* and *'did not provide them with the necessary information to perform their job effectively'*. Over half of responses to an inspection survey found decision-makers felt the training did not equip them to draft refusal decisions.[21] Yet this training was only about asylum decision-making, rather than the full raft of matters (deportation, human rights law and EU settlement law) which this new body would have to adjudicate upon.

18. Beyond specific legal knowledge, IAB adjudicators will also need to be able to work with appellants from very diverse backgrounds and with considerable vulnerabilities, handle gathering evidence through an interpreter, deal with potentially traumatic evidence including asking questions in an appropriately sensitive manner.

19. The comparison in the call for evidence with the position prior to the establishment of the FtT does not show the full picture. Adjudicators, appointed by the Home Office initially, and then by the Lord Chancellor, were not required to be legally qualified but were usually barristers or solicitors of several years' standing. The House of Commons Library highlights how the decision in 2000 to ensure all adjudicators were legally qualified *'reflects the fact that all adjudicators appointed since 1987 had such qualifications, despite not formally requiring them'*.[22] Whilst lay members were permitted in the Asylum and Immigration Tribunal, they were not regularly used and sat as part of a panel with legal members.[23]

20. The Government's proposals are ill-thought through. No proper case has been made to overturn decades of reliance on independent judges with expertise in complex law and handling sensitive legal issues.

Hearing methods, digital processes and efficiency (q20 – q24)

21. We agree that the status quo is not sufficient, but the focus should be on reform of Home Office decision-making and the Tribunal appeal process to make it more efficient. For example, there should be greater dialogue and constructive engagement between the parties (made easier by the availability of legal representation) allowing basic errors in decisions to be rectified, fresh evidence to be considered before the substantive appeal and appeals withdrawn early if a decision is not legally sustainable.

22. Appellants should submit available fresh evidence for the appeal at the earliest reasonable opportunity. We have recommended that pre-appeal hearing reconsideration would be a

[21] Independent Chief Inspector of Borders and Immigration, 'An inspection of asylum casework' (June – October 2023) p34 and 35

[22] House of Commons Library, 'History of asylum appeals in the United Kingdom' (6 February 2026)

[23] Hansard, 'Tribunals: immigration' (30 October 2007)

useful step forward, allowing appellants to submit fresh evidence or question findings in Home Office decisions and allow the Home Office to reconsider such matters (even if they are not going to withdraw their decision, they may want to concede points to narrow the issues in dispute). Increased rates of legal representation for appellants would assist with this, as unrepresented appellants will find it hard to engage in this process.

23. Clearly, the use of digital technology can assist in making the system more efficient. However, we would highlight the importance of ensuring there is not digital exclusion in "digital by default" systems, a particular risk where appellants lack legal representation, have vulnerabilities and/or have limited access to the Internet. The British Red Cross has highlighted how the quality of internet access in Home Office accommodation can vary significantly (it was often inconsistent in hotel accommodation) and that asylum-seekers have different experiences of digital use in their home countries.[24]

24. We do not agree that there should be an assumption that most cases will be determined on papers or remotely. In relation to virtual hearings, we would make the following points based on our 2018 report on Immigration and Asylum Appeals:

    a. There should be caution in assuming that virtual hearings are as fair as in-person hearings in all circumstances.

    b. Appellants should be in no worse position because of a virtual hearing: whilst some will benefit from remote hearings, many will find it alienating, distressing or tiring to sit in a remote hearing especially when discussing issues of personal trauma (likely exacerbated by being alone at home). There are also likely to be significant practical difficulties in cases with a significant number of witnesses, interpreters and/or minors. The Home Office is reminded of their duties under the Equality Act to make reasonable adjustments for individuals with protected characteristics.

    c. Video hearings must not jeopardise security. It is important that individuals are protected when discussing potential risk on return to a country of origin and/or personal, intimate or otherwise sensitive information. This can be harder to monitor and control in an online setting, both in terms of cyber security risk as well as security the safety of the individual's immediate environment from which they are giving evidence.

    d. Finally, the video hearing system must work and be practically effective. More work needs to be done to mirror the in-person Tribunal, including allowing the client to meet their lawyer confidentially in a video conference room and facilitating informal discussions between both sides prior to the hearing.[25]

[24] British Red Cross, 'Offline and isolated' (April 2023)

[25] JUSTICE, 'Immigration and Asylum appeals – a fresh look' (July 2018)

25. In 2021, following the Supreme Court decision in *Kiarie and Byndloss,* the High Court found that an out-of-country appeal could reasonably go ahead remotely but suggested, to make it fair, that the Home Office would need to take steps for those of limited means to be compatible with the ECHR; suggestions included paying for data charges of those with limited means or provide a laptop if the appellant could not access one.[26] The Home Office cannot mandate virtual appeals as standard, without setting out what they will do to ensure no-one is unfairly disadvantaged.

26. Even more alarming is the suggestion that most cases could be a paper-based hearing. Assessments of credibility cannot happen in a paper-based hearing, especially given the above cited issues with Home Office interview quality. Whilst some individuals may opt for a quicker, paper-based appeal, in more simple immigration matters, this should not be the standard and done without the individual's consent. They could also be used in cases where it is clear the appeal will be upheld. Besides this, a full hearing should be required. We note the Danish appeal model, which we do not endorse because of its limited onward appeal rights, has in-person appeal hearings. The Supreme Court held in 2017 that *'in many cases an arguable appeal against deportation is unlikely to be effective unless there is a facility for the appellant to give live evidence to the tribunal'.*[27]

27. In our view, a more proactive approach by the parties and HMCTS within the present Tribunal system (including early and pro-active case management) could identify hearings suitable for a remote hearing or even, in limited circumstances, a paper-based hearing. However, an in-person hearing should be the right of each appellant if that is where they will feel most comfortable to give live evidence.

Compliance, engagement, timeframes and prioritisation (q25 - 29)

28. We are concerned about the proposed expedition of certain cases. The Court of Appeal, in 2015, previously found that the then Detained Fast Track appeal process was unlawful as it created an unfair system for asylum and human rights appeals. The Court of Appeal held that the timetable was *'so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their case'.*[28] Some of the factors identified were the complex nature of many asylum appeals, the difficulties legal representatives had taking instructions from those in detention and the complex nature of preparing such an appeal for legal representatives. The Home Office have provided no information about how they would avoid similar issues or how a non-judicial body would ensure there was compliance with the

[26] *Arman & Anor, R (On the Application Of) v Secretary of State for the Home Department* [2021] EWHC 1217 (Admin), para 34 and 35

[27] *Kiarie and Byndloss v SSHD [2017] UKSC 42,* para 63

[28] *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840 (29 July 2015), para 38

timeframes identified. Proactive case management of priority cases can already be undertaken under the present system.

Accountability, transparency and oversight (q30 – q32)

Oversight / Accountability

29. The most important way of seeking accountability and oversight of Home Office decision-making is through the Tribunal appeal system, where a member of the independent judiciary scrutinises the evidence of the appellant and the reasoning of the Home Office. These proposals, by their very nature, risk reducing such oversight.

30. The Judicial Appointments Commission is an independent organisation which has statutory duties to ensure candidates are appointed solely on merit, of good character and to encourage diversity. The JAC aims to have a consistent, fair and bias-free selection process. We have criticised the lack of progress in improving judicial diversity[29], but believe such an independent body plays an important role in ensuring transparency and accountability in relation to appointments. We are worried about the lack of accountability without such an independent body. However, more information is required about the IAB to respond to questions about appropriate accountability properly.

31. On wider oversight and accountability, If IAB will be able to charge fees for hearing appeals, and retain at least some control of its operations (for example, in determining adjudicators' training needs and delivery) it should be classified as a non-departmental public body, per the Cabinet Office's guidelines.[1] The independence of the appeals body will otherwise collapse if its funding, direction, and meaningful operations are directed by the Home Office when it, itself, is intended to function as a form of oversight on first-instance Home Office decision-making.

32. Accountability mechanisms should be able to identify 'service issues' (i.e. patterns in the appeal body's procedure and decisions which give rise to frequent issues, for example the DWP Independent Case Examiner's Service Improvement Observations[30]), conduct regular audit and assessments, and publish an annual report of findings. We consider there is a case for the appeals body to be subject to a regulator and an ombudsman, specifically the Independent Chief Inspector of Borders and Immigration ('ICIBI') and the Parliamentary and Health Service Ombudsman ('PHSO').

33. Legislative amendment should make the ICIBI's role explicit but also rectify issues around the non-publication of reports (see, for example, the criticisms made by the former ICIBI

[29] JUSTICE, 'Increasing Judicial Diversity: An Update' (January 2020)

[30] For example, see 'Service Improvement Observations (SIO)' in the Independent Case Examiner's Annual Report (2023 – 2024) at pp. 48 – 50 accessed at < INDEPENDENT CASE EXAMINER For the Department for Work and Pensions Annual Report 1 April 2023 - 31 March 2024 >

David Neal[31]) and the requirements of the Minister to respond. The PHSO would be able to investigate and remedy maladministration, with robust investigatory powers and the ability to recommend financial compensation and carry out ongoing monitoring of service improvement.[32]

34. The remit of the Judicial Conduct Investigations Office ('JCIO') should be amended to include the new adjudicators in its scope. We note that Tribunal judges, arbitrators and adjudicators are already designated for such purposes. Doing so would provide appellants with a route of complaint about individual adjudicators' handling of their appeal, and provide an opportunity for penalty powers specific to the quasi-judicial function of these adjudicators (such as a formal advice for training, reprimand, and recommending for a judge's removal) to be exercised accordingly.

Transparency

35. The new appeals body will be operating as a quasi-judicial body considering complex questions of fact and law that engage appellant's fundamental rights. The principles of open justice and transparent government should therefore apply in relation to its functioning.

36. No information is provided on whether IAC adjudicators will provide reasoned judgments; we would stress the importance of providing detailed reasoning to allow individuals to understand the decision and consider a possible appeal application. On transparency, HMCTS are working with the judiciary on how to publish First tier Tribunal (IAC) judgments.[33] It is important that this work is allowed to conclude, as there are complicating factors such as ensuring that appellants who seek to remain anonymous cannot be identified through the wider information published and ensuring the safety of immigration lawyers, given rising threats to them (see, for example, the Law Society's report on threats to solicitors).[34]

37. In the pursuit of meaningful transparency, the new appeals body should further:

    (i) Publish quarterly statistics on decision-making rates and patterns as the present Tribunal system does, including rates of onward appeals to the Upper Tribunal and other complaints made (for example to the JCIO or PHSO, see above);

    (ii) Prepare and publish annual reports explaining key observations on its operations and functions, issues identified and solutions, its budget and

[31] BBC News, 'David Neal: Immigration and borders watchdog sacked for leaking critical reports' (20 February 2024) accessed at < David Neal: Immigration and borders watchdog sacked for leaking critical reports - BBC News

[32] Putting things right' and 'Seeking continuous improvement' in Parliamentary and Health Service Ombudsman, Principles for Remedy (2009) accessed at < Principles for Remedy.pdf

[33] Electronic Immigration Network, 'Lady Chief Justice says plans under way to publish all First-tier Tribunal (Immigration and Asylum Chamber) decisions' (14 November 2025)

[34] The Law Society, 'Threats to solicitors report' (13 January 2026)

expenditure breakdown, staffing figures and the quality of training available. This should be laid before Parliament within a reasonable timeframe;

(iii) Be scrutinised annually by both the Public Administration and Constitutional Affairs Committee and the Justice Committee in Parliament; and

(iv) Ensure that methods of challenging the IAB's decisions, to both the Upper Tribunal and other accountability mechanisms, are available publicly and set out in clear, accessible language.

Conclusion

38. For the reasons set out above, we are opposed to the new IAB being set up as a replacement for the FtT. We are concerned about independence, a lack of legal expertise from adjudicators and the risk of unfair processes for appellants. Greater efficiency in the FtT and improved Home Office decision-making, as well as immigration law simplification and early legal advice provision, should be a higher priority to reduce the significant backlog.

39. Should the Home Office decide to proceed, a full and detailed consultation with proper detail should be launched with all relevant stakeholders to discuss the complex issues highlighted.

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JUSTICE | 6 May 2026