

Case Resolution

November 2008

1. Background

In July 2006 the Home Secretary announced that all outstanding asylum cases outside the New Asylum Model¹ will be resolved by July 2011². These cases, formerly known as legacy cases and now called Case Resolution cases, are being dealt with by the Case Resolution Directorate (CRD) at the UK Border Agency (UKBA). It was originally estimated that there could be as many as 450,000 such cases at all stages of the asylum determination process, plus outstanding applications for variations and extensions of leave.³

The Home Secretary outlined the priorities that would determine how UKBA would deal with these cases:

“We will prioritise those who may pose a risk to the public, and then focus on those who can more easily be removed, those receiving support, and those who may be granted leave. All cases will be dealt with on their individual merits”⁴.

2. What is a Case Resolution case?

An application for asylum, or for an extension or variation of leave that had **not** been allocated a Case Owner under the New Asylum Model⁵ prior to 7th March 2007, is a Case Resolution case. Since that date all new claims for asylum and applications for an extension or variation of leave have come under the NAM.

¹ See Refugee Council briefing <http://www.refugeecouncil.org.uk/policy/briefings/2007/nam.htm>

² See “ Fair, effective, transparent and trusted Rebuilding confidence in our immigration system Home Office July 2006

³ This is where limited leave such as Humanitarian Protection or Discretionary Leave has been granted when an application for asylum has been refused.

⁴ *Op cit* Para 2.10

⁵ Note that this description has now been dropped – it is now called simply the asylum determination procedure. This briefing will continue to refer to NAM for clarity in order to distinguish from CRD.

An exception applies to applications for an extension or variation of leave made by people given four years exceptional leave to remain (ELR) before April 2003. These cases should be dealt with by the Managed Migration part of UKBA.

3. How are these cases being handled?

Each Case Resolution case has been allocated to one of 58 teams based in Croydon, Liverpool and Manchester each headed up by their own Case Owner at Senior Executive Officer level.⁶

The UKBA plans to progressively bring forward the cases for action and, once a case has been drawn, bring it to a conclusion. Where required, CRD will commission other UKBA staff to conduct appeals and to carry out removals. CRD is responsible also for making "hard case" payments under Section 4 of the 1999 Immigration and Asylum Act in relation to their cases.⁷

It should be noted that independently of the case resolution exercise, Enforcement Officers continue to carry out removals. Thus, a person may be detained and removed by Enforcement before their case has been brought forward for action by CRD. This is a matter of some concern which is discussed further in Section 4 of this briefing.

Decisions following case resolution

A person whose case falls within the CRD may be granted leave to remain in the UK or the application may be refused. If the application is refused the UKBA will seek to remove them. UKBA has advised that it will make decisions under the case resolution exercise, including grants of leave to remain, in line with its standard criteria. The case resolution exercise is not a general amnesty.

4. "When will cases be resolved and how will people know when their case is being dealt with?"

The CRD will write to some people to let them know when it is dealing with their case. Letters will specify what further information may be required and will give 21 days to respond with any further information.

UKBA has advised that:

"Broadly, CRD will notify individuals unless:

- a) there is evidence of serious criminality (where we would consider deportation)⁸;
- b) administrative removal or deportation action is planned/imminent;
- c) there is a serious risk of absconding⁹;
- d) it is clear the individual will be granted and we already have all the necessary information (so that informing the individual could simply delay us making a decision)".¹⁰

⁶ It is important to note that Case Owners within CRD have different responsibilities to those in the NAM – in the NAM they are responsible for individual cases – in CRD they are in charge of teams that deal with cases.

⁷ That is "hard case support" payable as vouchers to those at the end of the asylum process as provided for in Section 4 of the 1999 Immigration and Asylum Act.

⁸ This is likely to include most convictions which have led to a prison sentence.

⁹ This will include people who have previously absconded; or breached Temporary Admission or Temporary Release conditions; and individuals whom we have been notified may abscond (e.g. letter from applicant, representative or MP)

¹⁰ Emily Miles, Director of CRD, to Stakeholders March 2008

These categories are so broad that it is not possible to predict whether any individual case falls within them. The vast majority of Case Resolution cases have reached the appeal rights exhausted stage and could in theory face administrative removal. No one can be confident that they will be formally notified when their case is going to be dealt with by the CRD Team.

Some cases will not be handled by CRD but by UKBA Enforcement Teams. Enforcement Teams continue to identify and remove people independently of the Case Resolution Directorate. Enforcement officers have the power to detain and remove somebody over a very short timescale – normally 72 hours. It is not the practice of Enforcement Teams to write to people to inform them that they are looking at their case.

Requesting the UKBA deal with a case as a priority

Individuals can ask the CRD to prioritise their case for consideration. Requests should be submitted in writing setting out why the case is an exceptional one¹¹ that needs to be dealt with urgently. UKBA may deal with a case as a priority where the individual:

- urgently needs to travel overseas because (i) a close relative is ill; (ii) a close relative has died; or (iii) needs medical treatment abroad
- is someone whose family members have been granted permission to remain in the UK and his or her personal situation is no different to those family members
- is at risk of suicide or is in some other way seriously and immediately vulnerable (e.g. in a situation of domestic violence)
- has an outstanding original asylum or human rights claim - a fresh claim for asylum will not of itself provide a reason for a case to be dealt with immediately
- has a case that has been seriously mishandled by the UK Border Agency (this might include a case where a previous Home Office policy to grant permission to remain in the UK has not been applied in the individual's case)

Whilst the UKBA may agree to expedite its consideration of a case, this does not mean that it will grant leave. The UKBA could refuse the case and seek to take action to remove. People should seek advice before they ask for a case to be dealt with quickly.

Extensions of existing leave

Some individuals in the Case Resolution backlog will have been asylum seekers who, following refusal of their application for asylum, were granted leave to enter or remain in the UK for a limited period. They need to apply to have this leave renewed before it expires.

If a person applies for Indefinite Leave to remain (ILR) or further limited leave to remain before their leave expires they retain the leave previously granted until the outstanding application is finally decided, including any appeal.

5. What to do

Getting legal advice

In view of the uncertainty about whether an Enforcement team or CRD will deal with a case, and the uncertainty about whether a person can expect to receive formal notification from CRD that their case is

¹¹ The criteria for “exceptional cases” can be seen at: Asylum Policy Instruction CRD – Priorities and Exceptional Circumstances www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/. See Table 1 for the list of exceptional cases. (accessed 4.8.08)

being dealt with, we would strongly advise a person who believes that there may be information relevant to their case that has not been submitted to UKBA to seek advice now about their asylum application.

Anyone with an outstanding application should ensure be able to get legal advice when needed. Legal aid is available.

If you do not have a current legal representative you can find information on qualified legal representatives in your area by telephoning the Community Legal Service Direct (CLSD) on 0845 345 4435 or by visiting the CLSD website, www.clsdirect.org.uk has a directory of legal advisers. To ensure that your representative is properly qualified to advise you they should be either a qualified lawyer who is a member of the Law Society or an adviser who is officially recognised by the Office of the Immigration Services Commissioner (OISC). The OISC maintain their own list of qualified persons and can be contacted on 0845 000 0046 or visit their website www.oisc.gov.uk .

Many people whose initial applications have been refused or have lost at appeal experience difficulties getting legal representation. When seeking legal advice and representation they need to be prepared to explain to potential representatives why it is that they feel their case requires further attention. Good grounds for asking for advice and representation include:

- The person may be able to demonstrate there is a real danger of serious harm if returned to their home country as there may be new circumstances affecting themselves or their country of origin that have not been previously submitted.
- They may have previously submitted further evidence relating to their case and never received a response. New evidence may also have become available or never been considered.
- As many of these will be older cases there may be human rights considerations in that their removal will have a disproportionate effect on their family or private life. These could be affected by the nature of the relationships involved, for example the ability for the family to relocate together in their home country, or the reasonableness of expecting family members to leave the UK only to reapply for family reunion in the ordinary way under the Immigration Rules.
- Alternatively they may qualify under Long Residence Rules if they have been here lawfully for 10 years or unlawfully for 14 years.
- It may be that they are one of a group of cases that should have but did not benefit from earlier Home Office policies in place at the time of their application.

As well as these possibilities that may provide grounds for the granting of leave in addition there is a requirement under Paragraph 395C of the Immigration Rules that before proceeding to administrative removal the Secretary of State must consider the following factors:

- (i) age;
- (ii) length of residence in the United Kingdom;
- (iii) strength of connections with the United Kingdom;
- (iv) personal history, including character, conduct and employment record;
- (v) domestic circumstances;
- (vi) previous criminal record and the nature of any offence of which the person has been convicted;
- (vii) compassionate circumstances;
- (viii) any representations received on the person's behalf.

as well as any UK obligations under the Convention and Protocol relating to the Status of Refugees or under the Human Rights Convention.

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In relation to family cases the Home Secretary is also required to consider:

- the ability of a spouse or civil partner to support himself or herself if required to leave the UK;
- the effect on a child's education if required to leave the UK;
- the effect upon a child's care in the UK if a parent is required to leave and
- any representations made on behalf of a spouse, civil partner or child.

Be prepared

People could be very suddenly confronted with the prospect of removal without notification and they therefore need to be prepared for this. The following steps are suggested:

1. Gather all the relevant documentation on their case – this should include all copies of all original statements, interviews, refusal letters, subsequent determinations from the Asylum and Immigration Tribunal and any further correspondence.
2. Keep a copy of the documentation papers where they are accessible – either with their representative or otherwise leaving them with a friend who is not threatened with detention. A person can be detained when they report and may need a friend to get these documents urgently.
3. Take steps to ensure that you will have ready access to a legal advisor who is willing to and able to represent and assist.

6. Communicating with the Case Resolution Directorate

By telephone through the immigration Enquiry Bureau (IEB)

It is possible to phone up to check which Case Owner team has been allocated a case, but note that UKBA will not provide details of when the case will be dealt with. Enquiries may be made through the general IEB switchboard on:

Telephone: 0870 606 7766

Textphone: 0800 389 8289

The opening hours are: Monday - Thursday 0900 - 1645 Friday 0900 – 1630.

What information will IEB ask for?

Individuals (or their representatives) will be asked to provide their reference number so that operators can check UKBA systems to determine whether the call relates to a CRD case. They will also check the following to confirm the identity of the caller:

- Applicant's HO reference number;
- Applicant's name;
- Applicant's nationality;
- Applicant's date of birth; and
- The date the application or the documents requested by the CRD were submitted.

IEB will only confirm which Case Owner team is dealing with a case and provide a PO Box address to write to. They can take details of any change of address and pass it on to the Case Owner team.

By letter: Currently any requests for information, letters confirming continuation of leave, or

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to argue that a case is an exceptional one¹² that needs to be dealt with urgently, have to be submitted in writing to UKBA.

A PO Box address can be obtained through IEB as above but there is also a general address to send letters to:

Case Resolution Directorate,
Lunar House,
40 Wellesley Road,
Croydon,
CR9 2BY.

All correspondence should clearly state the Home Office reference to which the letter refers. The UKBA should send an acknowledgement of receipt of this letter but will only provide details about the case owner team once the case has been identified for action as described above in Section 3 of this briefing.¹³

¹² The criteria for “exceptional cases” can be seen at: Asylum Policy Instruction CRD – Priorities and Exceptional Circumstances www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/. (accessed 24.4.08 – see Table 1)

¹³ See CRD Guidance on “older cases”

<http://www.ind.homeoffice.gov.uk/?requestType=form&view=Search+results&simpleOrAdvanced=simple&page=1&contentType=All&searchTerm=legacy> (accessed 4.8.08)

Appendix 1. Q&A

What is a Case Resolution case?

Any asylum application made prior to 7th March 2007 that had not been previously allocated to the NAM.

All applications for the extension or variation of leave that are not NAM cases. EXCEPT applications for ILR from people who got Exceptional Leave to Remain prior to 2003.

How can people tell/check if their application is a NAM or CRD case?

All cases in the NAM will have a named Case Owner dealing with their individual case and they should have personal contact details in writing.

Individuals can check if their case is formally part of the CRD programme using the IEB phone number as described in Section 6.

How are CRD cases being handled?

Each CRD Team calls forward a batch of cases each week for resolution. This will be a mixture of cases based on the original priorities:

- those who may pose a risk to the public (i.e. where there has been a serious crime).
- those who can more easily be removed (those who have documentation or whose country does not present documentation problems).
- those receiving support (families with children and people on section 4)
- those who may be granted leave (longer stayers, people with human rights issues).
- cases may also be considered under the "exceptional circumstances policy".¹⁴

Once a case has been brought forward the UKBA intends to resolve it.

There are a number of possible outcomes:

- Where UKBA identifies outstanding protection issues people should be granted refugee status, humanitarian protection or discretionary leave.
- People may be allowed to stay on human rights grounds or on family or health grounds. They will normally be granted Indefinite Leave to Remain.
- If neither of these applies then removal directions will be set and the UKBA will seek to start enforce the removal of the person.

What is the role of Enforcement?

¹⁴ The criteria for "exceptional cases" can be seen at: Asylum Policy Instruction CRD – Priorities and Exceptional Circumstances www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/. (accessed 24.4.08)

It is important to be aware that although there is a process for reviewing cases through CRD, the work of the Enforcement Teams is being carried out in parallel.

At the same time as some cases are being processed by the CRD process, Enforcement Teams will also be checking out other cases for taking action to remove: they are more likely to act on cases that they believe are likely to be easily removable or where there is evidence of criminality. Enforcement can act on a case even though it has yet to be considered by CRD.

Enforcement will normally check to see if the case has been allocated to a CRD case worker. If it has they will have to reach agreement about how to proceed with the case. CRD are able to recall a file if they feel it is necessary. If it is not allocated to CRD then Enforcement retain responsibility for resolving any outstanding issues and proceeding as they deem appropriate.