ANNUAL REPORT 2018

An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta

The International Protection Appeals Tribunal

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APPENDICES:

Charles Flanagan T.D.
Minister for Justice and Equality
Department of Justice and Equality
51 St. Stephens Green
Dublin 2.

28th March 2019

International Protection Appeals Tribunal – Annual Report 2018

Dear Minister,

After a year of transition in 2017, following the coming into force of the International Protection Act 2015 on the 31st of December 2016, the Tribunal started the year 2018 with a caseload of 653. The number of appeals submitted to the Tribunal increased steadily throughout the year, reaching a total of 2,127 international protection and Dublin Regulation appeals by the end of December 2018, compared to a total of 887 such appeals reaching the Tribunal in 2017, an *increase of 140%*.

Additionally, following the expansion of the remit of the Tribunal to deal with appeals under the European Union (Reception Conditions) Regulations 2018, the Tribunal received 24 'reception conditions appeals', amounting to a total of 2,151 appeals reaching the Tribunal in 2018.

The Tribunal has undergone a thorough review of its work processes and has further improved its efficiencies, setting it on target for achieving its mission of determining all appeals as expeditiously as may be consistent with fairness and natural justice, and with respect for the dignity of all applicants.

In that regard, I am particularly grateful to the Registrar, staff and Members of the Tribunal who, through a concerted effort, increased efficiencies in the processing of appeals throughout the year, leading to 1,714 appeals being scheduled for hearing, an *increase of 181%* when compared to the number of hearings scheduled in the previous year. By year end, the number of decisions issued by the Tribunal totalled 1,092, an *increase of 80%* from 2017.

I would like to thank the Department of Justice and Equality for its collegiality and provision of support to the Tribunal throughout 2018 and look forward to our ongoing collaboration in the coming years.

Yours sincerely,

Hilkka Becker
Chairperson

1. Introduction

[1.1] Establishment

The International Protection Appeals Tribunal (hereinafter referred to as 'the Tribunal') was established on the 31st of December 2016, in accordance with s.61 of the International Protection Act 2015, to determine appeals and perform such other functions as may be conferred on it by or under the International Protection Act 2015 and the Dublin System Regulations. Pursuant to s.61(3)(b), the Tribunal is independent in the performance of its functions.

[1.2] Mandate

The Tribunal is a statutorily independent body and exercises a quasi-judicial function under the International Protection Act 2015. The Tribunal's predecessor was recognised by the Court of Justice of the European Union (CJEU) as a 'court or tribunal' for the purpose of Article 267 of the Treaty on the Functioning of the European Union (TFEU).

The Tribunal decides appeals of persons in respect of whom an International Protection Officer has recommended that they should not be given a refugee declaration and should be given a subsidiary protection declaration, and of persons in respect of whom an International Protection Officer has recommended that they should be given neither a refugee declaration nor a subsidiary protection declaration. The Tribunal also determines appeals under the European Union (Dublin System) Regulations 2018, as well as appeals against recommendations that an application be deemed inadmissible and appeals against recommendations that the making of a subsequent application not be permitted.

With the commencement of the European Communities (Reception Conditions) Regulations 2018 on the 30th of June 2018, the Tribunal's remit was extended to also deal with appeals against decisions by the Minister for

Justice and Equality to refuse to grant or to renew a labour market access as well as against a decision to withdraw such access. Furthermore, the Tribunal now has jurisdiction to decide appeals against decisions taken by the Minister for Justice and Equality in relation to the provision, withdrawal or reduction of material reception conditions such as housing, food and associated benefits in kind, the daily expenses allowance, and clothing provided by way of financial allowance under the Social Welfare Consolidation Act 2005. Moreover, the Tribunal has the jurisdiction to decide appeals against decisions of the Minister for Employment Affairs and Social Protection to vary material reception conditions where a recipient of such conditions is in receipt of an income.

[1.3] Mission Statement

The Mission of the Tribunal in accordance with the International Protection Act 2015 and other relevant national, European and international law is:

(i) To determine appeals from persons in respect of whom an International Protection Officer has recommended that they should not be given a refugee declaration and should be given a subsidiary protection declaration, and of persons in respect of whom an International Protection Officer has recommended that they should be given neither a refugee declaration nor a subsidiary protection declaration;

(ii) To determine appeals against an International Protection Officer's recommendation to deem an application for international protection inadmissible pursuant to s.21(2) of the International Protection Act 2015 as well as appeals against an International Protection Officer's recommendation that a subsequent application for international protection not be allowed pursuant to s.22(5) of the International Protection Act 2015; and

(iii) To determine appeals under the Dublin System Regulations, which determines the appropriate European country to determine an asylum application;

(iv) To determine appeals under the Reception Conditions Regulations 2018, which determine the provision of material reception conditions to protection applicants, as well as their access to the labour market in specific cirumstances;

and in so doing, to provide a high quality service through the implementation of policies and procedures which are fair and open, treating all applicants and stakeholders with courtesy and sensitivity.

The Tribunal will strive to determine all appeals:

- in accordance with the law;
- in accordance with fairness and natural justice;
- with respect for the dignity of applicants;
- efficiently;
- with the highest standard of professional competence; and
- in a spirit of openness and transparency in how the appeals process is managed.

[1.4] Strategy Statement 2017-2020

In 2017, the Tribunal launched its first Strategy Statement 2017-2020. This Strategic Plan guides the Tribunal in drafting its annual Business Plan. The annual Business Plan details how each Unit within the Tribunal will work in the year ahead towards achieving the goals and objectives set out in the Strategy Statement.

The Strategy Statement identifies the following five high level goals as the key goals that the Tribunal will focus on in the three year period from 2017 to 2020:

High Level Goal 1:
To administer, consider and decide appeals to the highest professional standards.

High Level Goal 2:
To manage the transition to the new legislative basis and structures of the Tribunal following commencement of the International Protection Act 2015.

High Level Goal 3:
To achieve and maintain quality standards through the provision of training and professional development supports to Tribunal Members.

High Level Goal 4:
To efficiently and actively manage cases in the Superior Courts to which the Tribunal is a party and to provide instructions and/or observations where appropriate.

High Level Goal 5
To provide quality service to the highest professional standards with a particular focus on achieving value for money in the deployment of the Tribunal's physical and human resources.

The full Strategy Statement is available on the Tribunal website www.protectionappeals.ie. It is planned, in line with the Oversight Agreement in place between the Department of Justice and Equality and the Tribunal, to establish a formal process in 2019 for setting the Tribunal's strategy for 2020 – 2023 in the context of the Department's Transformation Programme.

[1.5] Membership of the Tribunal

The Tribunal consists of the following Members: a Chairperson, not more than two Deputy Chairpersons, and such number of ordinary Members appointed in a whole-time or part-time capacity, as the Minister for Justice and Equality, with the consent of the Minister for Public Expenditure and Reform, considers necessary for the expeditious performance of the functions of the Tribunal. The Chairperson is tasked with ensuring that the functions of the Tribunal are performed efficiently and that the business assigned to each Member is disposed of as expeditiously as may be consistent with fairness and natural justice.

On the 31st of December 2018, the Tribunal had a Chairperson, two Deputy Chairpersons, three whole-time Tribunal Members, and 65 part-time Members.

[1.6] Registrar and Staff of the Tribunal

Pursuant to s.66(1) of the International Protection Act 2015, the Minister shall appoint a person to be the Registrar of the Tribunal. The Registrar, in consultation with the Chairperson, is tasked to manage and control the staff and administration of the Tribunal, and to perform such other functions as may be conferred on him or her by the Chairperson.

The Registrar also has responsibility for assigning the appeals to be determined to Members of the Tribunal, having regard to the need to ensure the efficient management of the work of, and the expeditions performance of its functions by, the Tribunal, consistent with fairness and natural justice, and any Guidelines issued by the Chairperson.

Administrative staff are assigned to the Tribunal from the Department of Justice and Equality. In accordance with s.61(4) of the International Protection Act 2015, the Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the

Tribunal in the performance of its functions and such members of the staff of the Tribunal shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine. On 31st December, 2018 the staff complement was 35, including a number of staff members on a shorter working year.

[1.7] Applications for International Protection

Applications for international protection in Ireland were steadily declining since the peak of over 11,000 applications for refugee status in 2002. However, as a result of the migration crisis in 2015, applications for international protection rose from 1,448 in 2014 to 3,276 in 2015 and stood at 3,673 in 2018, remaining significantly higher than in 2014.

Due to the transition process necessitated by the reform of the international protection system and the introduction of the single-procedure in the International Protection Act 2015, which commenced on the 31st of December 2016, more than 1,800 applications against a recommendation from the Refugee Applications Commissioner that refugee status be refused, which were pending before the Tribunal at the time of the commencement of the new legislation, were transferred to the International Protection Office (hereinafter referred to as the 'IPO'), for the consideration of the applicants' possible entitlement to subsidiary protection and the consideration of the granting of permission to remain. As a result, the Tribunal only had 454 appeals on hand at the beginning of 2017, ending that year with a caseload of 653 pending appeals. In contrast to that, the Tribunal received a total of 2,080 appeals in 2018, the majority of which fell to be decided under s.41 of the International Protection Act 2015.

It is likely that the caseload of the Tribunal will continue to rise over the coming period and it is imperative that the Tribunal is equipped, both with regard to

staffing numbers and the availability of Tribunal Members who are trained and experienced in the efficient delivery of high quality determinations of international protection appeals.

[1.8] Decision Template

The Tribunal has continued to develop its decision templates for use by Members. These templates were first introduced at the start of 2014, and have been amended and updated to reflect the new legislation and widened jurisdiction of the Tribunal. The templates were originally developed in conjunction with the office of the United Nations High Commissioner for Refugees (UNHCR) in Dublin.

The function of the templates is to provide decision makers with a logical and legally robust framework within which to make their decisions. The templates are not overly prescriptive and set out the sequence of steps to be taken in a decision. It appears that the new decision template has continued to contribute to the low number of applications for Judicial Review against Tribunal decisions. For example, in the case of *K.M.A. (Algeria)* [2015] IEHC 472, the High Court found the structure provided by the template, especially the use of numbered paragraphs to be *"particularly helpful"*.

[1.9] Quality Audit System

The year 2018 saw the introduction of a Quality Audit System which enables the Tribunal to analyse its decisions and relevant judgments from the Irish superior courts, the CJEU and the ECtHR. The Quality Audits, which are carried out on a quarterly basis, are intended to enable the Tribunal to identify and address training needs of Tribunal Members, highlight and remedy procedural issues arising and further increase efficiencies in the delivery of decisions by Tribunal Members.

[1.10] Legislative Changes

In March 2018, the Minister for Justice and Equality made the **European Union (Dublin System) Regulations 2018** (S.I. No.62 of 2018) for the purpose of supporting the operation in the State of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26th June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (recast) ('the Dublin III Regulation'). These Regulations revoked the European Union (Dublin System) Regulations 2014 and the European Union (Dublin System)(Amendment) Regulations 2016.

On the 16th of April 2018, the **International Protection Act 2015 (Safe Countries of Origin) Order 2018** (S.I. No. 121/2018), which lists the countries designated as safe countries of origin for the purposes of processing applications for international protection made by nationals of those countries under the International Protection Act 2015, came into operation. Where the initial recommendation made by an International Protection Officer under s.39(4)(e) of the International Protection Act 2015 includes a finding to the effect that an applicant's country of origin is a safe country of origin, an appeal to the Tribunal is subject to the accelerated appeals procedures set out in s.43 of the International Protection Act 2015.

Following the decision of the Supreme Court in the case of *N.H.V. v Minister for Justice & Equality and ors* [2017] IESC 35, in which it found that an absolute ban on the right to seek employment for applicants for international protection, where there was no time limit in the decision making process, was unconstitutional, the Government decided to opt into Directive 2013/33/EU of the European Parliament and of the Council of 26th June 2013 laying down standards for the reception of applicants for international protection (recast) ('the Reception Conditions Directive (recast)'). The Directive was transposed

into national law by way of statutory instrument, the **European Communities (Reception Conditions) Regulations 2018** (S.I. No.230 of 2018), which were commenced on the 30th of June 2018. Pursuant to those Regulations, the Tribunal's remit was extended to deal with 'reception conditions appeals' under reg. 21 thereof.

[1.11] Chairperson's Guidelines

Pursuant to s.63(2) of the International Protection Act 2015 the Chairperson may issue to the Members of the Tribunal guidelines on the practical application and operation of the provisions, or any particular provision of Part 10 of the International Protection Act 2015, and on developments in the law relating to international protection.

Moreover, pursuant to s.63(3) of the International Protection Act 2015, the Chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient performance of the functions of the Tribunal, issue guidelines to the Registrar for the purpose of the performance of his or her functions of assigning or re-assigning appeals under s.67(2) or (3) of the International Protection Act 2015.

The following Chaiperson's Guidelines were in place at the end of the year 2018:

- Guideline No. 2017/1: UNHCR Eligibility Guidelines;
- Guideline No. 2017/2: Access to Previous Decisions;
- Guideline No. 2017/3: Effect of Order of Certiorari;
- Guideline No. 2017/4: Guidance Note on Country of Origin Information (COI);
- Guideline No. 2017/5: Appeals from Child Applicants;
- Guideline No. 2017/6: Medico-Legal Reports;

- Chairperson's Guidelines on Assigning and Re-assigning Appeals by the Registrar;
- Chairperson's Guideline No. 2018/1: Compelling Grounds;
- Chairperson's Guideline No. 2018/2: Adjournments and Postponements of Appeal Hearings; and
- Chairperson's Guidelines No 2018/3: Witnesses.[1]

All Guidelines are available on the website of the Tribunal: www.protectionappeals.ie.

[1.12] Transitional Provisions

Where appeals were pending before the Refugee Appeals Tribunal on commencement of the International Protection Act 2015, the following provisions applied:

- Where a person has appealed a recommendation to refuse them refugee status and that appeal had not been determined, they were deemed to have made an application for international protection under the International Protection Act 2015, with certain modifications (s.70(2)). This means that their case was transferred from the Tribunal to the Department for the consideration by an International Protection Officer, of their entitlement to subsidiary protection.
- Pending subsidiary protection and Dublin III appeals were retained and decided by the International Protection Appeals Tribunal.

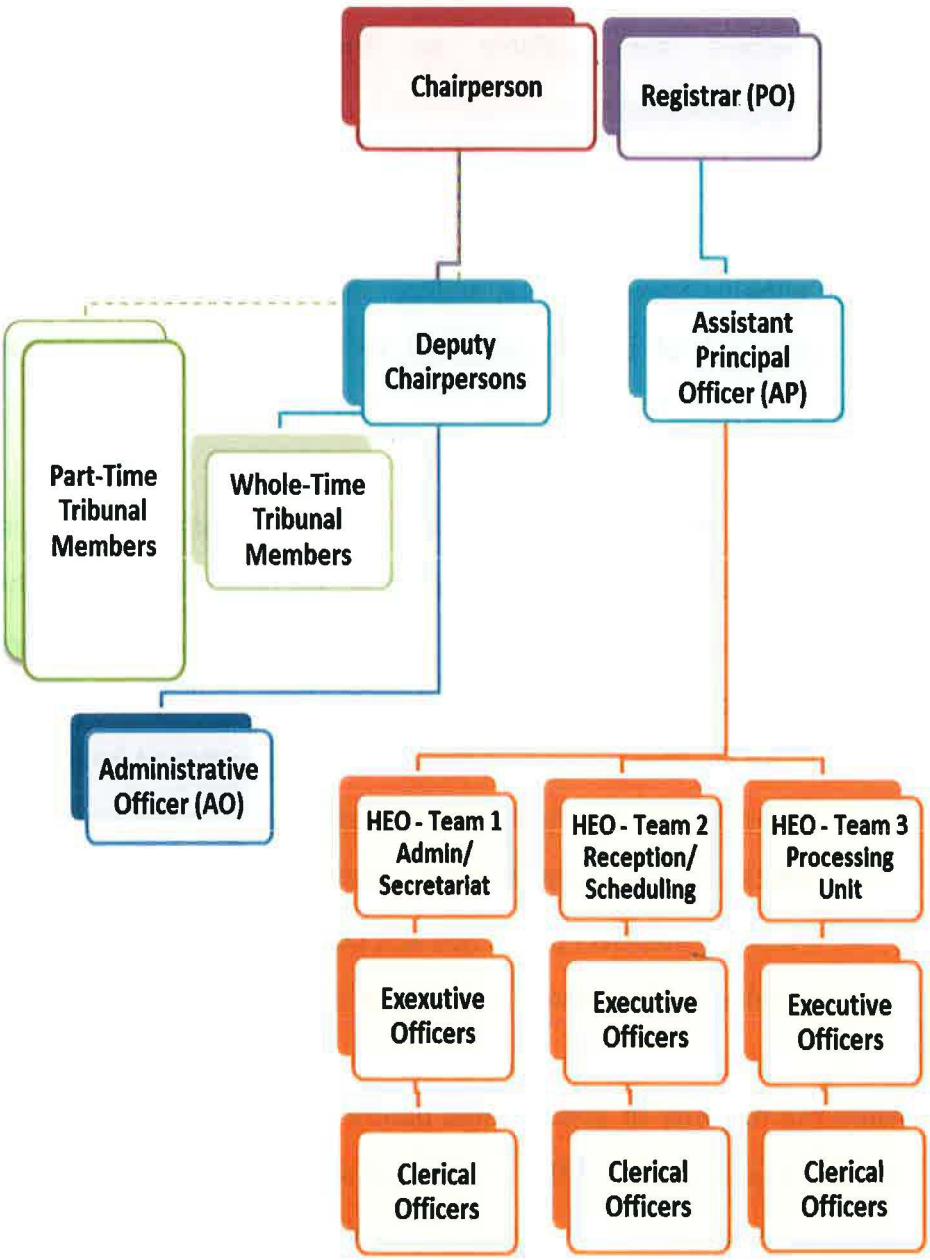
While the majority of appeals now before the Tribunal no longer fall to be decided in application of the transitional provisions, there continue to be a number of those types of appeals which will continue to occupy the Tribunal in 2019 and beyond.

[1] Replaced by Chairperson's Guideline No.1/2019 on Taking Evidence from Appellants and Other Witnesses.

2. Tribunal Operations and Support

[2.1] General

The organisational structure of the Tribunal is set out below.



Appeal Procedures are detailed in **Appendix 2**.

[2.2] Appeals Processing/Administration

Appeals Registration and Assigning

Pursuant to s.67(2) of the International Protection Act 2015, appeals are assigned to Tribunal Members by the Registrar in accordance with the Chairperson's Guideline on Assigning and re-assigning appeals by the Registrar included in **Annex 2** to this report.

Appeals registration and assigning of appeals involves:

- receiving, checking, recording and processing all Notices of Appeal and correspondence, including correspondence from the IPO, the United Nations High Commissioner for Refugees (hereinafter referred to as the 'UNHCR'), legal representatives and applicants;
- arranging receipt of documents from the IPO following receipt of a Notice of Appeal is received;
- preparation of copy appeal case files for Tribunal Members; and
- formal assigning of cases to Members by the Registrar.

Scheduling and Reception

Scheduling involves arranging the attendance of Tribunal Members, Presenting Officers, the applicant, legal representatives and, where appropriate, interpreters, witnesses and HSE/Tusla staff at hearings.

Reception duties include the servicing of oral hearings and the processing of correspondence and submissions received on the day of the hearing.

Appeals Processing

This involves:

- Processing of correspondence and queries from applicants, legal representatives and Members,

- Preparing and issuing decisions to the applicant, the legal representative (if any) and notifying the IPO, the Minister for Justice and Equality and the UNHCR in accordance with s.46(6) to (8) of the International Protection Act 2015,
- Recording, tracking and redacting of decisions, and
- Redacting Members' Decisions and uploading to the ROMDA webpage (ROMDA Refugee Office Members' Decisions Archive is a web based database of previous Tribunal Decisions see - Appendix 2.8) and maintaining the webpage.

[2.3] Administration/Secretariat

The Secretariat is responsible for:

- Co-ordinating activity between the Tribunal, the IPO and other constituent parts of the asylum system, including the Legal Services Unit of the Department of Justice and Equality (hereinafter referred to as the 'LSSU') and the Chief State Solicitor's Office (hereinafter referred to as the 'CSSO'),
- Liaising with the Office of the Representative of the UNHCR and other governmental, inter-governmental and non-governmental bodies, and
- Providing information on Tribunal matters and responding to correspondence.

The Secretariat co-ordinates the day-to-day back-up services for the Members which include ongoing Members' training and collating training/educational resource materials. Training initiatives undertaken in 2018 by the Tribunal are outlined in Chapter 3.

[2.4] Personnel

[2.4.1] Registrar and Staff of the Tribunal

Pursuant to s.66(1) of the International Protection Act 2015, the Minister shall appoint a person to be Registrar of the Tribunal. Mr Pat Murray was appointed by the Minister for Justice and Equality as Registrar of the Tribunal on the day of its establishment on the 31st of December 2016. Administrative staff are appointed to the Tribunal by the Minister for Justice and Equality as he or she considers necessary to assist the Tribunal in the performance of its functions. Members of staff of the Tribunal shall be civil servants within the meaning of the Civil Service Regulation Acts 1956 to 2005.

The table below shows the level of staffing agreed in the 2018 Oversight Agreement between the Tribunal and the Department, including the Chairperson, Deputy Chairperson and whole-time Members, as well as the actual level of staffing as per 31st December 2018. As previously stated, for much of 2018 the Tribunal carried administrative staff vacancies as illustrated below. Additionally, a number of Tribunal staff avail of atypical working arrangements.

IPAT STAFF LEVELS 2018	Persons	FTE	Agreed Oversight levels*
Chairperson (PO)	1	*1*	1
Deputy Chairperson (APO)	2	*2*	2
W/t Tribunal Member (APO)	3	*3*	3
SUB TOTAL	**6**	***6***	**6**
Principal Officer (Registrar)	1	*1*	1
Assistant Principal Officer	0	*0*	1
HEO/Administrative Officers	4	*3.8*	4
EXECUTIVE OFFICERS	6	*5.2*	8
CLERICAL OFFICERS*	24	*22.8*	27
SUB TOTAL	**35**	***32.8***	41
TOTAL	**41**	***38.8***	**47**

*1 CO to EO acting up post agreed as an additional temporary post

The continuing increase in appeals expected to reach the Tribunal in 2019 and beyond will require a corresponding increase in support staff to the level agreed in the Oversight Agreement to enable the Tribunal to further increase efficiencies and deal with such appeals in a fair and efficient manner. In that regard, the efforts made by the Department of Justice and Equality at the latter end of the year towards filling these posts and the commitment received that outstanding appointments will be completed in 2019 is greatly appreciated.

[2.4.2] Staff Training

The Tribunal has provided or facilitated a wide range of training courses for staff. Training courses availed of by administrative staff included:

- Microsoft Word (Intermediate)
- Microsoft Excel (Intermediate and Advanced)
- Communication Skills
- Building Resilience
- Interview Skills Seminar
- Customer Service Skills
- Minute Taking and Meeting skills
- Report Writing
- Middle Management Development Course
- Assertiveness Skills
- Advanced Diploma in Immigration and Asylum Law
- Health and Safety Training
- First Aid Training
- Fire Warden Training
- Suicide Awareness

[2.4.3] Accommodation

The Tribunal is located at 6/7 Hanover St. East, Dublin 2, where it currently occupies the first floor. In addition to the workspace for administrative staff, there are seven hearing rooms and consultation rooms for appellants and their

legal representatives on the ground floor of the building. The Tribunal also has a training room with a maximum capacity of 35.

[2.4.4] Finance

The Tribunal is funded by monies voted by the Dáil through the Vote for the Office of the Minister for Justice and Equality. Having regard to the fact that the Tribunal does not have its own budget, costs incurred by the Tribunal, including staff salaries, fees to members of the Tribunal, legal costs and all accommodation/utilities and other running and maintenance costs, are approved by and funded directly from the Department through INIS Corporate Services.

The Tribunal now shares the Hanover Street premises with a number of other offices / agencies including Department of Justice and Equality offices. Some of the costs attributed to the Tribunal below are costs associated with the premises as a whole, including running costs, pay and costs for service officers, postage etc.

Category	**Expenditure 2018**
Incidental Expenses	€1,498.76
IT Costs	€7,483.44
Legal Costs	€855,212.74
Members Fees	€604,039.00
Members Training	€3,618.60
Membership of Professional Bodies	€5,620.00
Office and Premises Expenses	€232,225.94
Office Machinery and Other office Supplies	€52,402.50
Postal and Communications Services	€41,750.82
Publications	€4,907.05
Salaries and Wages*	€1,835,992.18
Training	€3,991.50
Translation/Interpretation	€17,551.89
Travel and Subsistence/Incidental Expenses	€2,914.57
Grand Total	**€3,669,208.99**

[2.4.5] Judicial Review

Following advices received from the Attorney General in 2016, it was decided that the Tribunal as an independent statutory body carrying out quasi-judicial functions, should attract the same legal principles as those applying to a District Court judge and that once the Tribunal has made a decision, it is *functus officio* and has no part in defending or supporting it. The justification for a decision of the Tribunal will be set out in the decision itself. Once a Member of the Tribunal has fulfilled the function of delivering a reasoned decision, he or she has no further function and it could be seen to impugn the independence of the Tribunal to seek to stand over its decisions. These principles apply in the public interest so as to maintain confidence in the judicial and equivalent systems. The only circumstances in which these principles may not apply is where *mala fides* on the part of a Member of the Tribunal is alleged or systemic procedural challenges are made against the operations of the Tribunal. In all other cases, the Minister for Justice and Equality, who makes the decision to grant or refuse international protection, determine an application to be inadmissible, consent to the making of a subsequent application, make a transfer order under the Dublin System Regulations or a decision under the Reception Conditions Regulations, is the *legitimus contradictor*.

However, as a Respondent in judicial review challenges brought against any of its decisions, the Tribunal does liaise with the LSSU, the CSSO and the Attorney General's Office in relation to the provision of relevant information and observations. The Tribunal's Judicial Review Unit is now situated within its administration / secretariat. It records and monitors progress of all judicial reviews, considers all legal documents received and co-ordinates responses with the Chairperson.

At the start of 2018, the Tribunal had 40 active judicial reviews on hand. This compares to 146 cases at the start of 2017. In accordance with the agreement

reached with the Department of Justice and Equality, responsibility for 65 of the 146 cases on hand transferred to the LSSU in the first quarter of 2017. The Tribunal continued to deal with a remainder of the judicial reviews, which had been initiated prior to the establishment of the Tribunal on the 31st of December 2016.

During 2018, 7 of these judicial reviews were determined. Of these the applicant was unsuccessful in 5. In the 2 cases in which the applicant was successful, the outcome was determined by the court following a hearing.

At the end of the year, the Tribunal had 33 active judicial reviews on hand. Of these, 26 were waiting for a court outcome. This figure of 26 can be further broken down as follows:

Awaiting Court Order	**8**
Awaiting Hearing Date	**8**
Heard	**8**
Hearing Date fixed	**2**

On the 31st of December 2018 the LSSU had approximately 240 cases pending in which the Tribunal is named as a Respondent. Of the pending judicial reviews, 144 are in the 'Article 17 holding list' before the High Court, awaiting the outcome of the Court of Appeal decision in the case of *U. & ors v Refugee Appeals Tribunal & ors* [2017] IEHC 490.

The Tribunal closely follows the developments in the Superior Courts in respect of judicial reviews of its decisions. Whether the Court upholds the Tribunal's decisions, as usually was the case in 2018, or quashes a decision of the Tribunal, the Tribunal seeks to implement in its guidance to and training of its Members the jurisprudence of the Superior Courts.

The Tribunal was gratified that the High Court in its decision in *AJA (Nigeria) v International Protection Appeals Tribunal* [2018] IEHC 671, Humphreys J., 14 November 2018, commented positively about the Tribunal's current methodology, and acknowledged the importance of the Tribunal's quasi-judicial role in hearing witnesses and sifting through the evidence that comes before it.

A comprehensive summary of the judgments handed down in 2018 by the Superior Courts in 2018 regarding IPAT decisions is at **Appendix 4**.

[2.4.6] Legal Costs

The defence of judicial reviews against decisions of the Tribunal was handled by the Department of Justice and Equality's Legal Support Services Unit, the Chief State Solicitor's Office and the Offices of the Attorney General. The Department of Justice and Equality is liable to pay the costs of applicants who successfully challenge decisions of the Tribunal in the Superior Courts. The legal costs incurred by the Tribunal, including by its predecessor, the Refugee Appeals Tribunal, since 2008 are set out in the following table:

Year	Expenditure
2008	€3,428,130
2009	€4,523,622
2010	€4,363,114
2011	€3,168,952
2012	€1,427,510
2013	€1,625,971
2014	€2,688,787
2015	€1,833,385
2016	€2,696,339
2017	€1,580,537
2018	€855,132.74

In 2018, the total legal costs paid arising out of successful and settled judicial reviews of decisions of the Tribunal amounted to €855,132.74. In cases where a judicial review is successfully defended, an order will normally be obtained that the unsuccessful applicant pay their legal costs.

The 2018 figure covers 17 cases which gives an average cost of €50,302 per case. However, this figure does not include the legal costs of the State. It should be noted that these figures reflect the year in which the costs were paid and not necessarily the year in which the case was finalised.

The expense to the State in defending judicial reviews emphasises the benefit of investing in the training of Members of the Tribunal to ensure the production of high quality decisions that are consistent with fairness and natural justice.

3. Membership of the Tribunal

[3.1] Introduction

The Tribunal shall consist of the following Members:

(a) a Chairperson, who shall be appointed in a whole-time capacity;
(b) not more than 2 Deputy Chairpersons, who shall be appointed in a whole-time capacity; and
(c) such number of other Members, appointed either in a whole-time or part-time capacity, as the Minister, with the consent of the Minister for Public Expenditure and Reform, considers necessary for the expeditious performance of the functions of the Tribunal.

Ms Hilkka Becker, Solicitor, who had been in the position of interim Chairperson of the Tribunal pursuant to s.62(8) of the International Protection Act 2015since the 22nd of April 2017, was appointed Chairperson of the Tribunal in January 2018 following a competition under s.47 of the Public Service Management (Recruitment and Appointments) Act 2004 for the position of Chairperson of the Tribunal which was held in the autumn of 2017 and concluded in December 2017.

Following a competition under s.47 of the Public Service Management (Recruitment and Appointments) Act 2004, Ms Cindy Carroll BL was appointed to the position of Deputy Chairperson on the 5th of March 2018. The other Deputy Chairperson, Mr John Stanley BL, has been with the Tribunal since February 2017. Both the Chairperson and the Deputy Chairpersons were appointed by the Minister for Justice and Equality on a whole-time basis for a term of 5 years.

In September 2018, Ms Agnes McKenzie BL; Mr John Buckley BL and Ms Shauna Ann Gillan BL were appointed as whole-time Tribunal Members for a term of 3

years, following open competition. The part-time Members of the Tribunal are appointed by the Minister for Justice and Equality for a term of 3 years on a contract for services. A Member must have been a practising Barrister or Solicitor for at least five years to qualify for appointment.

[3.2] List of Members

Following commencement of the International Protection Act 2015 on the 31st of December 2016, the Members of the Refugee Appeals Tribunal were deemed to have been appointed in a part-time capacity to the International Protection Appeals Tribunal. In March 2017, a competition under s.47 of the Public Service Management (Recruitment and Appointments) Act 2004, following which a total of 50 new Members were appointed to the Tribunal in the course of 2017. An additional 8 Members were appointed in 2018, 5 of whom had previously been Members of the Refugee Appeals Tribunal.

At the end of 2017, the number of Members of the Tribunal had risen from 25 at the beginning of that year to a total of 75; and at the end of 2018, the number of Members of the Tribunal totalled 71, including the Chairperson, Deputy Chairpersons and three whole-time Members.

The following is a list of part-time Members of the Tribunal who held office during 2018:

1. Agnes McKenzie, B.L.	2. Lalita Pillay, B.L.
3. Ann Marie Courell, B.L.	4. Leonora Doyle, Solicitor
5. Anne Colley, Solicitor	6. Louis Dockery, Solicitor
7. Bernadette McGonigle, Solicitor	8. Majella Twomey, B.L.
9. Brian Cusack, B.L.	10. Margaret Browne, B.L.
11. Brid O'Flaherty, B.L.	12. Marguerite Fitzgerald, Solicitor
13. Byron Wade, B.L.	14. Marie-Claire Maney, Solicitor
15. Caroline Counihan, B.L.	16. Mark Byrne, B.L.
17. Christopher Hughes, B.L.	18. Mark William Murphy, B.L.
19. Ciara Fitzgerald, B.L.	20. Mary Forde, Solicitor
21. Ciara McKenna-Keane, B.L	22. Meg McMahon, B.L.
23. Ciaran White, B.L.	24. Michael Kinsley, B.L.
25. Clare O'Driscoll, B.L.	26. Michael McGrath, S.C.
27. Colin Lynch, Solicitor	28. Michael Ramsey, B.L.
29. Conor Feeney, B.L.	30. Michelle O'Gorman, B.L.
31. Conor Gallagher, B.L.	32. Moira Shipsey, Solicitor
33. Conor Keogh, B.L.	34. Morgan Shelly, B.L.
35. Cormac Ó Dúlacháin, S.C.	36. Niall O'Hanlon, B.L.
37. Denis Halton, B.L.	38. Nicholas Russell, Solicitor
39. Elizabeth Davey, B.L.	40. Nuala Dockry, B.L.
41. Elizabeth Mitrow, Solicitor	42. Nuala Egan, B.L.
43. Elizabeth O'Brien, B.L.	44. Olive Brennan, B.L.
45. Emma Toal, B.L.	46. Oluwafemi Daniyan, B.L.
47. Eoin Byrne, B.L.	48. Patricia O'Connor, Solicitor
49. Evelyn Leyden, Solicitor	50. Patricia O'Sullivan Lacy, B.L.
51. Finbar O'Connor, Solicitor	52. Paul Brennan, Solicitor
53. Fiona McMorrow, B.L.	54. Paul Kerrigan, Solicitor
55. Folasade Kuti-Olaniyan, Solicitor	56. Peter Shanley, B.L.
57. Frank Caffrey, Solicitor	58. Rory de Bruir, B.L.
59. Ger O'Donovan, B.L.	60. Rosemary Kingston O'Connell, Solicitor
61. Helen-Claire O'Hanlon, B.L.	62. Sharon Dillon-Lyons, B.L.
63. Jeanne Boyle, Solicitor	64. Shaun Smyth, B.L.
65. Joanne Williams, B.L.	66. Shauna Ann Gillan, B.L.
67. John Buckley, B.L.	68. Simon Brady, B.L.
69. John Noonan, B.L.	70. Stephen Boggs, B.L.
71. Katherine McGillicuddy, B.L.	72. Steven Dixon, B.L.
73. Kevin Lenahan, B.L.	74. Una McGurk, S.C.
75. Kieran Falvey, B.L.	76. Zeldine O'Brien, B.L.
77. Kim Walley, Solicitor	

[3.3] Training for Members of the Tribunal

Once Members are appointed to the Tribunal, it is necessary for them to undergo an intensive period of training prior to being in a position to commence hearing and deciding appeals. This involves formal training, delivered in conjunction with the UNHCR and other external trainers, on all aspects of international protection status determination. It is also necessary for the Members to be trained in the use of the Tribunal's IT systems, which permits remote access for the Members. The Tribunal also provides a period of intensive mentoring of newly appointed Tribunal Members and facilitates new Members 'sitting in' on other Tribunal hearings to become familiar with how hearings are conducted. This induction process is vital to ensure that new Members are fully capable of properly hearing and deciding cases assigned to them. The consequence of this induction process is that it takes a number of months from the time of their appointment before a new Tribunal Member can be expected to deliver decisions on a regular basis and within the timelines foreseen by the Tribunal management.

In addition to the in-house training provided by the Tribunal on a regular and ongoing basis, Tribunal Members also attended various conferences and engaged in other training activities throughout 2018, which are detailed below in Section 5 of this report.

[3.4] Statutory Meetings

S.63(7) of the International Protection Act 2015 requires the Chairperson to convene a meeting of the Members of the Tribunal at least once a year to review the work of the Tribunal. The Tribunals' statutory meeting for the year 2018 took place on the 7th of December 2018 in the Chartered Accountants' House, 47/49 Pearse Street, Dublin 2.

[3.5] Members' Fees

The scale of fees which determines the amount payable for each type of appeal is shown below:

Type	2018
Single Procedure Oral Hearing	**€**
Principal Applicant	730
+ Spouse or Partner case similar	1095
+ Spouse or Partner case different (Full fee €730)	1460
Single Procedure – Papers only Appeal	
Principal Applicant	490
+ Spouse or Partner case similar	735
+ Spouse or Partner case different (Full fee €490)	980
Inadmissibility or Subsequent Appeal	
Principal Applicant	365
+ Spouse or Partner case similar	546
+ Spouse or Partner case different (Full fee €365)	730
Withdrawn/Postponed	
Withdrawn Prior to Hearing	245
Withdrawn Post Hearing	490
Postponement – Day of Hearing	245
Accelerated Appeal (on papers)	
Determination	248
+ Spouse or Partner case similar	372
+ Spouse or Partner case different (Full fee €248)	496
Dublin Regulation	
Oral Hearing	315
Oral Hearing – Spouse or Partner case similar	473
Oral Hearing – Spouse or Partner case different (Full fee €315)	630
On Papers	166
On Papers – Husband & Wife similar cases	249
On Papers– Husband & Wife different cases	332
No Show / Withdrawal	137

[3.6] Members' Fees paid and Decisions completed in 2018

Member's fees paid and number of decisions completed for 2018 is set out in the following tables:

[3.6.1] Decisions completed by Members:

Member of Tribunal	Decisions
Agnes McKenzie, B.L.	61
Anne Colley, Solicitor	8
Bernadette McGonigle, Solicitor	2
Brian Cusack, B.L.	34
Brid O'Flaherty, B.L.	21
Byron Wade, B.L.	65
Caroline Counihan, B.L.	2
Christopher Hughes, B.L.	24
Ciara Fitzgerald, B.L.	8
Ciara McKenna-Keane, B.L	4
Ciaran White, B.L.	9
Cindy Carroll, B.L. (Deputy Chairperson)	21
Clare O'Driscoll, B.L.	12
Colin Lynch, Solicitor	4
Conor Feeney, B.L.	13
Conor Gallagher, B.L.	16
Conor Keogh, B.L.	5
Cormac Ó Dúlacháin, S.C.	6
Denis Halton, B.L.	23
Elizabeth Davey, B.L.	2
Elizabeth O'Brien, B.L.	64
Emma Toal, B.L.	33
Eoin Byrne, B.L.	10
Finbar O'Connor, Solicitor	3
Frank Caffrey, Solicitor	4
Ger O'Donovan, B.L.	1
Hilkka Becker, Solicitor (Chairperson)	6
John Buckley, B.L.	10
John Noonan, B.L.	39
John Stanley, B.L. (Deputy Chairperson)	5
Kevin Lenahan, B.L.	9
Kim Walley, Solicitor	9
Leonora Doyle, Solicitor	4
Majella Twomey, B.L.	49
Margaret Browne, B.L.	26
Marguerite Fitzgerald, Solicitor	2

Marie-Claire Maney, Solicitor	3
Mark Byrne, B.L.	107
Mark William Murphy, B.L.	46
Mary Forde, Solicitor	8
Meg McMahon, B.L.	13
Michael Kinsley, B.L.	5
Michael McGrath, S.C.	16
Michelle O'Gorman, B.L.	15
Moira Shipsey, Solicitor	6
Morgan Shelly, B.L.	3
Nicholas Russell, Solicitor	42
Nuala Dockry B.L.	1
Nuala Egan, B.L.	1
Olive Brennan, B.L.	38
Patricia O'Connor, Solicitor	6
Patricia O'Sullivan Lacy, B.L.	23
Paul Brennan, Solicitor	5
Peter Shanley, B.L.	7
Rosemary Kingston O'Connell, Solicitor	10
Shaun Smyth, B.L.	4
Shauna Ann Gillan, B.L.	71
Simon Brady, B.L.	6
Stephen Boggs, B.L.	4
Steven Dixon, B.L.	4
Una McGurk, S.C.	28
Zeldine O'Brien, B.L.	6
Grand Total	**1092**

[3.6.2] Fees Received by Part-Time Members

Member of Tribunal	Fees
Agnes McKenzie, B.L.	€25,801.00
Ann Marie Courell, B.L.	€975.00
Anne Colley, Solicitor	€4,126.00
Bernadette McGonigle, Solicitor	€804.00
Brian Cusack, B.L.	€18,821.00
Brid O'Flaherty, B.L.	€10,972.00
Byron Wade, B.L.	€31,515.00
Caroline Counihan, B.L.	€952.00
Christopher Hughes, B.L.	€13,270.00
Ciara Fitzgerald, B.L.	€6,820.00
Ciara McKenna-Keane, B.L	€5,370.00
Ciaran White, B.L.	€5,727.00
Clare O'Driscoll, B.L.	€7,437.00
Colin Lynch, Solicitor	€4,150.00
Conor Feeney, B.L.	€9,887.00
Conor Gallagher, B.L.	€15,094.00
Conor Keogh, B.L.	€4,875.00
Cormac Ó Dúlacháin, S.C.	€2,920.00
Denis Halton, B.L.	€8,293.00
Elizabeth Davey, B.L.	€1,710.00
Elizabeth O'Brien, B.L.	€41,755.00
Emma Toal, B.L.	€16,785.00
Eoin Byrne, B.L.	€6,090.00
Evelyn Leyden, Solicitor	€980.00
Finbar O'Connor, Solicitor	€3,415.00
Fiona McMorrow, B.L.	€1,715.00
Frank Caffrey, Solicitor	€1,102.00
Helen-Claire O'Hanlon, B.L.	€1,225.00
John Buckley, B.L.	€5,977.00
John Noonan, B.L.	€18,990.00
Kevin Lenahan, B.L.	€7,565.00
Kim Walley, Solicitor	€5,101.00
Lalita Pillay, B.L.	€1,225.00
Leonora Doyle, Solicitor	€4,267.00
Majella Twomey, B.L.	€21,675.00
Margaret Browne, B.L.	€11,957.00
Marguerite Fitzgerald, Solicitor	€952.00
Marie-Claire Maney, Solicitor	€3,905.00

Mark Byrne, B.L.	€58,664.00
Mark William Murphy, B.L.	€24,753.00
Mary Forde, Solicitor	€6,217.00
Meg McMahon, B.L.	€8,040.00
Michael Kinsley, B.L.	€3,537.00
Michael McGrath, S.C.	€5,632.00
Michelle O'Gorman, B.L.	€8,397.00
Moira Shipsey, Solicitor	€3,655.00
Morgan Shelly, B.L.	€3,067.00
Nicholas Russell, Solicitor	€16,070.00
Nuala Egan, B.L.	€1,710.00
Olive Brennan, B.L.	€18,565.00
Patricia O'Connor, Solicitor	€3,873.00
Patricia O'Sullivan Lacy, B.L.	€14,742.00
Paul Brennan, Solicitor	€3,750.00
Peter Shanley, B.L.	€4,390.00
Rosemary Kingston O'Connell, Solicitor	€7,070.00
Shaun Smyth, B.L.	€2,440.00
Shauna Ann Gillan, B.L.	€38,466.00
Simon Brady, B.L.	€5,605.00
Stephen Boggs, B.L.	€4,639.00
Steven Dixon, B.L.	€2,920.00
Una McGurk, S.C.	€18,630.00
Zeldine O'Brien, B.L.	€5,007.00
Total[2]	**€604,039.00**

[2] Payments may relate to decisions completed in previous years.

4. Summary of the Work of the Tribunal for 2018

[4.1] Introduction

At the beginning of 2018 the Tribunal had 74 part-time Members the majority of whom had been newly appointed September (14), October (3) and December (31) of the previous year and who, following completion of their four-day induction training in September and December 2017, began to conduct appeal hearings and draft decisions on an increasingly regular basis throughout the year.

However, with intensive on-the job training continuing post-appointment and following completion of a compulsory 4-day induction training, it is the Tribunal's experience that it can take several months for a newly appointed Member to be fully trained and to be in a position to deal with a significant number of appeals on a regular basis.

[4.2] Executive Summary for 2018

The Tribunal started the year with 653 appeals on hand. The number of appeals submitted to the Tribunal increased steadily throughout the year, reaching a total of 2127 international protection and Dublin Regulation appeals by the end of December 2018, compared to a total of 887 such appeals reaching the Tribunal in 2017, an *increase of 140%*, and ending the year with 1596 such appeals pending. Additionally, the Tribunal received 24 appeals under the Reception Conditions Regulations, amounting to a total of 2151 appeals reaching the Tribunal in 2018.

The number of appeals scheduled for hearing in 2018 stood at 1,714. This figure represents 80.5% of the appeals that reached the Tribunal during the year and represents an *increase of 181%* when compared to the number of hearings scheduled in the previous year.

While the intake of appeals remained low in the first half of the year, the number of appeals reaching the Tribunal increased significantly in the third quarter of the year, resulting in the number of decisions issued in the last quarter of the year exceeding the target agreed with the Department of Justice and Equality in the Oversight Agreement with the Tribunal.

The total number of decisions issued by the Tribunal in 2018 totalled 1092, an *increase of 80%* from the previous year. Additionally, the Tribunal disposed of 250 appeals which were withdrawn or deemed withdrawn.

The Tribunal has undergone a thorough review of its work processes and has further improved its efficencies, setting it on target for achieving its mission of determing all appeals in accordance with the law, in accordance with fairness and natural justice, with respect for the dignity of applicants, efficiently, with with the highest standard of professional competence, and in a spirit of openness and transparency in how the appeals process is managed.

Summary – Tribunal Caseload 2018

Executive Summary 2018	
Total Appeals Received	**2,151**
Cases Scheduled for Hearing	**1,714**
Total Decisions Issued	**1,092**
Total Appeals Disposed of	**1,342**
Live Appeals on Hand at Year End	**1,597**

Summary – Types of Appeals received in 2018

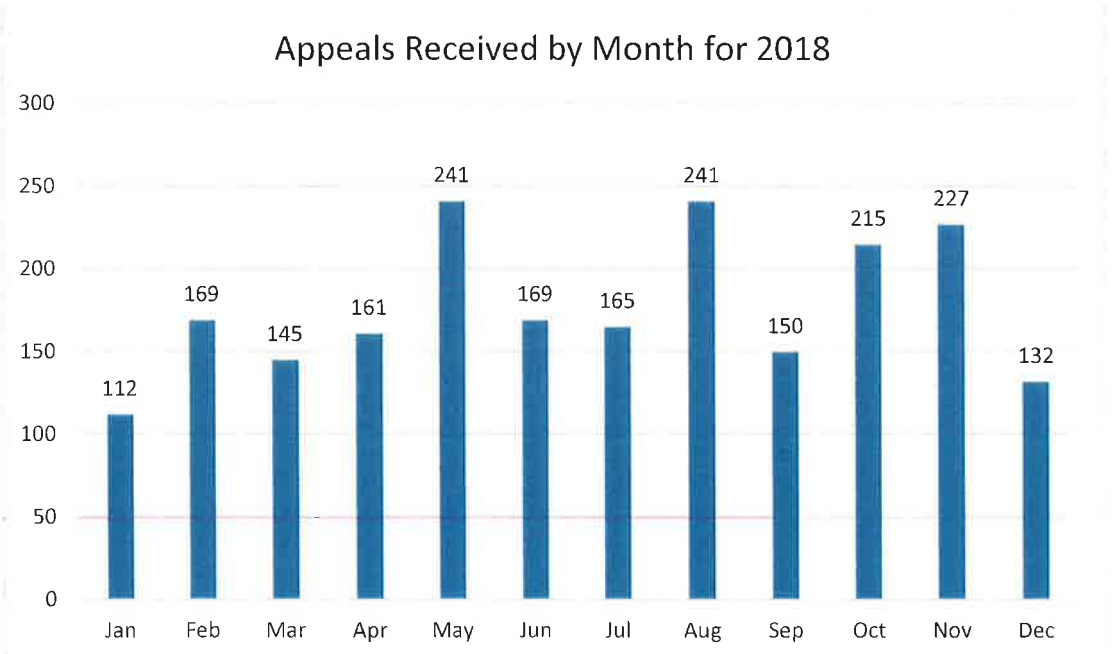
Appeal Type	Appeals Received
Substantive IP Appeal	1,712
Substantive IP Appeal *Asylum only*	119
Substantive IP Appeal *SP only*	46
SP Appeal – *Legacy*	44
Accelerated IP Appeal	4
Dublin III	154
Inadmissible Appeal	15
Subsequent Appeal	33
Reception Conditions Appeal	24
Grand Total	**2,151**

[4.2] Appeals Received

Tables 4.2.1. to 4.2.9. below set out the total number of appeals received by the Tribunal in 2018:

[4.2.1] International Protection Act and Dublin Regulation Appeals Received in 2018

Month	Appeals Received
Jan	112
Feb	169
Mar	145
Apr	161
May	241
Jun	169
Jul	165
Aug	241
Sep	150
Oct	215
Nov	227
Dec	132
Grand Total	**2127**



[4.2.2] Substantive International Protection Appeals Received

Month	Appeals Received
Jan	89
Feb	131
Mar	119
Apr	125
May	195
Jun	145
Jul	139
Aug	197
Sep	105
Oct	167
Nov	182
Dec	118
Grand Total	**1712**

[4.2.3] Substantive International Protction Appeals Received *(SP Only)*

Month	Appeals Received
Jan	6
Feb	5
Mar	9
Apr	7
May	8
Jun	6
Jul	1
Aug	0
Sep	4
Oct	0
Nov	0
Dec	0
Grand Total	**46**

[4.2.4] Substantive IP Appeal Received *(Refugee Status Only)*

Month	Appeals Received
Jan	11
Feb	16
Mar	6
Apr	22
May	21
Jun	5
Jul	1
Aug	2
Sep	20
Oct	7
Nov	7
Dec	1
Grand Total	**119**

[4.2.5] Legacy Subsidiary Protection Appeals Received (s.70(8))

Month	Appeals Received
Jan	6
Feb	9
Mar	6
Apr	1
May	1
Jun	1
Jul	1
Aug	6
Sep	0
Oct	7
Nov	5
Dec	1
Grand Total	**44**

[4.2.6] Dublin III Regulation Appeals Received

Month	Appeals Received
Jan	0
Feb	0
Mar	0
Apr	0
May	5
Jun	8
Jul	17
Aug	34
Sep	21
Oct	33
Nov	29
Dec	7
Grand Total	**154**

[4.2.7] Inadmissibility Appeals Received (s.21)

Month	Appeals Received
Jan	0
Feb	2
Mar	1
Apr	0
May	5
Jun	2
Jul	1
Aug	1
Sep	0
Oct	0
Nov	3
Dec	0
Grand Total	**15**

[4.2.8] Subsequent Appeals Received (s.22)

Month	Appeals Received
Jan	0
Feb	6
Mar	4
Apr	6
May	6
Jun	2
Jul	5
Aug	1
Sep	0
Oct	1
Nov	0
Dec	2
Grand Total	**33**

[4.2.9] Reception Conditions Appeals Received

Month	Appeals Received
Jan	0
Feb	0
Mar	0
Apr	0
May	0
Jun	0
Jul	0
Aug	6
Sep	11
Oct	4
Nov	1
Dec	2
Grand Total	**24**

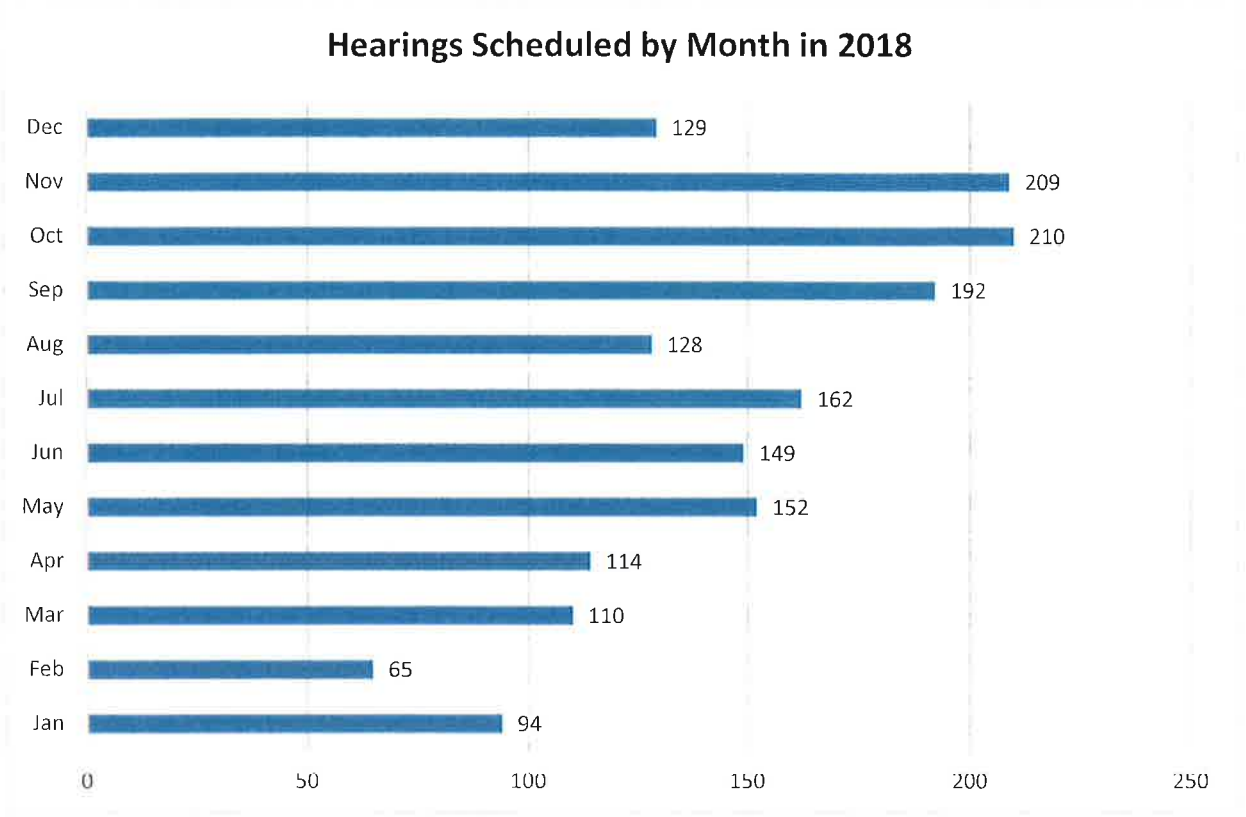
[4.3] Number of Appeals Scheduled for Hearing

The number of appeals scheduled for hearing in 2018 stood at 1,714. This figure represents 80.5% of the appeals that reached the Tribunal during the year and represents an *increase of 181%* when compared to the number of hearings scheduled in the previous year.

When considering the scheduling rate, it must be considered that, depending on a number of preliminary matters, including receipt of the relevant documentation pursuant to s.44(1) of the International Protection Act 2015, it takes a minimum of six weeks from the time an appeal is received to the time it is scheduled for hearing.

[4.3.1] Number of Hearings Scheduled in 2018

Month	No of Hearings Scheduled
Jan	94
Feb	65
Mar	110
Apr	114
May	152
Jun	149
Jul	162
Aug	128
Sep	192
Oct	210
Nov	209
Dec	129
Grand Total	**1714**



[4.4.] 'No Shows' and Withdrawals

Where an applicant fails, without reasonable cause, to attend an oral hearing in respect of a single procecure appeal and fails, within 3 working days from the dated of the oral hearing scheduled, to furnish the Tribunal with an explanation for not attending, which satisfies the Tribunal that the applicant had reasonable cause for not attending the hearing, the appeal will be deemed withdrawn.

In 2018, the number of 'no shows' was 38, which represented just over 2% of the total number of appeals scheduled for hearing.

An applicant may withdraw his or her appeal at any stage in the process for a variety of reasons. In the event of a withdrawal, the original recommendation of the International Protection Officer stands. Additionally, where in the opinion of the Tribunal an applicant has failed, or is failing, in his or her duty to co-operate, or the Minister notifies the Tribunal that he or she is of the opinion

that the applicant is in breach of paragraph (a), (c) or (d) of s.16(3) of the International Protection Act 2015, and the applicant has not – within 10 working days - confirmed in writing that he or she wishes to continue with his or her appeal, the Tribunal shall deem the appeal to have been withdrawn.

In 2018, the number of withdrawals was 250, which represents just over 9% of the total number of appeals on hand.

Table 4.5.1 sets out the number of 'no shows' and withdrawals in 2018.

[4.4.1] Number of 'No Shows' and Withdrawals in 2018

2018	No of Appeals
No Shows	38
Appeal Withdrawn	250
Grand Total	**288**

[4.5] Postponements and Adjournments

A postponement occurs where it is necessary, for example because an outbreak of chicken pox in an accommodation centre. The parties of the hearing are informed as soon as possible in advance of the hearing date of any postponement. However, on occasion, hearings have to be postponed on the day of the hearing, for example where no interpreter or no suitable interpreter has been made available to facilitate appropriate communication at the hearing between appellants and their legal reresentatives, the Tribunal and the representative of the Minister.

Adjournments take place at the hearing and are regulated in regulation 9 of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017, which provides that the Tribunal may adjourn a hearing to a specified date where it is satisfied that it is in the interests of justice to do so.

30% of scheduled hearings were either postponed or adjourned in 2018. Out of these, a significant percentage of appeals were postponed based on a pending High Court challenge against the validity of the underlying recommendation from the IPO under s.39(3) of the International Protection Act 2015 and an injunction granted by the Court of Appeal in the matter of *RS v The Chief International Protection Officer & Ors* [2018] IECA 322 in October 2018.

[4.5.1] Number of Postponements and Adjournments

2018	No of Appeals
Adjournments	96
Postponements	433
Grand Total	**529**

[4.6] Total number of decisions issued in 2018

The number of decisions issued by the Tribnal in 2018 totalled 1092, an *increase of 80%* from the previous year.

[4.6.1] Total number of decisions issued

Month	Decisions Issued
Jan	66
Feb	57
Mar	52
Apr	92
May	64
Jun	67
Jul	60
Aug	87
Sep	111
Oct	163
Nov	181
Dec	92
Grand Total	**1092**

[4.6.2] Total number of substantive 'Single Procedure' International Protection Decisions issued

Month	Decisions Issued
Jan	47
Feb	46
Mar	37
Apr	68
May	42
Jun	53
Jul	50
Aug	57
Sep	84
Oct	131
Nov	154
Dec	84
Grand Total	**853**

[4.6.3] Total number of Refugee Status decisions issued under the transitional provisions of the International Protection Act 2015 (s.70(7))

Month	Decisions Issued
Jan	0
Feb	0
Mar	0
Apr	0
May	3
Jun	2
Jul	1
Aug	0
Sep	0
Oct	0
Nov	1
Dec	0
Grand Total	**7**

[4.6.4] Total number of substantive International Protection (SP only) decisions issued (s.70(5))

Month	Decisions Issued
Jan	5
Feb	1
Mar	6
Apr	7
May	4
Jun	2
Jul	2
Aug	8
Sep	8
Oct	10
Nov	3
Dec	1
Grand Total	**57**

[4.6.5] Total number of SP decisions issued under the transitional provisions of the International Protection Act 2015 (s.70(8))

Month	Decisions Issued
Jan	7
Feb	6
Mar	5
Apr	8
May	12
Jun	7
Jul	3
Aug	11
Sep	5
Oct	7
Nov	3
Dec	0
Grand Total	**74**

[4.6.6] Total number of Dublin III Regulation decisions issued

Month	Decisions Issued
Jan	2
Feb	0
Mar	0
Apr	3
May	0
Jun	0
Jul	1
Aug	1
Sep	0
Oct	0
Nov	12
Dec	4
Grand Total	**23**

[4.6.7] Inadmissibility Appeals (s.21) decisions issued

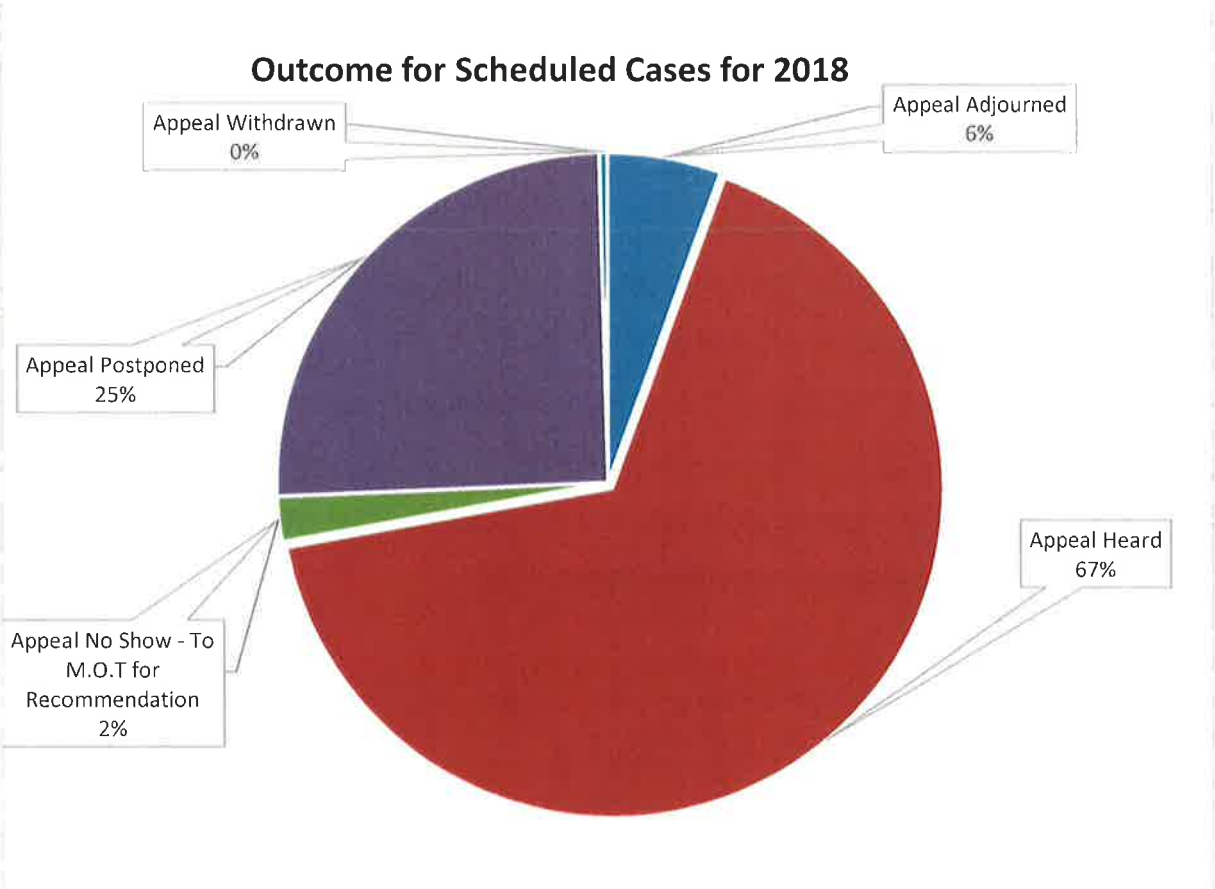
Month	Decisions Issued
Jan	0
Feb	0
Mar	1
Apr	0
May	1
Jun	0
Jul	1
Aug	2
Sep	3
Oct	1
Nov	0
Dec	0
Grand Total	**9**

[4.6.8] Appeals against refusal to permit subsequent application (s.22) decisions issued

Month	Decisions Issued
Jan	5
Feb	3
Mar	3
Apr	6
May	2
Jun	3
Jul	2
Aug	7
Sep	4
Oct	5
Nov	4
Dec	2
Grand Total	**46**

[4.6.9] Reception Conditions Appeals decisions issued

Month	Decisions Issued
Jan	0
Feb	0
Mar	0
Apr	0
May	0
Jun	0
Jul	0
Aug	0
Sep	7
Oct	9
Nov	4
Dec	1
Grand Total	**21**



[4.7] Appeals on Hand at 31st December, 2018

A total of 1,597 live appeals were on hand on the 31st of December 2018 compared to 653 appeals on hand at the end of 2017 an *increase of just over 140%.*

Summary of 'live appeals' at 31st December 2018

Appeal Type	Appeals
Substantive IP Appeal	1311
Substantive IP Appeal –Asylum only	50
Substantive IP Appeal –SP only	30
SP Appeal	39
Accelerated IP Appeal	4
Dublin III	139
Inadmissible Appeal	9
Subsequent Appeal	14
Reception Conditions Appeal	1
Total number of appeals on hand as at 31st December 2018	**1597**

[4.8] Length of Appeal Process

The average length of time taken by the Tribunal to process and complete substantive international protection appeals including transition cases in 2018 was approximately 154 working days. The processing times for appeals during the year were impacted by the fact that the majority of Tribunal Members remained 'in training' during the year and a significant amount of time was invested by the Deputy Chairpersons in assisting new Members to make decisions that are of high quality and legally correct while at the same time increasing efficiencies of decision making.

Additionally, the Tribunal was carrying significant staff vacancies most particularly at CO and EO level for much of 2018. The assistance of the Department of Justice and Equality towards filling these posts at the latter end of 2018, with the commitment given to completing the outstanding

appointments in 2019 is greatly appreciated in the context of the Tribunal's ongoing efforts to ensure efficient decision making.

Moreover, the Tribunal continued to deal with a high number of 'transition appeals' following the commencement of the International Protection Act 2015 at the end of 2016. In some of these cases the date of appeal is backdated to the date of the original recommendation of the International Protection Officer giving an impression that the appeal has taken a more significant time to process than it actually has.

The Tribunal has set as an objective for 2019 that the average processing times for appeals,where an oral hearing is required, will be reduced to 70 working days. However, it must be acknowledged that there are number of factors outside the control of the Tribunal that could impede this, including the availability of adequate resources and postponements of hearings due to legal proceedings, medical issues, or the inavailability of suitable interpreters for Tribunal hearings.

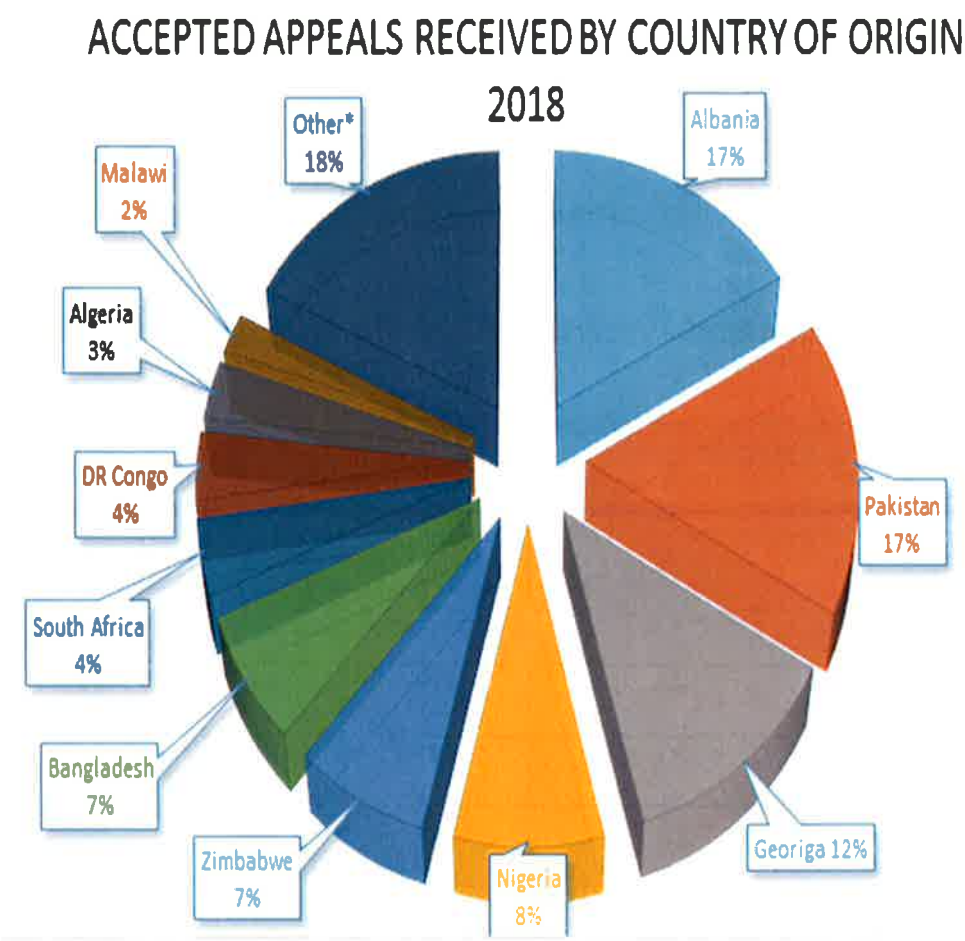
[4.9] Country of Origin of Applicants 2018

The highest proportion of substantive appeals received by the Tribunal in 2018 were from Albanian and Pakistani nationals, followed by Georgian nationals. It is notable that two of the top nationalities of applicants for international protection are from countries which are now included in the International Protection Act 2015 (Safe Countries of Origin) Order 2018 (S.I. No. 121/2018), which came into operation in April of 2018.

[4.9.1] Substantive International Protection Appeals, Subsequent Appeals and Inadmissible Appeals accepted[3] in 2018 by country of origin.

	Total		Substantive IP Appeal		Subsequent Appeal		Inadmissible Appeal	
Nationality	Appeals Received	%	Appeals Received	%	Appeals Received	%	Appeals Received	%
Albania	298	17%	298	17%		0%	0	0%
Pakistan	292	17%	289	17%	3	9%	0	0%
Georgia	217	12%	213	12%	3	9%	1	7%
Nigeria	145	8%	141	8%	3	9%	1	7%
Zimbabwe	128	7%	126	7%	2	6%	0	0%
Bangladesh	126	7%	123	7%	3	9%	0	0%
South Africa	75	4%	71	4%	4	12%	0	0%
DR Congo	69	4%	69	4%		0%	0	0%
Algeria	58	3%	52	3%	6	18%	0	0%
Malawi	41	2%	41	2%		0%	0	0%
Other*	311	18%	289	17%	9	27%	13	87%
Grand Total	1760	100%	1712	100%	33	100%	15	100%

[3] A total of 887 appeals were received by the Tribunal in 2017 – 22 remained at the pre-acceptance stage at the end of the year.


ACCEPTED APPEALS RECEIVED BY COUNTRY OF ORIGIN
2018
Other* 18%
Albania 17%
Malawi 2%
Algeria 3%
DR Congo 4%
Pakistan 17%
South Africa 4%
Bangladesh 7%
Georiga 12%
Zimbabwe 7%
Nigeria 8%

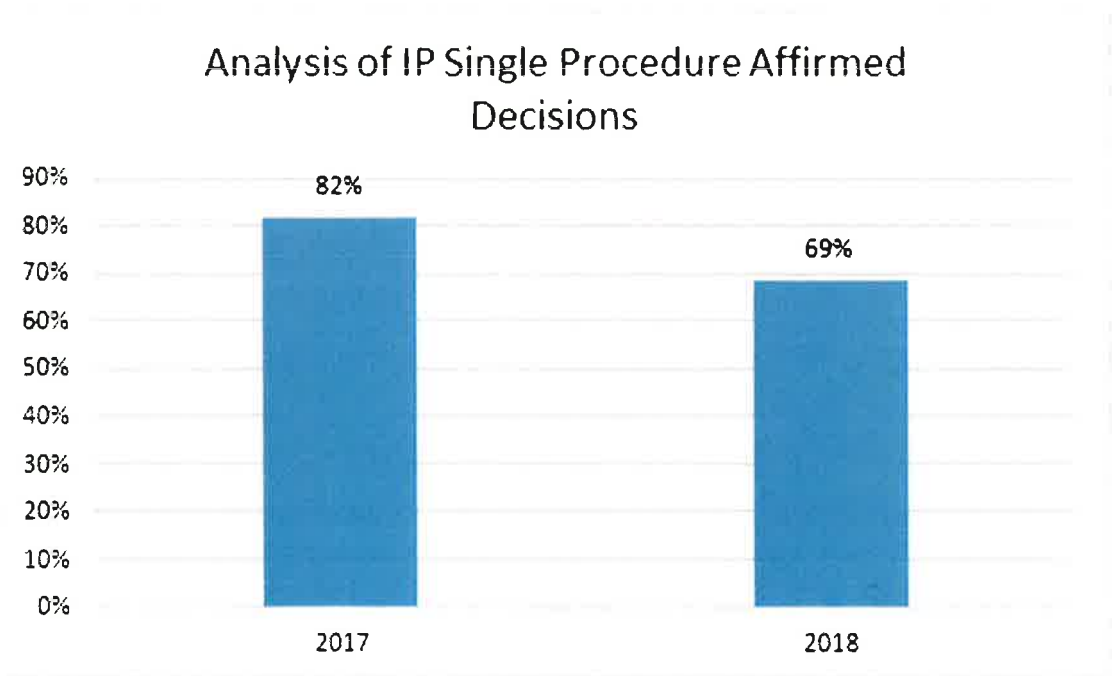
[4.10] Outcome of Appeals

Tables 4.10.1 to 4.10.8. below show the number of recommendations made at first instance which were affirmed / set aside on appeal by the Tribunal in 2018. These figures do not include withdrawals or abandoned cases.

[4.10.1] International Protection Single-Procedure Appeals 2018

International Protection Appeals 2018				
Granted/Set Aside – Refugee Status	**Granted/Set Aside - Subsidiary Protection (SP)**	**Total Granted**	**Total Affirmed**	**Total Decisions**
244	**35**	**279**	**638**	**917**
26.6%	**3.81%**	**30.43%**	**69.57%**	**100%**

[4.10.2] Analysis of single procedures International Protection recommendations affirmed in 2018



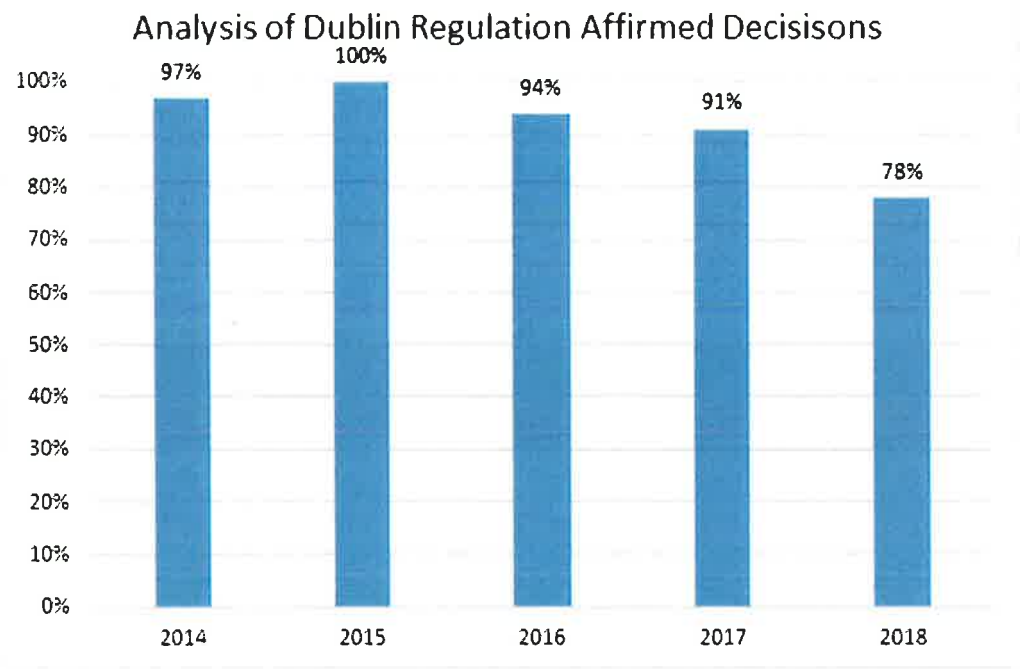
[4.10.3] Summary of International Protection, Subsidiary Protection , Subsequent Appeals and Inadmissibility Appeals accepted in 2018 by country of nationality – affirmed and set aside from 1st January 2018 to 31st December 2018

Nationality	Refused/Affirmed	Granted/Set Aside	Grand Total	Set Aside % of Total Decisions
Pakistan	162	50	**212**	24%
Nigeria	96	21	**117**	18%
Zimbabwe	42	58	**100**	58%
Georgia	82	14	**96**	15%
Albania	53	31	**84**	37%
South Africa	39	17	**56**	30%
Bangladesh	44	9	**53**	17%
Malawi	33	13	**46**	28%
Algeria	30	2	**32**	6%
DR Congo	9	18	**27**	67%
Other*	96	63	**159**	40%
Grand Total	**686**	**296**	**982**	**31%**

[4.10.4] Dublin Regulation Decisions affirmed in 2018

Appeal Type	Refused/Affirmed	Grand Total	% Affirmed
Dublin III	18	23	78%

[4.10.5] Analysis of Dublin Regulation Decisions 2014 to 2018



[4.10.6] Summary of Dublin III Appeals, by country of nationality, affirmed and set aside from 1st January 2018 to 31st December 2018

Nationality	Refused/Affirmed	Granted/ Set Aside	Grand Total	Set Aside % of Total Decisions
Nigeria	6	0	6	0%
Pakistan	1	3	4	75%
Bangladesh	3	0	3	0%
Afghanistan	0	2	2	100%
Georgia	2	0	2	0%
Egypt	1	0	1	0%
Syrian Arab Republic	1	0	1	0%
Eritrea	1	0	1	0%
Iraq	1	0	1	0%
Algeria	1	0	1	0%
Lebanon	1	0	1	0%
Grand Total	**18**	**5**	**23**	**22%**

[4.10.7] Inadmissibility decisions affirmed (s.21)

Appeal Type	Refused/Affirmed	Grand Total	% Affirmed
Inadmissibility Appeal	9	9	100%

[4.10.8] Subsequent application decisions affirmed (s.22)

Appeal Type	Refused/Affirmed	Grand Total	% Affirmed
Subsequent Appeal	35	46	76%

5. Other Activities

[5.1] Meetings with other organisations

It is a specific objective of the Tribunal to develop and maintain good working relations with other stakeholders working in the international protection area as well as with other organisations whose work is relevant to the Tribunal. The Tribunal has continued this policy in 2018. Meetings were held with each of the following organisations, among others, during the year.

- Department of Justice and Equality
- Office of the Chief State Solicitor
- Office of the Attorney General
- Law Society of Ireland
- Bar Council of Ireland
- Legal Aid Board - Refugee Documentation Centre
- Tusla-Child and Family Agency
- Office of the United Nations High Commissioner for Refugees
- EASO, European Asylum Support Office
- EJTN, European Judicial Training Network
- IARMJ, International Association of Refugee and Migration Law Judges
- EMN, European Migration Network
- SPIRASI
- ACESA, Association of Chief Executives of State Agencies

[5.2] Training of Tribunal Members

Members of the Tribunal attended the following training during the year:

- UNHCR Asylum Claims based on Sexual Orientation and Gender Identity, 20th – 21st February 2018, Dublin;

- EASO Pilot professional development workshop on implementing the Judicial Practical Guide on Country of Origin Information (COI), 12th – 13th April 2018, Malta;
- UNHCR Dublin III Training, 25th April 2018, Dublin;
- EASO Professional development workshop on implementing the Judicial Analysis on Exclusion, 22nd – 23rd May 2018, Malta;
- EASO Professional development workshop on implementing the Judicial Analysis on article 15(c) QD (recast), 7th – 8th June 2018;
- IPAT Training 15th and 18th June 2018, Dublin *(one day attendance compulsory for all Members);*
- EASO Professional development workshop on the Introduction to the Common European Asylum System (CEAS), 11th – 12th September 2018, Malta;
- EASO Professional Development Workshop on Evidence and Credibility Assessment 24th – 25th September 2018 and 27th – 28th September 2018, Dublin;
- EASO Profestional Development Workshop on Qualification for International Protection, 13th – 14th November 2018, Malta;
- UNCHR Subsidiary Protection and Children's Claims, 26th – 27th November 2018, Dublin;
- IPAT Training, 7th December 2018, Dublin *(attendance compulsory for all Members);* and
- EJTN Judicial Training Methods – Seminar on 'Judgecraft', 13th – 14th December 2018, Stockholm.

In addition to the formal training set out above, the Tribunal holds regular 'Lunch & Learn' sessions and informal discussion groups on selected topics and Members receive a regular 'Information Note' through which they are informed of recent national and European case-law as well as of country information reports and relevant legislative developments.

[5.3] Conferences Attended

Members of the Tribunal attended the following conferences during the year:

- EASO Network of Courts and Tribunals – Annual Coordination Meeting & Thematic Workshop on Vulnerability, 18th – 19th January 2018, Malta;
- UCD Women in Leadership Conference 2018, 8th February 2018, Dublin;
- NUI Galway Conference on 'Defending the Rights of Refugees and Migrants – the role of courts and tribunals', 17th – 18th May 2018, Galway;
- Annual Ministerial Civil Agencies' Roundtable, 19th July 2018, Dublin;
- IARMJ European Chapter Conference, 12th – 14th September 2018, Catania;
- FLAC, Legal Implications of the Public Sector Human Rights Duty', 19th October 2018, Dublin;
- Academy of European Law (ERA) Annual Conference on European Asylum Law, 17th – 18th October 2018, Trier; and
- EASO/IARMJ High Level Judicial Roundtable, 22nd – 23rd November 2018, Luxembourg.

[5.4] European Asylum Support Office

The Tribunal participated in several projects run by the European Asylum Support Office (EASO) and contributed to the provision of judicial training at the EASO in Malta as well as other locations, including Greece, Albania and Germany.

The Chairperson and one Deputy Chairperson contributed to the drafting of judicial analyses produced by IARMJ Europe under contract to EASO on:

- **Evidence and credibility assessment in the context of the Common European Asylum System**
    - Judicial analysis
    - Compilation of jurisprudence
- **Asylum procedures and the principle of non-refoulement**
    - Judicial analysis

- Compilation of jurisprudence

- **Country of origin information**
  - Judicial practical guide on country of origin information
  - Compilation of jurisprudence

These judicial analyses can be accessed here.

[5.5] International Association of Refugee and Migration Judges

The Tribunal Members are members of the International Association of Refugee and Migration Judges (IARMJ), which was founded in 1997 and seeks to foster recognition that protection from persecution on account of race, religion, nationality, membership in a particular social group, or political opinion is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law.

More information on the IARMJ and its activities can be accessed here.

[5.6] Tribunal Users Group

The Tribunal Users Group was established in 2014 to meet and discuss proposals around practice and procedure put forward by the Tribunal and to provide an opportunity for legal representatives to give feedback to the Tribunal on issues of concern.

The Group consists of two nominees each from the Law Society of Ireland and the Bar Council of Ireland, the Chairperson of the Tribunal and its two Deputy Chairpersons as well as the Tribunal Registrar. The Group met twice in 2018 on the 7th of February and the 23rd of October.

[5.7] Internships

Since June 2018, the Tribunal has had a number of unpaid legal interns on placement in the office. The arrangement has been quite informal and it was one which was discussed with Human Resources in advance.

The following interns were with the Tribunal in 2018:

- University of Tulsa Internship Programme (one intern in June 2018)
- University College Cork (two interns in July 2018 and two interns in August 2018)
- University College Cork (one full-time intern from October 2018 to January 2019)
- Trinity College Dublin (one part-time intern from October 2018 to January 2019)

The work which the interns as a group have carried out has been very useful to the Tribunal in its functions and has been delivered quickly and professionally. In addition to their normal duties, two of the interns collaborated on writing an article for The Researcher on the issue of returning failed asylum seekers to the DRC – this article is due to be published in April 2019.

All of the legal interns who have come to the Tribunal have been of a very high calibre. In order to secure a placement with the Tribunal, the intern must have achieved a minimum level of a 2H1 in all of their college law exams. All interns agree to abide by the rules and regulations of the Department of Justice and Equality, including the GDPR and IT policy, and sign a document to that effect on their arrival in the Tribunal. The undertakings as regards confidentiality extends after the interns have finished their positions with the Tribunal.

6. Tribunal Customer Service

[6.1] Customer Service

The office is open 5 days a week including lunchtime and is open to personal callers between the hours of 8.45am and 5.30pm Monday to Friday. A telephone enquiry service (tel. 01-4748400) is provided daily from 9.15am - 5.30pm (5.15pm on Fridays). The Tribunal is committed to providing a high standard of customer service as set out in our customer service charter.

[6.2] Data Protection

In line with the Data Protection Act 1988, the Tribunal is registered with the Data Protection Commissioner as a data controller. The Tribunal is fully compliant with the General Data Protection Regulation (EU 2016/679) and corresponding national legislation since its implementation on the 25th of May 2018.

[6.3] Health and Safety

It is the policy of the Tribunal, as set out in our Health and Safety Statement, to ensure, in so far as is reasonably practicable, the safety, health and welfare of all its employees and those who have business on its premises. Health and safety issues are a priority for the Tribunal - this is reflected in the training provided to staff and the security measures at the Tribunal's premises which are continually under review. The Health and Safety Statement is updated as required.

[6.4] Ethics in Public Office Act, 1995

The Chairperson and Principal Officer of the Tribunal are subject to the requirements of the 1995 Act. All relevant staff holding prescribed positions are made aware of their obligations under the Ethics in Public Office Acts 1995 to 2001 and have complied with the requirements.

[6.5] Freedom of Information Act, 2014

The Tribunal is covered by the provisions of the Freedom of Information Act, 2014. Further details are available on the Tribunal's website. FOI requests can be submitted to FOIRequests@refappeal.ie.

[6.6] Child Safeguarding

The International Protection Appeals Tribunal is committed to maintaining the highest standards of child safeguarding, in line with all relevant legislation including the Children First Act 2015 and informed by best practice including Children First: National Guidance for the Protection and Welfare of Children (2017 edition) as published by the Department of Children and Youth Affairs. Further details are available on the Tribunal's website.

[6.7] Public Sector Equality and Human Rights Duty

Section 42 of the Irish Human Rights and Equality Commission Act 2014 establishes a positive duty on public bodies to have regard to the need to eliminate discrimination, promote equality and protect the human rights of staff and persons to whom services are provided.

In particular, the Tribunal has had regard to its obligations under s.42 of the Act to:

- assess and identify human rights and equality issues relevant to its functions; and
- identify the policies and practices that are in place/ will be put in place to address these issues.

This will form part of the Tribunal's preparations of its Strategy Statement 2020 – 2023.

Appendix 1:

Appeals Process: Procedures

1. Introduction

The Tribunal deals with five types of appeals: (1) substantive international protection appeals (including accelerated substantive international protection appeals), ; (2) appeals against recommendations to deem an application for international protection inadmissible; (3) appeals against recommendations that a subsequent application for international protection not be allowed; (4) "Dublin" transfer appeals and (5) appeals against decisions relating to reception conditions of applicants for international protection.

The Tribunal's jurisdiction for appeal types (1), (2) and (3) is provided by the International Protection Act 2015. The Tribunal's jurisdiction for appeal type (4) is provided by the International Protection Act 2015 and the European Union (Dublin System) Regulations 2018. The Tribunal's jurisdiction for appeal type (5) is provided by the European Communities (Reception Conditions) Regulations 2018. The latter regulations are a notable innovation in 2018, and bear a brief discussion.

The commencement of the European Communities (Reception Conditions) Regulations 2018 on the 30th of June 2018, extended the Tribunal's remit to deal with appeals against decisions by the Minister for Justice and Equality to refuse to grant or to renew a labour market access as well as against a decision to withdraw such access. Furthermore, the Tribunal now has jurisdiction to decide appeals against decisions taken by the Minister for Justice and Equality in relation to the provision, withdrawal or reduction of material reception conditions such as housing, food and associated benefits in kind, the daily expenses allowance, and clothing provided by way of financial allowance under the Social Welfare Consolidation Act 2005. Moreover, the Tribunal has the jurisdiction to decide appeals against decisions of the Minister for

Employment Affairs and Social Protection to vary material reception conditions where a recipient of such conditions is in receipt of an income.

The following is an outline of the main features of the various appeals' procedures:

Substantive International Protection Appeals - Oral Hearing

A substantive international protection appeal is one where the applicant may seek an oral hearing pursuant to s.42(1)(a) of the International Protection Act 2015. The hearing occurs before a Member of the Tribunal and generally involves the applicant and his/her legal representative, an interpreter and an officer of the Minister (hereinafter referred to as 'Presenting Officer'). Furthermore, in addition to the examination and cross-examination of the application, the Tribunal is obliged, pursuant to s.42(6)(f) of the Act, to allow for the examination and cross-examination of any witnesses. Experience to date shows that on average an oral hearing takes a minimum of 1½ - 2 hours. Section 42(4) of the Act requires that an oral hearing be held in private. However, the UNHCR can attend for the purposes of observing the proceedings (s.42(5) of the Act). In the event that an oral hearing is not sought, the substantive appeal will be decided on the papers by the Tribunal, unless the Tribunal is of the opinion that it is in the interest of justice to hold an oral hearing.

Accelerated International Protection Appeals - No Oral Hearing

These arise where the report of the report of an International Protection Officer pursuant to s.39 of the International Protection Act 2015 includes any of the findings referred to in s.39(4) of the Act. Such appeals are determined without an oral hearing, unless the Tribunal considers it not in the interest of justice not hold an oral hearing (s.43(b)) and have shorter time limits for lodging the Appeal.

Dublin System Appeals

Dublin appeals arise under the European Union (Dublin System) Regulations 2018, SI No. 62 of 2018, which came into operation on INSERT.

The 2018 Regulations give effect to the Dublin III Regulation in Irish law. Regulation 10 of the 2018 Regulations provides for the transfer of persons from the State to the Member State responsible under the Dublin III Regulation for receiving the person. Regulation 19 contains provisions in relation to the Tribunal.

It should be noted that following the disbanding of the Refugee Applications Commissioner with the International Protection Act 2015's repeal of the Refugee Act 1996 there was no transitional provision in those regulations transferring the Commissioner's jurisdiction to make a transfer decision to another body. Consequently, although transitional provisions in the International Protection Act 2015 transferred this jurisdiction to the Tribunal, there were only a limited number of 'legacy' Dublin appeals before the Tribunal in 2017 under the previously applicable Dublin System Regulations (i.e., the European Union (Dublin System) Regulations 2014, S.I. No. 525 of 2014), before the making of the 2018 Regulations.

Inadmissibility Appeals

Section 21 of the International Protection Act 2015 gives effect to Article 25 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. It provides that a person may not make an application for international protection where the application is deemed inadmissible. Where an International Protection Officer at first instance is of the opinion that an application is inadmissible he/she must recommend that the Minister deem the application inadmissible.

The decision of the International Protection Officer on admissibility is appealable to the Tribunal under s.21(6) of the International Protection Act

2015. Pursuant to s.21(7), appeals to the Tribunal on admissibility must be determined without an oral hearing.

Provisions such as those contained in s.21 of the International Protection Act 2015 were not contained in the Refugee Act 1996, the European Communities (Eligibility for Protection) Regulations 2006 or the European Union (Subsidiary Protection) Regulations 2013.

Subsequent Appeals

Section 22 of the International Protection Act 2015 gives effect to Article 32 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. It provides for the circumstances in which a person may be permitted to make a subsequent application for international protection after refusal or withdrawal (including deemed withdrawal) of a prior claim.

The first instance decision of an International Protection Officer on the matter is appealable to the Tribunal under s.22(8). Pursuant to s.22(9), appeals to the Tribunal on admissibility must be determined without an oral hearing.

Provisions such as those contained in s.22 of the International Protection Act 2015 are comparable to those that were in s.17(7) of the Refugee Act 1996, as amended (albeit that s.17(7) did not provide for an appeal to the Tribunal).

Reception Conditions Appeals

Regulation 21 of the European Communities (Reception Conditions) Regulations 2018 gives effect to Article 26 of Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast). Following the coming into operation of the implementing legislation on the 30th of June 2018, the Tribunal's remit was extended to also deal with appeals against decisions by the Minister for Justice and Equality to refuse to

grant or to renew a labour market access as well as against a decision to withdraw such access.

Furthermore, the Tribunal has jurisdiction to decide appeals against decisions taken by the Minister for Justice and Equality in relation to the provision, withdrawal or reduction of material reception conditions such as housing, food and associated benefits in kind, the daily expenses allowance, and clothing provided by way of financial allowance under the Social Welfare Consolidation Act 2005.

Moreover, the Tribunal has the jurisdiction to decide appeals against decisions of the Minister for Employment Affairs and Social Protection to vary material reception conditions where a recipient of such conditions is in receipt of an income.

Reception conditions appeals shall, unless the designated Member of the Tribunal considers it not in the interest of justice to do so, be determined without holding an oral hearing.

2. Procedure for Lodging an Appeal

When an applicant receives a recommendation from the IPO pursuant to s.40 of the International Protection Act 2015, he/she is informed of the right to appeal and the requirement to do so within specific statutory time limits depending on the type of appeal:-

- **Substantive international protection appeals** – Applicants have **15 working days**, from the date of the sending of to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge the **Notice of Appeal**. They have the option of an oral hearing, which they must request on the Notice of Appeal Form.

- **Accelerated international protection appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge the **Notice of Appeal**. They do not have the option of an oral hearing; unless the Tribunal considers it not in the interest of justice not to hold an oral hearing.

- **Dublin Regulation appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge the Notice of Appeal. They have the option of an oral hearing. The lodging of an appeal suspends the transfer of an applicant to the relevant country.

- **Inadmissibility appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge a Notice of Appeal. They do not have an option of an oral hearing.

- **Subsequent appeals** – Applicants have **10 working days**, from the date of the sending to the applicant of the notification of the International Protection Officer's recommendation, to complete and lodge a Notice of Appeal. They do not have an option of an oral hearing.

- **Reception Conditions appeals** – Applicants have 10 working days from the date of notice of the decision, to complete and

lodge an appeal which shall be made in writing and shall include copies of the documentation referred to in the appeal.

The designated member of the International Protection Appeals Tribunal shall determine an appeal under this Regulation within a reasonable time and in any case, within 15 working days from the date on which the appeal is received by the Tribunal, and unless it considers it is not in the interests of justice to do so, make its determination in relation to the appeal without holding an oral hearing.

In all instances the applicant must specify the grounds of appeal in the Notice of Appeal Form, attach any supporting documentation, the submissions to be made and the authorities to be relied upon.

The Tribunal has discretion to direct the attendance of witnesses in cases where the applicant requests an oral hearing or the Tribunal is of the opinion that it is in the interest of justice to hold an oral hearing.

3. Procedure for Accepting Appeals

On receipt of the **Notice of Appeal**, the Tribunal considers whether it is within the prescribed time limit for the particular appeal type.

The Tribunal has discretion to allow late appeals where the applicant is able to demonstrate that there were special circumstances as to why the Notice of Appeal was submitted after expiry of the prescribed period, and, in the circumstances concerned, it would be unjust not to extend the prescribed period.

The Notice of Appeal is acknowledged to the applicant and his/her legal representative (if any). The Minister and, where applicable, the UNHCR Dublin

are notified by e-mail on the same day of receipt of the appeal, distinguishing the appeal type.

In respect of international protection appeals, the Minister is also requested, pursuant to s.44(1) of the International Protection Act 2015, to furnish the Tribunal with copies of the documents provided to the applicant under s.40 of the Act, namely a statement of the reasons for the recommendation of the International Protection Officer and a copy of the report under s.39 of the Act. Copies of the Notice of Appeal and all associated documents submitted to the Tribunal are furnished to the Minister, as required under s.41(3) of the Act.

4. Procedure for Assigning Cases to Members for Decision Making

The Chairperson has issued a Guideline to the Registrar for the purpose of his functions of assigning or re-assigning appeals under s.67(2) or (3) of the International Protection Act 2015. The Guideline is issued pursuant to S. 63(3)(a) of the International Protection Act 2015.

In assigning appeals to members of the Tribunal, the overriding objective is to ensure that the business of the Tribunal is managed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice. Subject to the matters set out in paragraph 2.1 and paragraphs 3 to 7 of the Guideline, the Registrar should endeavour, insofar as is practicable, to assign and re-assign appeals fairly and proportionately amongst the Members.

5. Procedure in relation to Oral Hearings

Where an applicant has requested an oral hearing in the context of a substantive international protection appeal, the Tribunal must give not less than 20 working days' notice of the date of oral hearing to both the applicant and his/her legal representative (if any). In practice, the notice given exceeds the statutory requirement and the aim of the Tribunal is to give six weeks'

notice to all Applicants. The Minister, UNHCR and witnesses (if any) are notified at the same time as the Applicant. The hearing is held in private and conducted through an interpreter, where necessary and possible. The hearing is intended to be conducted without undue formality and in such a manner as to ensure that the proceedings are fair, transparent, and efficiently progressed.

6. Procedure in Relation to Withdrawals

At any stage during the international protection process, an applicant may withdraw an appeal by sending a notice of withdrawal to the Tribunal. In the event of a withdrawal, the original Recommendation of the International Protection Officer stands.

Where an applicant fails, without reasonable cause, to attend an oral hearing of a substantive international protection appeal at the date and time fixed for the hearing then, unless the applicant, no later than three working days from that date, furnishes the Tribunal with an explanation for not attending the oral hearing which the Tribunal considers reasonable in the circumstances, his/her appeal shall be deemed to be withdrawn.

Furthermore, where, in the opinion of the Tribunal, an applicant has failed, or is failing in his or her duty under s.27 of the International Protection Act 2015 to cooperate, the appeal may – in line with the procedure set out in s.45(2) to (7) of the Act – be deemed withdrawn.

7. Procedure for Issuing Decisions

An appeal against the recommendation of an International Protection Officer is dealt with under s.41 of the International Protection Act 2015.

Decisions of the Tribunal are notified to the applicant, the legal representative (if any), and to the Minister for Justice and Equality. The decision is also communicated to the United Nations High Commissioner for Refugees.

All applicants receive a copy of the Tribunal's 'Information Leaflets for Applicants on Appeals Procedures' - (one document for each type of appeal) from the IPO with the issue of the International Protection Officer's recommendation on their case. A short explanatory note is also available in several languages on request.

8. Procedures in relation to the Refugee Office Members' Decisions Archive (ROMDA)

ROMDA, the facility for legal representatives to research and submit previous redacted decisions in support of their clients' asylum appeal, is maintained on a continuous basis. The decisions archive is updated on a monthly basis with the most recent decisions of the Tribunal. Decisions are redacted by Tribunal staff to ensure that confidential applicant details have been removed. The decisions are then converted to PDF files and uploaded onto the Tribunal Decisions Archive on the website. Access is now open to ROMDA and users can access the database by requesting a username and password. Please contact info@refappeal.ie for further information.

Appendix 2

Guideline to the Registrar on Assigning and Re-assigning Appeals

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1. Background:

1.1 This guidance is issued pursuant to S. 63(3)(a) of the International Protection Act 2015 to assist the Registrar of the Tribunal in performing their functions of assigning or re-assigning appeals pursuant to S.67(2) or (3).

1.2 The relevant statutory provisions are set out in Appendix 1.

2.2 The following terms have the same meaning as that contained in the International Protection Act 2015: "Business", "Family", "Tribunal", "member", "Registrar" "Unaccompanied child" and "Chairperson".

2. Assignment of Appeals

2.1 In assigning appeals to members of the Tribunal, the overriding objective is to ensure that the business of the Tribunal is managed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice.

2.2 Subject to the matters set out in paragraph 2.1 and paragraphs 3 to 7 of this Guidance Note, the Registrar should endeavour, insofar as is practicable, to assign and re-assign appeals fairly and proportionately amongst the Members.

3. Family Members:

3.1 Where there are several appeals which relate to the same family those appeals may be assigned to the same Member.

3.2 Where a member has previously dealt with an appeal relating to a family member of a current applicant, the appeal of the current applicant may be assigned to the Member who dealt with the previous appeal of the family member.

4. Unaccompanied Minors:

4.1 Were the appeal is made in respect of an unaccompanied minor the Registrar should use their best endeavours to ensure that the appeal is assigned to a Member who has received appropriate training, as specified by the Chairperson, in dealing with such persons.

5. Appeals Involving Particular Sensitivities:

5.1 It is acknowledged that particular appeals may involve certain cultural, gender and/or other sensitivities, e.g. allegations of sexual assault or female genital mutilation.

5.2 Such appeals should be assigned to Members taking such sensitivities into account, insofar as it is practicable to do so.

6. Re-assignment of Appeals

6.1 Where a Member is unable or unwilling to decide an appeal, the Registrar may, in agreement with the Member, re-assign that appeal to another Member.

6.2 Where the Registrar cannot agree with a Member to re-assign an appeal the Registrar shall so inform the Chairperson who shall then decide whether to re-assign the Appeal pursuant to S. 63(4)(a).

7. Other Matters:

7.1 In assigning or re-assigning appeals between the various Members of the Tribunal the following matters should also be taken into account by the Registrar:-

7.1.1 A Member's availability,
7.1.2 A Member's ability to meet such timelines for the efficient dispatch of the business of the Tribunal, as may be determined by the Chairperson,
7.1.3 The grounds of the appeals set out in the notices of appeal,
7.1.4 The country of origin of applicants,
7.1.5 The provision of the International Protection Act 2015, (as amended), pursuant to which the appeals are made,
7.1.6 Whether the Member is disposing of the business of the Tribunal as expeditiously as may be consistent with fairness and natural justice,
7.1.7 Whether the Member has particular knowledge, or training, relevant to the issues raised in the appeal,
7.1.8 Any other matters relevant to the disposal of the business of the Tribunal efficiently and as expeditiously as may be consistent with fairness and natural justice.

Appendix 3
Statutory Provisions
International Protection Act 2015

Functions of chairperson of Tribunal

63. (1) The chairperson shall ensure that the functions of the Tribunal are performed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice.

(2) The chairperson may issue to the members of the Tribunal guidelines on the practical application and operation of the provisions or any particular provisions of this Part and on developments in the law relating to international protection.

(3) (a) The chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient performance of the functions of the Tribunal, issue guidelines to the Registrar for the purpose of the performance of his or her functions of assigning or re-assigning appeals under *section 67 (2)* or *(3)*.

(b) In issuing the guidelines referred to in *paragraph (a)*, the chairperson shall have regard to the following matters:

(i) the grounds of the appeals specified in the notices of appeal;

(ii) the country of origin of applicants;

(iii) any family relationship between applicants;

(iv) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made;

(v) the provisions of this Act under which the appeals are made.

(4) The chairperson may —

(a) re-assign business from one member to a different member if, in the opinion of the chairperson, such re-assignment—

(i) is warranted by the inability or unwillingness to transact that business of the member to whom the business was originally assigned, and

(ii) where the business relates to an appeal, cannot be achieved by agreement between the Registrar and that member,

Role of members of Tribunal

65. (1) A member of the Tribunal shall, on behalf of the Tribunal, transact the business assigned to him or her under this Act.

(2) A member shall, in the performance of his or her functions under this Act—

(a) ensure that the business assigned to him or her is managed efficiently and disposed of as expeditiously as is consistent with fairness and natural justice,

(b) conduct oral hearings in accordance with this Act and any regulations under *section 41 (4)*,

(c) accord priority to an appeal to which *section 63 (5)* applies that is assigned to him or her,

(d) have regard to any guidelines issued by the chairperson under *section 63 (2)*,

(e) prepare the report referred to in *paragraph (b)* or *(c)* of *section 63* *(4)* and provide it to the chairperson when requested to do so,

(f) attend any meetings convened by the chairperson under *subsection (6)* or *(7)* of *section 63* , unless it is impracticable to do so,

(g) provide such assistance to the chairperson in the performance by the chairperson of his or her functions under this Act as the chairperson may reasonably request, and

(h) comply with any direction given by the chairperson relating to training and the continued professional development of members.

Functions of Registrar

67. (1) The Registrar shall, in consultation with the chairperson—

(a) manage and control generally the staff and administration of the Tribunal, and

(b) perform such other functions as may be conferred on him or her by the chairperson.

(2) The Registrar shall assign to each member the appeals to be determined by him or her.

(3) Subject to *section 63* *(4)(a)*, the Registrar may re-assign an appeal where the member to whom it was originally assigned is unable or unwilling to determine that appeal.

(4) In assigning or re-assigning an appeal to a member the Registrar shall have regard to—

(a) the need to ensure the efficient management of the work of, and the expeditious performance of its

functions by, the Tribunal, consistent with fairness and natural justice, and

(b) any guidelines issued by the chairperson under *section 63 (3)(a)*.

Appendix 4

Comprehensive summary of Judgments of the Superior Courts from 2018 relating to decisions of the International Protection Appeals Tribunal

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Superior Court judgments relating to decisions of the Tribunal (2018)

Below is a summary of the judgments of the Superior Courts in 2018 regarding IPAT decisions. The Tribunal incorporates the guidance of the Superior Courts into its training for Members and Members' resources.

The Integrity of the Tribunal

The High Court described in positive terms the Tribunal's methodology in ***AJA (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 671, Humphreys J., 14 November 2018. The applicants in that case alleged that a "quest to disbelieve" negatively affected a refugee claimant's evidence. The Court criticised this as polemical. In the Court's judgment:

> "It is not a hugely helpful notion to introduce into the discussion because it runs the risk of perpetuating a very out-of-date notion that the tribunal's methodology is questionable or is in need of regular correction by the court. There is no basis to suggest any generalised problems in the IPAT as it currently functions, leaving aside of course the possibility that individual decisions may not withstand judicial review. To suggest that the tribunal or its members are involved in a "quest to disbelieve" is not much more than a smear and unfairly imputes a lack of integrity to their processes and a degree of bad faith that cannot honourably be made the subject of a casual allegation."

In the same case, the Court emphasised the importance of the Tribunal's quasi-judicial role:

> "One must not lose sight of the fact that the tribunal member has seen and heard the witness and it is not necessarily appropriate for the court to sift through the papers and quash a decision made by an independent quasi-judicial statutory office-holder who did see the witness simply because the court takes a different view of the evidence or of what it thinks is credible or incredible. Many tales look credible on paper – but less so when one sees and hears the teller, particularly when tested by cross-examination."

Jurisdiction of the Tribunal in international Protection Appeals

In *AL (Algeria) v International Protection Appeals Tribunal* [2018] IEHC 553, High Court, Humphreys J., 24 September 2018 the Court clarified the jurisdiction of the Tribunal in respect of substantive international protection appeals: 'The Tribunal is not engaged in judicial review and it is neither necessary nor appropriate for the tribunal to give its views on how the Commissioner handled any given application. The tribunal is simply coming to its own view on the evidence, and that is what this tribunal member did.'

In ***JH (Albania) v International Protection Appeals Tribunal*** [2018] IEHC 752, High Court, Humphreys J., 14 December 2018 the Court commented that *MARA v Minister for Justice and Equality* [2015] 1 IR 561 allows for the possibility that certain findings would not be the subject of an appeal, but that means adverse findings. It is not open to an applicant to ring-fence favourable findings from being reviewed on appeal if other, adverse, findings are appealed. A consideration by the tribunal of the latter may necessitate reconsideration of the former, particularly if the applicant's credibility comes under challenge; which is what happened here.'

Burden of Proof – Duty to Substantiate

In ***JH (Albania) v International Protection Appeals Tribunal*** [2018] IEHC 752, High Court, Humphreys J., 14 December 2018, considering in particular the issue of an 'aged out' unaccompanied minors duty to substantiate his or her claim, the Court said that '[a]n applicant's status as an unaccompanied minor at the time of the application does not in itself prevent him from seeking appropriate documentary evidence as an adult. It does not convert his application from one lacking in appropriate substantiation into one that does not require such substantiation.'

Shared Duty to Assess the Application

In dismissing the judicial review before it, in which the applicant claimed that the tribunal had failed in its shared duty to assess the appeal, the Court ***AAL (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 792, High Court, Humphreys J., 21 December 2018, held that the appellant's characterisation of the tribunal as simply 'an inquisitor' was not accurate. Rather:

> 'There is a spectrum of types of inquisitorial process. International protection decision-making is not to be structured purely on the basis of *ad hoc* judgments of the Superior Courts of Ireland. It is a *sui generis* procedure, which rests on the bedrock of EU asylum and subsidiary protection law set out in European directives and supplemented by recognised EU guidelines. It is not up for reinvention in every new case. The mere use of the word "*inquisitorial*" as shorthand in some of the caselaw does not either sweep away or affect in any way the well-established meaning of the shared duty.'

The Court summarised the shared duty as follows:

(i) Under art. 4(1) of the directive 2004/83/EC it is generally for the applicant to submit all elements needed to substantiate the application: see *M.M.*

(ii) It is the duty of a Member State to cooperate with the applicant at the stage of determining the relevant elements of the application: see *M.M.* This involves cooperation with the applicant as opposed to a fully inquisitorial procedure. It also involves identifying the elements of the application actually made, not an application that the applicant could have made but did not.

(iii) The elements of the application fall broadly into two categories: the country situation and factors personal to the applicant.

(iv) Insofar as information regarding the country situation is concerned, Member States have an investigative burden with regard to the information listed in art. 4(3) of the qualification directive: see EASO judicial analysis. This is closer to the traditional understanding of the inquisitorial function.

(v) A Member State may also be better placed than an applicant to gain access to certain types of documents: see *M.M.* This is more likely to arise in relation to country documentation. State protection bodies are not in a position to obtain documents personal to an applicant because attempting to do so identifies the applicant to third parties as a protection seeker, contrary to the International Protection Act 2015, s. 26.

(vi) Insofar as factors personal to the applicant are concerned, the primary responsibility to describe the facts and events which fall into his or her personal sphere is that of the applicant: see authority cited in *B.B.A. (India).*

(vii) If the applicant fails to assemble the elements of his or her claim that are personal to him or her, the State therefore has only a limited role in supplying the deficit, as it is unlikely to be in a "*better position*" to do so than the applicant (see *M.M.*).

Standard of Proof in Respect of the Assessment of Facts

The Court, in its judgment in ***MEO (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 782, High Court, Humphreys J., 7 December 2018 upheld as correct the judgment of the Court in *ON v Refugee Appeals* Tribunal [2017] IEHC 13, in respect of the standard of proof in the assessment of facts in international protection applications.

The Court rejected arguments based on EU law, ECHR law, and the Refugee Convention that that standard was incorrect. In respect of the latter arguments, the Court commented that the Tribunal (in its adoption of the balance of probabilities test, in conjunction with the benefit of the doubt) could not be faulted as its methodology has been adopted in close consultation with the UNHCR.

The Court also commented that 'insofar as there is any suggestion that the IPAT is out of line with international standards, it is clear from the affidavit of Ms. Hilkka Becker,

chairperson of the tribunal, that the approach it adopts as to past facts, balance of probabilities plus benefit of the doubt, is in line with UNHCR guidance.

The Court noted, however, that 'as far as past or present facts are concerned, it is clear from the tribunal's methodology that not all facts have to be accepted on the balance of probabilities test, and facts which have a "reasonable chance of being true" [...] can be accepted if the benefit of the doubt is extended to them.'

Benefit of the Doubt

The Court in ***JH (Albania) v International Protection Appeals Tribunal*** [2018] IEHC 752, High Court, Humphreys J., 14 December 2018 held that s.28(7) of the International Protection Act 2015 does not apply unless the applicant's general credibility is established.'

Credibility and Assessment of Facts

Credibility Assessment Generally

The High Court judgment in ***SA (Ghana and South Africa) v International Protection Appeals Tribunal*** [2018] IEHC 97, Humphreys J., 1 February 2018 provided the following guidance in respect of credibility assessment:

- If an applicant gives incredible testimony on any matter it is open to a decision-maker to draw inferences of lack of credibility generally.
- Where a decision is cumulative the decision-maker is not required to specify the weight to be attached to each and every individual element of the decision.
- That UNHCR or IPAT guidelines are not expressly referred to in a decision does not mean that the Tribunal ignored them.
- Noting the statement in Beyond Proof: Credibility Assessment in EU Asylum Systems, UNHCR, May 2013 that decision-makers should "engage in self-assessment so that they recognise the extent to which their own emotional and physical state, values, views, assumptions, prejudices and life experiences influence their decision making", Humphreys J. stated that while the passages quoted are "no doubt desirable aspirational sentiments", this is not to be taken to require decision-makers to make a declaration that they have examined their prejudices.
- It is a matter for a decision-maker to decide whether an omission of an important matter goes to credibility, especially where the decision-maker sees and hears the applicant. It is not possible to lay down a rule that omission of matters in application forms cannot be considered.
- There is no obligation to give an overly detailed account of what individual items are being rejected if an applicant's credibility is being rejected generally.
- The Tribunal is required to consider documents and country reports capable of corroborating or otherwise supporting an applicant's claim.
- Where a decision maker has stated that all material was considered, the onus is on the applicant to displace that assumption.

- A decision-maker is not obliged to list every argument which he or she is rejecting or every fact the significance of which he is discounting.

Credibility Indicators

The High Court provided useful guidance on "credibility indicators". It confirmed that where there is contradiction between accounts offered by an applicant, it is a matter for the Tribunal to assess (***SA (Ghana and South Africa) v International Protection Appeals Tribunal*** [2018] IEHC 97, Humphreys J., 1 February 2018). The High Court accepted the use of plausibility as a credibility indicator in ***CM (Zimbabwe) v The International Protection Appeals Tribunal*** [2018] IEHC 35, Humphreys J., 23 January 2018.

The applicant in ***BDC (Nigeria) v The International Protection Appeals Tribunal*** [2018] IEHC 460, unreported, High Court, Humphreys J., 20 July 2018 argued that the Tribunal's decision was unsound in finding that an aspect of the applicant's claim was uncertain, without having regard to the totality of the evidence, and that an unambiguous finding was required. In the court's judgment, the applicant's claim was misconceived in that the particular finding of uncertainty focused on by the applicant had to be seen as part of the wider findings of the Tribunal which included a finding that all material facts asserted by the applicant was rejected (***XE v International Protection Appeals Tribunal*** [2018] IEHC 402, Keane J., 4 July 2018 considered).

On the facts of ***KM (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 510, High Court, Humphreys J., 10 July 2018, the Tribunal held that nothing emerged that satisfactorily resolved the inconsistencies in the applicant's explanations. In the Court's judgment, while it might have been sufficient for the tribunal member to have stated that he had formed the view from seeing and hearing the applicant that his memory difficulties were selective and his evidence evasive, the phrase used was too opaque to provide adequate guidance on the tribunal's reasoning.

The Court in ***AA (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 769, High Court, Humphreys J., 18 December 2018 stated that '[m]erely because an applicant is consistent about something does not make that something the tribunal has to accept. Otherwise one would be handing out international protection merely for keeping one's story straight, whether fabricated or otherwise.'

Credibility and "Peripheral" Matters

In ***POS (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 670, High Court, Humphreys J., 9 November 2018 the applicant argued, *inter alia*, that the Tribunal's credibility assessment was unlawful because in considering evidence of travel that called the applicant's credibility into question it did not properly deal with the applicant's core claim. In rejecting this argument, the Court commented that:

> "Occasional suggestions that lies about travel should normally be regarded as peripheral are without any jurisprudential or principled foundation

whatsoever. A decision-maker can and must consider all relevant matters, and untruthfulness about something that is capable of verification or assessment is unquestionably relevant to assessment of credibility about something less easily verified. That could include matters such as mendacity, undue hesitation or opacity about matters such as travel arrangements, or undue hesitation or disingenuousness about swearing an oath that one's account is true, just to take two examples. Unless, that is, the asylum and protection world is to be some sort of special reservation outside the laws of rationality; a primary-coloured applicants' playground walled-off from the normal rules of logic, common sense and legal reasoning."

In ***MSR (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 692, High Court, Humphreys J., 26 November 2018, the applicants argued, inter alia, that the Tribunal's credibility assessment was unlawful because it did not impact on the applicants' core claims, In rejecting this argument, the Court stated at para.16 that:

> "[T]here is no obligation to address credibility exclusively by reference to the core claim. Where a person tells a cock-and-bull story on matters capable of rational assessment, that in itself is relevant to the assessment of a "*core claim*" that is not directly verifiable. Any other approach would be to create a one-way ratchet system whereby demonstrated lies are to be disregarded and an unverifiable subjective account must be accepted. The tribunal acted perfectly reasonably in rejecting the credibility of the applicants' accounts, having regard to all of the circumstances, including matters that the applicants would categorise as not being part of the "*core claim*". There is no legal obligation whatsoever to exclusively or primarily focus on the "*core claim*" or to evaluate it separately from a holistic view of all of the evidence – indeed it would be unlawful to so compartmentalise; and stepping outside the improperly closed box of asylum logic for a moment, we do not do artificially compartmentalise an account in real life where assessment of credibility in any other context falls to be considered."

The Court in ***AA (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 769, High Court, Humphreys J., 18 December 2018 stated that the tribunal was entitled to consider an applicant's reason for not applying for international protection in the UK, where he had resided before coming to Ireland, as a matter undermining his claim.

Credibility and Country Information

In ***RAK (Eswatini) v International Protection Appeals Tribunal*** [2018] IEHC 681, High Court, Humphreys J., 27 November 2018, the applicant claimed that she was at risk of persecution in Eswatini (previously, Swaziland) because of her involvement in PUDEMO. The Tribunal rejected her claim essentially on credibility grounds, finding, inter alia, that it was not believable that PUDEMO gave the applicant PUDEMO documentation and T-shirts in June 2014 when, after documented arrests of people with such documentation and T-shirts in April/May 2014, PUDEMO therefore would

have been alive to the dangers of possessing such materials. The Tribunal upheld the applicant's complain in this regard as the COI showed also that there were arrests previous to April/May 2014, which the Tribunal did not factor in, the reasoning of the decision was wanting.

In ***BC (Malawi) v International Protection Appeals Tribunal*** [2018] IEHC 705, High Court, Humphreys J., 10 December 2012 the applicant claimed that he had a twin sister who was murdered in Malawi because she had albinism. The Tribunal's decision accepted that the applicant had a sister with Albinism, but said that "no COI was found to support the proposition that the relatives of those suffering from albinism are at risk." However, there were a number of pieces of country information before the Tribunal that did lead to such a conclusion. The Court found that it was not readily obvious what the Tribunal had in mind to reconcile the finding with the country information, and, accordingly, quashed the decision.

The Tribunal decision considered in ***KM (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 510, High Court, Humphreys J., 10 July 2018 stated that 'the notice of appeal, submissions and all of the documents provided have been fully considered'. The Court commented that '[t]hat wording possibly could be improved, and it might be best if the tribunal expressly states that it has considered all up-to-date country material and has assessed credibility and the applicant's claim in the light of that. However, that it is implicit in the language used in the decision, but I might be permitted to say it might be better going forward if that were to be made explicit in tribunal findings.'

In ***BBA (India) v International Protection Appeals*** Tribunal [2018] IEHC 741, High Court, Humphreys J., 14 December 2018, the Court distinguished between 'mainstream' and other country information, indicating that the Tribunal has a general obligation to have regard to the former, and not the latter:

> 'It is not remotely workable for the tribunal and each of its members to maintain a round-the clock watch on the internet for newspaper articles about each and every country, or for such occasional statements, reports or press releases as might be issued from time to time by NGOs such as Amnesty International. The Human Rights Watch Annual Report, by contrast, is properly mainstream country information of the type to which one could argue that the tribunal can be expected to have general regard.'

Credibility and Medico-Legal Reports

In ***JUO (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 710, High Court, Humphreys J., 4 December 2018, in seeking to make out her claim of past physical and sexual abuse, the applicant had furnished the Tribunal with a medical report from SPIRASI that said that injuries exhibited by the applicant were highly consistent with her account. The Tribunal, in finding against the applicant on credibility grounds, had said that "in arriving at the various credibility factors in this decision, the Tribunal has at all times taken account of the medico-legal, medical and counselling reports submitted on behalf of the applicant". In the judgment of the

Court, this was a vital statement and had to be accepted unless the applicant discharges the onus of displacing it as untrue. In the Court's opinion:

> "Whether a report says that injuries or harm are consistent, or even as here highly consistent, with the account given, that does not mean that the harm was caused by the matters complained of in the account. It is a piece of evidence to be put in the balance with all other elements. It is not appropriate, or indeed lawful, for the tribunal to compartmentalise an assessment of the evidence by artificially divorcing the evidential ramifications of a medical report from all other evidence."

Credibility and the Best Interests of the Child

In ***OA (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 661, High Court, Humphreys J., 20 November 2018, the High Court opined that the best interest principle is of limited or possibly no relevance to a purely factual finding such as that of past persecution, or the factual as opposed to the methodological element of the assessment of forward-looking risk.

Authenticating Documents

In ***RS (Ukraine) v International Protection Appeals Tribunal*** [2018] IEHC 743, High Court, Humphreys J., 3 December 2018, the applicants sought to appeal the Court's decision in *RS (Ukraine) v IPAT (No 1)* [2018] IEHC 512 on the basis, inter alia, of the following proposed question of exceptional public importance:

> "Is an international protection decision-maker obliged to determine the probative value to be afforded to a medico-legal report in relation to the material fact for which it is proffered, or can the decision-maker dispose of it as "insufficient" in the context of a general credibility assessment?"

In declining the application, the Court provided guidance on the interpretation of the judgment of the Court of Appeal in *RA v Refugee Appeals Tribunal* [2017] IECA 297 (Unreported, Court of Appeal 15 November, 2017). In that judgment, the Court of Appeal (Hogan J.) (at para. 62) said that:

> "given the alleged provenance of the documents and their obvious relevance to his claim, if true, it was incumbent in these circumstances on the Tribunal member to assess such documentary evidence - if necessary, by making findings as their authenticity and probative value - so that that very credibility could be assessed by reference to all the relevant available evidence",

The High Court respectfully suggested that this comment was *obiter*, and in tension with the *ratio* of RS, which the High Court considered to be that, per para.70 of RS, that "[t]he Tribunal member's obligation was to make an overall assessment of credibility based upon an evaluation of all potentially relevant information and not just some of that material".

The High Court, at para.9, said that it would be incorrect if the phrase "if necessary, by making findings as to their authenticity and probative value" was interpreted as meaning that (save in exceptional circumstances where the document's status was unquestionable) credibility could be determined in the light of, and thus by definition after, such "findings". In the judgment of the Court, if such a "distorted process" were to apply, the credibility assessment would not be one carried out by reference to all of the evidence, but "by reference to a blinkered and truncated process involving improperly premature and artificially compartmentalised findings in relation to documents, divorced from a holistic assessment of the evidence overall".

In the judgment of the Court, that one could make findings on documents in advance of an assessment of the applicant's account overall could only apply in "exceptional circumstances" where the authenticity of the document can be indubitably established independently of the applicant's credibility, and this, in the Court's opinion, is what Hogan J. can only have meant by "*if necessary*" (para.10).

Duty to Consider Documents

In ***JM (Malawai) v International Protection Appeals Tribunal*** [2018] IEHC 663, High Court, Humphreys J., 20 November 2018, the Tribunal Member refused to accept late submission (after the oral hearing) of a previous Tribunal decision and a medical report. The Tribunal's rationale not to accept the late submission was that "the said other decision is not conceivably relevant or of probative value."

However, in the Court's judgment, a previous decision of the Tribunal is something on which an applicant is entitled to rely. The Court commented on the usefulness of previous Tribunal decisions in an appeal before the Tribunal:

> "[W]here a tribunal member has heard a case and is considering deciding it a particular way, he or she may consider it worthwhile to check other similar decisions before making his or her mind up finally. That is not a question of natural justice as such, but rather of the tribunal informing itself generally of the broad approach being adopted by other colleagues, before settling on a specific approach in the given case. This does not require recalling the parties to inform them that he or she has looked at a particular case or cases unless perhaps the tribunal member is planning to cite such cases in the decision."

Moreover, on the facts of the case, the previous decision on which the applicant had sought to rely was not available at the time of his oral hearing. In the Court's judgment, an applicant should be entitled to make a point based on a previous decision and have it considered, and to hold that the Tribunal was entitled to decline to consider something that was not available previously would be an unfair Catch-22.

Having regard to the judgment of the Court of Appeal in RA v Refugee Appeals Tribunal [2017] IECA 297, the Court, in its judgment in ***KM (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 510, High Court, Humphreys J., 10 July 2018,

commented that it saw 'a certain theoretical difficulty with divorcing an assessment of the reliability of documents from an assessment of the reliability of the person producing them' as such issues inform one another. The Court recommended:

> "The safest course is probably for the tribunal to endeavour to identify how reliable the document is on a prima facie basis or alternatively, which amounts to the same thing, to ask how much weight should prima facie be placed on the document before going on to consider an applicant's evidence more generally, following which the documents can be revisited if necessary. A decision-maker can lawfully find a document to be prima facie reliable or not to be reliable, or by way of an intermediate position to be not particularly reliable, where for example it cannot be verified and could easily be forged. A decision-maker can also lawfully avoid having to decide that issue by stating that even if the document is reliable it does not significantly advance the applicant's claim. Any such decision is perfectly permissible so long as it is rational and lawful.'

In the instant case, the tribunal simply said it was not in a position to verify the authenticity of the documents but they were not in themselves capable of establishing the truth of the claim'. This, in the Court's judgment, was not a finding that stood up to scrutiny on the facts of the case. While it might have been open to the tribunal to reject the documents, or some of them, it was irrational in finding that they did not materially assist the applicant.

Social media activism

In ***EQ v The International Protection Appeals Tribunal*** [2018] IEHC 375, unreported, High Court, Keane J., 27 June 2018 the High Court rejected the applicant's claim that the IPAT failed to properly consider the applicant's claim to have a well-founded fear of persecution in Ethiopia as a "social media activist".

Decisions Involving the Same Witnesses

In ***C v International Protection Appeals Tribunal*** [2018] IEHC 755, High Court (Barrett J.), 21 December 2018, the Court heard how the Tribunal, on one set of evidence in one application, concluded that Mr O, an applicant for subsidiary protection, established that he was gay. In another set of evidence in another application, the Tribunal concluded that Mr C, also an applicant for subsidiary protection, did not establish that he was gay. Mr O and Mr C claimed to be in a gay relationship. Mr C sought to quash his decision. The Tribunal rejected this application, observing that the applications were different applications, yielding different decisions on different evidence. The Tribunal validly reached its conclusion concerning Mr C by reference to all the evidence.

Future Risk

In ***DU (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 630, High Court, Humphreys J., 6 November 2018, the applicant sought international protection on the basis that he would be targeted in his country of origin because he is bisexual. The Tribunal rejected his appeal on the grounds that the credibility of his claim was rejected. The applicant sought judicial review on the basis, inter alia, that the Tribunal failed to consider future risk due to his sexual orientation. In rejecting the application for judicial review, the Court stated that there was no obligation to consider a future risk based on the applicant's orientation if the claim regarding an orientation was not accepted by the Tribunal. The Court quoted, with approval, the following comments in *MAMA v RAT* [2011] IEHC 147 [2011] 2 IR 729 (High Court, Cooke J.):

> "In practical terms, however, the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true."

The Court commented that the phrase "possibly being true" in this passage means "possibility having regard to what is accepted or rejected by the tribunal." In the judgment of the Court:

> "[w]here an applicant alleges a fact that could give rise to future risk and that fact is accepted, then there may be an obligation to consider any future risk based on that fact. Where such a fact is not accepted, the need to consider a future risk based on that alleged fact simply does not arise."

The Court commented in its judgment in ***MEO (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 782, High Court, Humphreys J., 7 December 2018 that 'the tribunal is only obliged to consider the forward looking risk in the light of the facts as found, not by reference to the facts as rejected.'

The Court stated in ***KM (Pakistan) v International Protection Appeals Tribunal*** [2018] IEHC 510, High Court, Humphreys J., 10 July 2018 that the test is for the tribunal to form is own view of whether any forward looking risk remained by reason of factors independent of an applicant's credibility, if any, notwithstanding the rejection of such credibility.

Persecution

The Court in ***OA (Nigeria) v International Protection Appeals Tribunal (No. 2)*** [2018] IEHC 753, High Court, Humphreys J., 18 December 2018 stated that '[b]ecoming destitute because of the cold, impersonal working of the free-market economic system simply does not constitute persecution for the purposes of international or Irish law.'

Convention Nexus

The Court in ***OA (Nigeria) v International Protection Appeals Tribunal (No. 2)*** [2018] IEHC 753, High Court, Humphreys J., 18 December 2018 commented that the Tribunal only need consider the nexii claimed. The Court in its judgment in this matter held that the 'tribunal cannot plausibly be liable to have its decisions quashed on the basis of a failure to consider an applicant as a member of a social group that was never identified to it.

Failed asylum seekers

The Court in ***RC (Algeria) v International Protection Appeals Tribunal*** [2018] IEHC 694, High Court, Humphreys J., 3 December 2018 said that '[i]t is perfectly legitimate for the Tribunal to have made itself aware that Irish authorities do not disclose the status of deportees as failed asylum seekers. There is no obligation on the Tribunal to spell out reasons for it being aware of this well-known practice, a principal reasons being that it is contrary to Irish law to do so: see s. 26 of the International Protection Act 2015.'

Internal Protection Alternative

On the facts of ***AA (Pakistan) v The International Protection Appeals Tribunal*** [2018] IEHC 497, unreported, High Court, Humphreys J., 31 July 2018, the Tribunal refused the applicant's appeal in respect of both asylum and subsidiary protection. In respect of subsidiary protection, the Tribunal held that as the applicant, a citizen of Pakistan, could move to Karachi, an internal relocation option existed.

The applicant complained that as internal relocation was not an issue before the first instance decision maker, and as submissions on it were not invited by the Tribunal, and the applicant not made aware that it would be an issue, the Tribunal breached fair procedures. The court considered this complaint misconceived. In the court's judgment, at para.7:

> "The applicant put the subsidiary protection refusal in issue by appealing against it and therefore inherently opened up the question of internal protection or internal flight. An applicant does not need to be specifically notified of such a matter as it is an issue that arises automatically from the nature of appealing a subsidiary protection refusal. The applicant was put on notice in any event by questions posed at the hearing."

The applicant complained that the Tribunal failed to have regard to local and personal circumstances, and up-to-date country information. The court rejected this argument, stating, at para.8:

> "A detailed investigation of conditions in the proposed place of internal relocation can be explored in oral evidence. A detailed dossier of country

information regarding that proposed place does not have to be narratively discussed provided there is before the decision-maker some appropriate country material, provided there is due notice of the point being made (including notice that is given by putting the point to the applicant at the hearing) and provided that the correct test is applied. The tribunal decision should not be condemned for a failure to engage in detailed narrative discussion about conditions in the proposed locus of internal relocation."

The court did however quash the tribunal's decision for its failure to pose the correct question in respect of the reasonableness of the proposed internal relocation alternative. The court observed that under s.32(1)(b) of the International Protection Act 2015 the test is whether the applicant "can reasonably be expected to settle there". As the tribunal did not ask this question, its decision had to be quashed.

Subsidiary Protection

In ***EHGA (Venezuela) v The International Protection Appeals Tribunal*** [2018] IEHC 396, High Court (Humphreys J.), 5 June 2018 the court rejected the argument that the Tribunal erred in finding that the *UNHCR Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention*, related to asylum seekers, not subsidiary protection. The court noted that the appellant conceded that the UNHCR did not have jurisdiction to deal with subsidiary protection.

Permission to Remain

The Tribunal Member in the impugned decision at issue in ***JM (Malawi) v International Protection Appeals Tribunal*** [2018] IEHC 663, commented in the decision that "it is not my role but it does seem to me that [the appellant] may be a good candidate for leave to remain or some other similar right. The High Court listed a number of "fundamental problems" with such a comment, including (a) such considerations are not the function of the Tribunal; (b) assessment of leave to remain would require consideration of additional materials and issues of which the Tribunal has no knowledge, information, competence or expertise; (c) making such comments dilutes the Tribunal's statutory role; and (d) trivialises the process of leave to remain.

Subsequent Applications

The applicant in ***PNS (Cameroon) v The Minister for Justice and Equality*** [2017] IEHC 504, unreported, High Court, Humphreys J., 16 July 2018 asserted a right to remain in the State pending an appeal against a refusal to allow him to make a subsequent application for international protection. The applicant received from the IPAT a negative decision under s.22 of the 2015 Act. Article 7(1) of the Procedures Directive provides that a right to remain pending a first instance decision lasts "until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III".

The applicant argued that the IPAT appeal decision was the first instance decision for the purposes of art.7(1) of the Procedures Directive, and that the High Court on judicial review constituted the "appeal procedure" for the purposes of Chapter V of that Directive in respect of applications to make a subsequent application for international protection. The court disagreed. In the court's judgment, notwithstanding that the IPO's decision was referred to in s.22 of the 2015 Act as a "recommendation", it should be viewed as a "decision" for the purposes of art.39(1)(c), and therefore of art.7(1), of the Directive, and the IPAT appeal was the effective remedy therefrom, with the Minister's later "refusal" a subsequent formalisation of that process. In the court's judgment, such an interpretation was more compatible with the Directive than the applicant's interpretation, which would render the IPAT appeal unnecessary under EU law.

The applicant in ***KJM v Minister for Justice and Equality*** [2018] IESCDET 159, Supreme Court (O'Donnell, MacMenamin, Charlton JJ.), a case similar to *PNS (Cameroon)* sought a "leapfrog" appeal to the Supreme Court to ask:

(a) whether the applicant has a right to remain in Ireland pending the final formal decision of the Minister on the application pursuant to s.22 of the International Protection Act 2015; and
(b) whether, on the assumption that the applicant had such a right to remain pursuant to the provisions of the Directive, the Court could nevertheless refuse an application for judicial review brought with a view to enforcing such, on grounds of general discretion.

The Supreme Court was satisfied that the appeal involved questions of general public importance, and that there were exceptional grounds permitting a leapfrog appeal to it from the decision of the High Court.

Dublin III Cases

Right to choose country of asylum?

A challenge to the lawfulness of the Dublin III Regulation based on the proposition that it was invalid in the light of Art.31(2) of the Refugee Convention (which precludes unnecessary restrictions on refugees' freedom of movement) was rejected at the leave stage, with the court noting that applicant had chosen to seek asylum in the country to which he was to be transferred, the UK, hence the transfer order (*MAH v International Protection Appeals Tribunal* [2017] IEHC 462, O'Regan, 17 July 2017). The applicant appealed that decision to the Court of Appeal. The Court of Appeal rejected the appeal, concluding that while Article 31 of the Refugee Convention conferred an element of choice on those seeking refugee status as to the country in which they will make their application, that choice is largely confined "to those applicants who are *en route* to a particular destination and whose choice of country of refuge is not nullified simply because they did not make an application in a Contracting State where they were simply stopping over or transiting." Moreover, in the court's view, in the EU, Article 31 of the Refugee Convention is "supplemented and developed" by the Dublin

III Regulation, and it cannot be said that a system expressly authorised by the Treaties, as Dublin III is by Article 72(2)(e) TFEU, could be unlawful on the ground that it is contrary to an international treaty which is not in itself part of EU law. See ***MIF v The International Protection Appeals Tribunal*** [2018] IECA 36, Court of Appeal, Hogan J.; Irvine and Whelan JJ. concurring, 19 February 2018

Article 17(1) "Sovereign" Discretion

The High Court, in ***MA v International Protection Tribunal*** [2017] IEHC 677, Humphreys J., 8 November 2017, made a series of preliminary references to the Court of Justice of the EU, in essence to ascertain whether Ireland should consider the implications of Brexit before transferring someone to the UK and, if it should, whether the discretion to consider that in the context of art.17(1) is with the decision-making bodies in the State by virtue of the adoption in the Irish regulations of the language in the Regulation, in particular in respect of the meaning of "determining Member State".

In ***HN v The International Protection Appeals Tribunal*** [2018] IECA 102, Court of Appeal (Hogan J.; Peart and Irvine JJ. concurring), 18 April 2018, the Court of Appeal was of the view that given the judgment of the CJEU in Case C-578/16 PPU, *CK*, EU:C:2017:127, it seemed to follow, in the light of the Tribunal's findings in the instant case, that the Tribunal was under an obligation to consider exercising the art.17(1) discretion and, where necessary examine whether the applicant's mental health was sufficiently robust to withstand transfer to the UK, and to take account of all significant and permanent consequences flowing from the transfer. Thus, in the court's view, it was arguable for the purposes of leave that the Tribunal was obliged to consider exercising the art.17(1) jurisdiction.

Duty to give reasons

In ***MEO (Nigeria) v International Protection Appeals Tribunal*** [2018] IEHC 782, High Court, Humphreys J., 7 December 2018 the Court stated that 'the duty to give reasons is only a duty to give the main reasons, so that a decision-maker is perfectly entitled identify only the main reasons for that decision. As it is put in Fordham, Judicial Review Handbook, 6th ed. (Oxford, 2012) p. 667, reasons must relate to the "principle important controversial issues" the main issues in dispute'.

The Tribunal in the instant case said that the reasons given by it for rejecting the appeal were a 'non-exhaustive list of reasons'. The Court commented that while in a perfect world the decision maker would have said 'the main reasons are as follows', saying the list was non-exhaustive had be read to mean the same thing.

Importance of Clear Findings

The applicant in ***JA (Bangladesh) v Refugee Appeals Tribunal (No 2)*** [2018] IEHC 629, High Court, Humphreys J., 6 November 2018 sought subsidiary protection on the basis that he faced a risk of serious harm in Bangladesh in the form of severely harsh prison conditions after being wrongly convicted of a crime in his country of origin in absentia.

The Minister's decision on subsidiary protection (the case was subject to the 2015 Act's transitional provisions), in the opinion of the Court, used contradictory language in that it rejected the applicant's credibility (which the Court considered to imply rejection of the account of likely imprisonment), while also referring to the applicant "fleeing prosecution", implying some degree of acceptance of the possibility of imprisonment. Quashing the decision, the Court commented that the case emphasised the need for findings of a clear and unambiguous nature.

Alternative Findings

On the facts of ***AL (Algeria) v International Protection Appeals Tribunal*** [2018] IEHC 553, High Court, Humphreys J., 24 September 2018, in making an alternative finding, after rejecting the appellant's claim for subsidiary protection on one basis (i.e., in respect of the geographical scope of an armed conflict), the Tribunal Member introduce the alternative proposition of whether there were factors peculiar to the appellant's circumstances as an ground for subsidiary protection with the word 'furthermore', rather than with words equivalent to 'even if I am wrong'. Thus, in the Court's judgment, it was not possible to say that the considerations in respect of the first matter were entirely excluded from the Tribunal's thinking in terms of the latter matter. The Court commented that it might have been otherwise if the Tribunal Member had said that there were no factors personal to an applicant even if the armed conflict was to be taken as in existence throughout Algeria or in the applicant's home area.

In its judgment in ***RS (Ukraine) v International Protection Appeals Tribunal*** [2018] IEHC 512, High Court, Humphreys J., 17 September 2018 the Court complimented the "well-organised" decision of the Tribunal, which in particular illustrated the 'commendable option of considering matters on an "even if I am wrong" basis. In the Court's opinion, '[s]uch an approach enables a judicial review court to deal with a situation where two alternative grounds are given for a particular finding such that even if one of those grounds cannot be sustained the ultimate conclusion may survive if the alternative independent ground is held to be valid.'

Stare Decisis – Status of Tribunal Decisions

The Court clarified in ***RC (Algeria) v International Protection Appeals Tribunal*** [2018] IEHC 694, High Court, Humphreys J., 3 December 2018 that stare decisis does not apply to the tribunal. Rather:

> 'To say that some super-special weight has to be attached to previous decisions would create an irresistible levelling-up whereby any decision, however outlying, would have to result in a general grant of protection to persons that could in any way be viewed as similarly situated. That would amount to a one-way ratchet system that would rapidly render the asylum process unsustainable. It is not necessary for the tribunal to distinguish any previous different decision as each turns on its own facts under out system; apart, of course, from cases where the applicants are all part of the same

transaction, such as being family members. For any given country there are bound to be some favourable decisions and some unfavourable. It is not a legitimate process for an applicant to try to gather together any favourable ones and cry foul if they are not "followed". That would be a massive distortion of the process and would compromise the statutory independence of the tribunal member as well as obscuring the inherent differences on the facts between different cases.'


Evidence and Credibility Assessment
Defining the Tasks of Courts/Tribunals


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