

## Case Resolution Update<sup>1</sup>

September 2009

### 1. Background

In July 2006, the Home Secretary announced that all outstanding asylum cases that do not fall within the New Asylum Model<sup>2</sup> would be resolved by July 2011.<sup>3</sup> 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.<sup>4</sup>

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”.<sup>5</sup>

### 2. What is a Case Resolution case?

An application for asylum that had **not** been allocated a Case Owner under the New Asylum Model<sup>6</sup> prior to 5<sup>th</sup> March 2007 is a Case Resolution case. Since that date, all new claims for asylum have come under the NAM. In general, all applications for extensions or variation of leave will also be Case Resolution cases, unless they started out as asylum cases specifically allocated to a Case Owner under the NAM.

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<sup>1</sup> This briefing paper provides is for information purposes and does not constitute legal advice.

<sup>2</sup> See Refugee Council briefing <http://www.refugeecouncil.org.uk/policy/briefings/2007/nam.htm>

<sup>3</sup> See “Fair, effective, transparent and trusted Rebuilding confidence in our immigration system” Home Office July 2006

<sup>4</sup> This is where limited leave such as Humanitarian Protection or Discretionary Leave has been granted when an application for asylum has been refused.

<sup>5</sup> Op cit Para 2.10

<sup>6</sup> 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

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It is possible to check whether a case has been allocated to one of the Case Resolution Teams – and to which one – via the CRD Allocation Finder. This will give the name and address of the team dealing with the case. For this you need the full Home Office reference number.

<http://www.ukba.homeoffice.gov.uk/asylum/oldercases/who-is-processing-my-case/>

### 3. How are these cases being handled?

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

The UKBA is bringing forward the cases for action in batches and, once it has been identified as requiring action it will then be dealt with by, for example, dealing with outstanding correspondence or setting up requirements for future reporting. Where necessary, CRD commission other UKBA staff to conduct appeals<sup>7</sup> and to carry out removals. CRD staff are also responsible for making “hard case” payments under Section 4 of the 1999 Immigration and Asylum Act in relation to their cases.<sup>8</sup>

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.

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. A person whose case falls within the CRD may be granted leave to remain in the UK or removed. If granted, this is often on human rights grounds, due to the length of time they have been in the UK with the consequent development of family and community ties. See below for more information about how cases may be assessed.

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

The CRD writes to some people to let them know when it is dealing with their case. Because of the broad categories set out by UKBA this means that it is not possible to predict whether any individual case falls within them.

UKBA has advised that:

Broadly, CRD will notify individuals unless:

- a) there is evidence of serious criminality (where they would consider deportation);
- b) administrative removal or deportation action is planned/imminent;
- c) there is a serious risk of absconding;
- d) it is clear the individual will be granted leave to remain and they already have all the necessary information (so that informing the individual could simply delay them making a decision).<sup>9</sup>

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<sup>7</sup> Asylum seekers that are refused initially have the right of appeal to the Asylum and Immigration Tribunal. Defending the decision there will normally be a Home Office Presenting Officer (HOPO).

<sup>8</sup> Section 4 of the 1999 Immigration and Appeals Act allows for the provision of “facilities for accommodation” for people who are on temporary admission who cannot currently be removed. In practice this means accommodation with £35 worth of vouchers (shortly to be a “smart card”, and no cash allowed).

<sup>9</sup> Letter from CRD Director April 2008.

The vast majority of Case Resolution cases have reached the appeal rights exhausted stage and could in theory face administrative removal. People in this situation cannot assume that they will be formally notified when their case is going to be dealt with by the CRD Team.

When they are sent, letters specify what further information may be required and give 21 days to respond with any further information.

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 through their general enforcement activities. 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.

Legacy Service Centres: recently, CRD has been developing an approach of writing and asking people to call in to a local centre in order to take their case forward. CRD say this has been highly successful in getting people to come in to be photographed and provide documentation when they anticipate granting status. Equally, however, the purpose of the visit might be for CRD to obtain travel documentation to effect an asylum seeker's removal. Simply being asked to attend such an interview is no indication of how the case is to be treated.

Increasingly, CRD and Enforcement Teams are working together to develop an agreed local strategy in dealing with cases.

### **Requesting that CRD 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 one 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).<sup>10</sup>

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.

If they decide to do so they may wish also to visit their MP to request that the MP writes on their behalf and asks that it be expedited.

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<sup>10</sup> See the guidance on dealing with older cases

[http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/crd\\_prioritiesoptional.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/crd_prioritiesoptional.pdf?view=Binary)

## 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, and the accompanying rights to work and benefits, until the outstanding application is finally decided, including any appeal. It is therefore extremely important that an application for further leave is made before any existing leave expires. If a person fails to do so not only will they lose these entitlements, but overstaying is a criminal offence. If they are eventually removed they may then face a lengthy ban from returning lawfully to the UK.

## 5. What to do

### Getting legal advice

There remains considerable uncertainty about whether an Enforcement Team or CRD Team will deal with a case, and also about whether a person can expect to receive formal notification from CRD that their case is 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 that they are able to get legal advice when needed. Legal aid may be available, subject to a test of means.

If people do not have a current legal representative they can find information on qualified legal representatives in their area by telephoning the Community Legal Service Direct (CLSD) on 0845 345 4435 or by visiting the CLSD website, [www.clsdirect.org.uk](http://www.clsdirect.org.uk), which has a directory of legal advisers. Representatives must be properly qualified to advise so 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](http://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. 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 would 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 should have benefitted 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, there is a requirement under Paragraph 395C of the Immigration Rules that before proceeding to administrative removal the Secretary of State must consider a number of factors.

Revised instructions on how case workers should apply paragraph 395 (C) of the Immigration Rules were published in August 2009 and can be viewed at:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter53?view=Binary>

These factors include:

- (i) age;
- (ii) length of residence in the United Kingdom; UKBA caseworkers are obliged to take into account UKBA delays and 'an individual assessment of the prospects of enforcing removal' when considering CRD cases and enforcement of removals. Guidance to caseworkers sets out that they should place weight on significant delay (from 3-8 years, depending on the circumstances) where it is attributable to UKBA such as:
  - where an applicant has been waiting 3-5 years for a response to an initial application or an 'in time' application for further leave;
  - where UKBA delay has contributed to 4-6 years residence, but more usually 6-8 years residence, and the prospect of UKBA enforcing removal is unlikely.
- (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.

In relation to family cases the Case Owners are also required to consider:

- whether families with dependants under 18 have been resident for 4-6 years, but in some cases, 3 years, and there is a low likelihood of UKBA being able to enforce removal;
- 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.

Factors counting against individuals include a person's personal history and behaviour, evidence of criminality, failure to report, and failure to actively pursue the asylum claim.

People who think they may be affected by this change, namely who made an asylum claim before March 2007, have long periods of residence in the UK, and whose prospect of removal is low, should seek legal advice.

## Entitlement to work

Asylum seekers who are the main applicants can apply for permission to work under the EU Reception Directive if they have been waiting more than a year for an initial decision on their asylum claim. A recent Court of Appeal decision means that this Rule should also apply where there has been a fresh claim that has not received an initial decision for twelve months.<sup>11</sup>

The Court of Appeal's decision is legally binding. However, the UKBA is currently refusing to process such applications for permission to work from people with fresh claims, stating that they are challenging the decision in the House of Lords and will not proceed with these applications until the challenge is resolved. A legal adviser should be able to advise people whether it is possible to judicially review this practice as possibly unlawful.<sup>12</sup>

The Court of Appeal judgement implies that the Reception Directive applies in its entirety to fresh claims. If so, it means that people who have made a fresh claim for asylum may equally be entitled to asylum support and all other areas covered by the Reception Directive. Again, people should seek legal advice if they think this applies to their case.

## Be prepared

People can 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:

- a. Gather together 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.
- b. 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.
- c. Take steps to ensure that they will have ready access to a legal advisor who is willing to and able to represent and assist.
- d. Asylum seekers and others who decide to return permanently to their country of origin can ask for help from the Voluntary Assisted Return and Reintegration Programme (VARRP) run by the International Organization for Migration (IOM) on behalf of the UKBA. VARRP offers advice and counselling about return, assistance in obtaining travel documents, a flight, a relocation grant and in-kind reintegration assistance following return. Assistance under VARRP is not open to those for whom the UKBA has already issued removal directions. Asylum seekers and others considering return should seek legal advice prior to applying to VARRP. UKBA Case Owners may take an application to VARRP into account when making a decision on an application for asylum or leave. The UKBA Case Owner may ask questions about the application to VARRP and the reasons for applying and an Appeals Officer may draw it to the attention of a tribunal or court. Details on VARRP and voluntary return can be seen on the Refugee Council website.<sup>13</sup>

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<sup>11</sup> See Tekle v SSHD December 2008 <http://www.bailii.org/ew/cases/EWHC/Admin/2008/3064.html>

<sup>12</sup> See the Refugee Council's briefing on applying for permission to work under the Reception Directive for further information. <http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/policy/permission%20to%20work%20aug%2009%20update.pdf>

<sup>13</sup> See Voluntary returns [http://www.refugeecouncil.org.uk/howwehelp/directly/voluntary\\_returns/index.htm](http://www.refugeecouncil.org.uk/howwehelp/directly/voluntary_returns/index.htm)

## 6. Communicating with the Case Resolution Directorate

**Use the CRD Allocation finder:** this is the simplest way to find out who is dealing with a case but a Home Office reference number is required.

<http://www.ukba.homeoffice.gov.uk/asylum/oldercases/who-is-processing-my-case/>

### **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 to argue that a case is an exceptional one 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 number of the case 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.