



**Late appeals against deportation to
the Immigration Asylum Chamber -
A Basic Overview**

March 2021

Bail for Immigration Detainees (BID) is a national charity that provides legal advice and representation to individuals held under immigration powers to secure their release from detention. We also provide legal advice and representation to detainees facing deportation. BID works with detainees in all removal centres in the UK, and with immigration detainees held in prison at the end of their sentence.

- We provide free legal advice, information and support to immigration detainees to help them exercise their right to liberty and access to justice, and to help them challenge their deportation.
- We prepare and present (free of charge) applications for release on bail or temporary admission.
- We carry out research and use evidence from our legal casework to influence decision-makers, including civil servants, parliamentarians, and regulatory bodies through policy advocacy.

The Article 8 Deportation Advice project (ADAP) is a project that provides free legal advice and representation to individuals challenging deportation on the grounds of their long residence in the UK and/or their family life in the UK.

The right to respect for family and private life is protected by Article 8 of the European Convention on Human Rights.

Disclaimer

Although every effort is made to ensure the information in this factsheet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law. BID cannot be held liable for any inaccuracies and their consequences. The information in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer or legal adviser before making a decision about what to do.

Please check that this factsheet is up to date before using it. Please also check whether BID has written other factsheets or leaflets that might be relevant to you. All BID factsheets and leaflets can be found at www.biduk.org

Q. Who is this leaflet for?

A. This leaflet is intended for people who are in the UK facing deportation who are held in prison (either still serving their criminal sentence or held under immigration powers), or in Immigration Removal Centres. It can also be used by anyone who needs to appeal against a decision made by the Home Office to deport them.

Q. What is the purpose of the leaflet?

A. This leaflet explains how to make an application to appeal to the First-tier Tribunal of the Immigration and Asylum Chamber if the appeal deadline has passed.

Q. What is the deadline for appealing against a deportation decision from the Home Office?

A. For those in the UK, the deadline for an appeal to be received by the Tribunal is within 14 days from the date that the decision is sent by the Home Office.

The Home Office decision letter is headed 'Decision to Refuse a Human Rights claim' for non EEA cases or 'Immigration (European Economic Area) Regulations 2016 Decision to Make a Deportation Order', for EEA cases.

Q. Do I need a lawyer to fill out the appeal form for me?

A. No, you can complete it yourself.

Q. What do I need to put on the form?

A. You only need to write the main reasons why you believe you should not be deported. For example:

- because you have lived in the UK for a long time and/or you have a partner or children in the UK; or
- it would not be safe to return to your home country.

If you instruct a lawyer after the appeal has been lodged, they can also write to the court to apply to make changes to the grounds of appeal.

Q. Do I need to attach all my supporting evidence with the appeal form?

You should attach any evidence that you have, or that you can obtain before the appeal deadline. However, do not delay your appeal to obtain these documents if that would mean that your appeal would be sent late. Documents and evidence can also be given to the court after the appeal has been sent.

Q. Can I lodge an appeal if the deadline has passed?

A. You can appeal after the deadline has passed if you can show there are good reasons for the whole period of the delay.

However, it is very important that you try to appeal in time because the court may not accept the late appeal.

The longer the time period beyond the deadline, generally, the greater the risk that the court will not allow the late appeal to go ahead.

Q. What might be good reasons for a late appeal?

A. This will depend on your personal circumstances. Examples of possible reasons for late appeals might be:

- English is not your first language and you did not understand the Home Office letter or the appeal form
- You suffer from poor mental health, which made it hard for you to fill in the form
- If you are in prison, it may be because you do not have access to legal advice and did not understand how to complete the form
- You thought you needed a lawyer to complete the appeal form
- You did not receive the decision and appeal form from the prison service until just before the appeal deadline or even after the deadline
- If you are in an Immigration Removal Centre, you may not have been able to see a duty legal adviser before the appeal deadline
- If a lawyer could only help you if you pay but you could not afford to pay and this delayed you being able to appeal
- If you were told you were going to be deported anyway and for some reason you did not realise that you could or should appeal.

Q. If I am appealing out of time, where should I explain my reasons?

A. It is very important that you explain the reasons why the appeal is late and ask the court for an extension of time. If you do not give reasons why it is late, the court will not have any information on which to consider whether there was good cause for the late appeal.

There is a space on the appeal form that asks if you are appealing out of time. You should write the reasons why the appeal is late on the form. You could also write a covering letter to attach to the form to explain your reasons.

An example of a covering letter is at Appendix A. You can use this basic structure for your letter but you must make sure that you explain your particular reasons in the letter.

As well as writing down why the appeal is late, you should also write down the main reasons why you should stay in the UK and why it is important that your appeal is heard. For example, it may be that you have lived in the UK for a long time, or you have a partner or children or other family in the UK.

Q. What evidence should I attach to show good reason for appealing late?

A. You should attach any supporting evidence that you have. For example, you may be able to attach:

- Evidence of your medical condition, e.g. appointment slips with the mental health care team.
- Evidence that you have contacted lawyers through the Duty Advice Scheme in the Immigration Removal Centre but could not get an appointment in time or could not find a lawyer to represent you.

However, if you do not have the evidence, do not wait to receive it before appealing. It is important to be seen to be acting quickly. You should therefore keep the delay as short as possible.

If you are waiting for supporting evidence, you can write on the form what the evidence is and when you expect to receive it. You can then send it to the court once you have received it.

You must also enclose a copy of the Notice of Decision that you are appealing against.

Q. Should I keep a copy of the late appeal?

A. Yes, keep a copy if you can.

It is best to send it by email or fax. However, if you are in prison and have to post the appeal, post it by recorded delivery. Try to keep copies of all the documents you send if possible and always make a note of when you posted it.

Q. What should I do if I need to pay a fee for the appeal but I cannot afford to pay it?

A. If a fee is payable for the appeal but you cannot afford to pay, you should ask not to have to pay the fee (a 'fee waiver'). You can ask for this in a covering letter which you can send with the appeal. You should explain that you do not have enough money to pay the fee, and explain the reason for this.

You may also find our leaflet [‘Fees For Deportation Appeal – A Basic Guide’](#) useful.

Q. What happens when I have lodged my appeal late?

A. The court will decide if it will allow the late appeal to go ahead. This is done by the court on the papers without a hearing. The court will write to you with a decision, giving the reasons for the decision.

Q. What can I do if the First-tier Tribunal refuses to accept my late appeal?

A. The written decision will tell you how you can challenge a decision to refuse to allow the late appeal to be heard. The decision on a late appeal is normally not made by a judge but by a Tribunal Caseworker. You can apply within 14 days of the date of the decision to have the decision reconsidered by a judge.

Q. What can I do if my late appeal is accepted by the court but I cannot afford to pay a lawyer to represent me?

A. Legal aid, which pays for a lawyer to represent you free of charge, is not normally available to challenge deportation based on length of residence in the UK or family life or on grounds of EEA law.

However, it is possible to apply for Exceptional Legal Aid funding. You will need to show you would not have a fair chance to put your case without the help of a lawyer. You will also have to show that you do not have the money to pay a lawyer ('financial means' test) and that your case has a fair chance of success (a 'merits' test).

Legal aid is available for some kinds of applications, without needing an application for Exceptional Legal Aid Funding. For example, asylum claims where you say that you cannot safely return to your home country because you may be harmed or it would be against the Refugee Convention. Legal aid may also be available if you are a victim of trafficking. However, you would still need to meet the legal aid financial and merits tests.

You may find our leaflet ['Exceptional Legal Aid Funding –Applying for Legal Aid in Deportation Cases,' useful](#).

Glossary of key terms

Immigration Asylum Chamber

This is the court that hears deportation appeals. It has two levels. The lower level, which hears first appeals is the First Tier Tribunal (FTT). The upper level is the Upper Tier Tribunal (UTT). The UTT hears appeals against decisions of the FTT.

Appellant

This is the name given to the person who appeals. You will be the Appellant in your appeal to the FTT.

Appendix A - Example of covering letter to the Tribunal with a late appeal application

Tribunal Address:

Date:

Prison Ref:

Home Office Ref:

Dear Sir/Madam

Re: Notice of Appeal and request for Extension of time

Please find attached a completed appeal form and application for an extension of time.

I believe that I can show good cause for late appeal.

My appeal is late for the following reasons:

[Explain your reasons. See the section in the leaflet on '**What sort of circumstances might be good cause for late appeal**' for common reasons why an appeal may be lodged late. If any of these apply to your case, write them down and give as much information about each one as you can to help the court understand your situation].

I attach the following supporting evidence:

Write down what the supporting evidence is. If you are waiting for supporting evidence, explain what it is and when you expect to receive it.

I believe that my appeal has a good prospect of success for the following reasons:

It is important that the court understands how important the appeal is to you.

Briefly write here the key reasons that you have for wanting to challenge the decision to deport you for example, you may have come to the UK as a child, you may have close family, a partner or children in the UK, (see the section of the leaflet headed '**What do I need to put on the form**').

The overriding objective of the court

I ask the court to exercise its discretion in accordance with the overriding objective to deal with the appeal 'fairly and justly' which means as provided by rule 2:

"2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues."

Appendix A - Example of covering letter to the Tribunal with a late appeal application

An extension of time is therefore requested.

Fee for appeal

[If a fee is payable, but you cannot afford to pay, you need to ask the court to waive the fee. You will need to explain your circumstances],

E.g. I am in prison and I do not have money to pay the fee. I ask the court to waive the fee.

If you can pay, for example, you have a partner who can pay for you, but you need time to do this, you can ask the court to give you time to pay,

E.g. I ask the court to give me time to pay the fee.

Yours faithfully

Signed.....

Dated.....

More information

Advice Lines:

BID advice line:

- 020 7456 9750 (Monday-Thursday 10am to 12 midday)

Here For Good:

- 0207 014 2155 (Monday 9.30-11.30, Wednesday 11.30-13.30, Friday 13.30-15.30).0115 964 4112 (Tuesday 9-11, Thursday 15.00-17.00).

AIRE Centre:

- 020 7831 4276 (10.30-6pm Monday-Friday)
- 020 7831 4276

Some organisations that work with specific vulnerable groups include:

- Rights of Women (ROW). Provides an advice line for vulnerable women who are EU citizens or their family members who have experienced violence, (including domestic abuse, sexual violence, trafficking, modern slavery, so-called honour-based violence and FGM). Open Tuesdays & Thursdays 11-1 and 2-4 on 020 7118 0267
- The AIRE Centre Women In Prison Project Advice Line - 020 7831 4276 10.30-6 Monday-Friday.

Help finding a lawyer

The website below allows you to search to find immigration lawyers in your area:

- Civil Legal Advice: 0345 345 4 345 (Monday-Friday 9-5)
- <https://www.gov.uk/civil-legal-advice>

How to contact BID

By post:

Freepost RTSU-ZJCB-XCSX
Bail for Immigration Detainees (BID)
1b Finsbury Park Road
London
N4 2LA

Fax: 020 3745 5226

General enquiries: enquiries@biduk.org

Casework enquiries: casework@biduk.org

Advice Line: 020 7456 9750
(Mon-Thurs, 10am - 12 midday)

BiD Bail for
Immigration
Detainees

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