

Asylum process

Spring 2007

This section is intended for use alongside the *Asylum legislation* and *Asylum process* sections in the [Refugee Council Information Service](#).

The UK asylum determination process, which includes applying for asylum, screening, Home Office asylum interview and appeals, is a **legal** process. Most queries and/or difficulties your client may have within the asylum determination process should be taken up by a qualified, and OISC certified, immigration solicitor. However, there are scenarios where you, as an advisor, can assist or advise your client.

Warning: This support pack was updated during a time of radical changes within the refugee sector. This includes some significant changes within the Home Office such as:

- The Government body responsible for asylum issues is now the **Border and Immigration Agency (BIA)** – a new executive agency of the Home Office. The Agency assumes the responsibilities of the Immigration and Nationality Directorate (IND) for managing immigration control in the UK, including applications for permission to stay, citizenship and asylum.
- Support for asylum seekers is no longer overseen by the National Asylum Support Service (NASS). Asylum support in this document will now be referred to as **BIA support** and/or **asylum support**.
- In February 2005, the UK Government published a five-year strategy for immigration and asylum which included the development of the New Asylum Model (NAM). The aim of the NAM is to introduce a faster, more tightly managed asylum process with an emphasis on rapid integration or removal.

Note:

Because of all the recent upheaval, the information provided in the support packs are likely to change throughout 2007 as the procedures are implemented, current government consultations are finalised and new policies are introduced. We recommend you check the Refugee Council website for the most current information: www.refugeecouncil.org.uk.

Also, please keep us informed of any changes on the ground and common problems by emailing us on subscriptions@refugeecouncil.org.uk.

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Applying for asylum

Individuals and families can apply for asylum at their port of entry into the UK, or directly to the Asylum Screening Unit (ASU) within the Home Office's Border and Immigration Agency (BIA) (formerly known as the IND). The ASU offices are in Croydon and Liverpool.

When an individual or family applies for asylum, they must attend an initial screening interview. In this brief screening, the BIA tries to find out basic information such as the person's identity and route to the UK. They are also fingerprinted and photographed.

Once the BIA has screened the applicant and confirmed his/her identity, the BIA will issue the applicant with an Application Registration Card (ARC). The ARC confirms that the person has applied for asylum.

What can I do if...

My client has not yet applied for asylum?

Your client must apply for asylum *immediately* or s/he may be refused asylum support under section 55 of the Nationality, Immigration and Asylum Act 2002. See the [Asylum support](#) section for more information.

- Direct your client to an Asylum Screening Unit immediately (see [Contacts](#)).

My client cannot afford to travel to Croydon or Liverpool to apply for asylum?

The BIA will not pay travel costs for the journey to Croydon or Liverpool ASU in order for someone to claim asylum. Many charities, including some One Stop Services, have emergency/destitution funds that can be used for travel to ASU.

- Call the Refugee Council to find out if they have a destitution fund that your client can access (see [Contacts](#)). If not, ask if they are aware of charities that can assist your client.

My client was only granted temporary admission? (or, my client applied at port and only has an IS96 to confirm his/her application)?

To renew temporary admission for your client on the IS96 form, contact his/her legal advisor or the Immigration Service at the port of entry directly. Eventually, the IS96 will be replaced by an ARC.

My client was given a standard acknowledgement letter (SAL) instead of an ARC?

If the BIA cannot issue an ARC after screening, it will issue a SAL instead (an A4 document stating the person has applied for asylum). SALs are valid for a maximum of two months.

- The SAL should come with instructions on how to arrange for a valid ARC to be issued. Any queries, contact the BIA's Central Events Booking Unit (0151 237 6375).

Segmentation and the New Asylum Model

The objective of the New Asylum Model (NAM) is to conclude an increasing proportion of asylum cases within six months leading to either integration or removal. The Home Office seeks to do this through:

- Segmentation: cases are sorted at the screening stage according to their basic characteristics. Segmentation will depend primarily upon the nature of the asylum claim and will define the processing, management and support arrangements for each individual case. There are five segments.
- Faster processing: expected decision times will depend on the segment, but the objective of the NAM is that eventually all asylum decisions will be made within 20 working days (unaccompanied children, 35 days).
- Case ownership: The NAM introduced a single Case Owner within the Home Office who is responsible for an asylum applicant's case throughout the process.

From the 5th of March 2007, all new asylum applicants will come within the NAM. The separate Legacy Directorate will deal with any case not formally within the NAM by the 5th of March 2007.

- Legacy cases include those that have not been fully determined, applications for further leave, cases awaiting appeal or those who have exhausted their appeal rights but who remain in the UK.
- It will take an estimated five years to clear the legacy cases.

For more information on the NAM, please see the Refugee Council briefing: *The New Asylum Model, March 2007 update* (www.refugeecouncil.org.uk > policy and research > briefings)

What to do if...

My client is now a 'legacy case'?

The Home Office intends to send all legacy cases a questionnaire to update the information held by the Home Office in order to decide what action is appropriate, (such as a further interview). At the time of writing, a team is focusing on those who 'pose a threat to the public', separated children, and those on section 4 support.

- Questionnaires must be returned within 14 days. Although the BIA have said they will be flexible if forms arrive late, ultimately failure to return the questionnaire will lead to closure of the case.
- Those given a questionnaire should also be assigned a Case Owner (as in the NAM model). If your client has queries about the questionnaire, help him/her learn who the Case Owner is.
- Warn your client to watch out for the letter and questionnaire and inform your client to contact his/her legal representative immediately when it arrives.

Legal advice

It is essential that asylum applicants receive good quality legal advice throughout the asylum process. However, more and more asylum applicants are finding it difficult to access legal advice, in particular at the appeal stage of the asylum process.

Only solicitors, barristers or legal executives regulated by

- their own professional body; or
 - the Office of the Immigration Services Commissioner (OISC)
- are legally allowed to provide immigration advice.

What can I do if...

My client does not have a legal adviser?

There are several organisations that have listings of approved legal advisers, including Community Legal Services Direct (www.clsdirect.org.uk > the directory) and the Office of the Immigration Services Commission (www.oisc.org.uk > adviser finder). For more information about these services, see the *Contacts* section.

- It is important that your client makes sure his/her legal representative is OISC regulated as they are experts who understand the complexity of the asylum process and should work with integrity.

Some desperate asylum applicants fall prey to unregulated, and often unskilled or inexperienced, legal representatives who give poor advice and may demand payment from those eligible for Legal Aid.

My client cannot afford legal advice?

Some solicitors/legal advisers are paid by the Legal Services Commission (LSC) to work with low-income clients for free. This is called Legal Aid. Clients have to pass a 'means' test in order to qualify - if your client is on BIA support, they are eligible for free legal advice from solicitors/advisers who provide Legal Aid. There are three levels of work that an advisor can engage in:

- Legal Help: advice and assistance (such as preparing an asylum application) but not representation in a court or tribunal.
- Controlled legal representation (CLR): litigation and advocacy/representation in the Asylum and Immigration Tribunal. It cannot be used to pay for asylum support appeal hearings before the asylum support adjudicators.
- Public Funding Certificates: issued for judicial review proceedings in the High Court and for appeals to the Court of Appeal.

It is important to note that the cost limits also limit the number of hours a legal representative can work on a case. They can only exceed this limit with permission from the LSC.

My client is supported by the BIA, yet was told s/he is not eligible for Legal Aid?

- *Legal help* can only be provided if the client meets the means test (note: any asylum seeker receiving BIA asylum support would satisfy the means test). Your client will also need to pass the 'sufficient benefit' test – this simply refers to the fact that there is a matter of law on which to advise (thus most asylum seekers will be eligible for legal help with their initial claim).
 - Legal help with legacy cases: legal help should be available to assist with the completion of legacy forms.
- *CLR* funding for help at the appeal is subject to an additional merits test. A client's case will only pass the merits test if the prospects of success are more than 50%, or if they are borderline or unclear. If the solicitor refuses funding under the merits test, the client can appeal to the LSC. The solicitor is required to advise them of this right.

- If an LSC funded legal representative refuses to grant CLR to represent your client at appeal, they must give your client a CW4 form which should state the reasons why they are refusing legal aid and advise you of your right of appeal. Your client can send the CW4 to the LSC Funding Review Committee and ask them to review the decision.
- You may wish to ask a second legal representative to consider your client's case as they may reach a different decision than the original advisor.
- Some clients refused legal aid at this stage choose to represent themselves at appeal.

My client cannot afford to travel to his/her legal adviser?

Legal help can cover travel costs to visit a solicitor.

- Speak to your client's legal representative to ensure they will reimburse your client's travel costs.

My client is not happy with his/her legal adviser?

Asylum applicants need to think very carefully before deciding to move to another legal adviser. This is because the new legal adviser inherits the existing cost limit of the previous adviser. If, for example, the existing adviser has reached the cost limit, the new adviser will have to apply for an extension without being paid. This discourages new advisers from taking on clients that have already benefited from Legal Aid.

My client wishes to complain about his/her legal adviser?

Many legal agencies will have their own complaints procedure that your client can use. Alternatively, your client can make a complaint about his/her legal adviser to the Office of the Immigration Services Commissioner (OISC). For more information about making a complaint to the OISC, see the *Complaints* section of their website: www.oisc.org.uk > complaints. The OISC complaint form is available in 25 languages.

Home Office interviews

The Home Office Integrated Casework Directorate (ICD) considers all asylum applications. But the Home Secretary has the ultimate authority.

No matter which procedure or 'segment' the Home Office uses to process an asylum application, they should interview every asylum applicant about the details of their claim. The interview is usually the key element in deciding a claim.

During the interview, the asylum applicant is expected to disclose all aspects of his/her claim. This includes reasons for claiming asylum under the 1951 UN Convention Relating to the Status of Refugees as well as humanitarian/human rights reasons.

- Ensure your client understands that, at the end of the interview, s/he will be asked to sign a copy of the interview record. However, your client is not obliged to sign this record if unhappy or unclear about its contents. Refusal to sign an interview record does not result in a non-compliance refusal.
- Appointments are sent out by post, so it is vital that asylum applicants tell the BIA when they change addresses. The legal representative often does this.
- It is vital that the asylum applicant attends the interview – failure to do so can result in a non-compliance refusal.
- Within the NAM, Case Owners should endeavour to ensure that a solicitor will see an asylum applicant before his/her interview, but this is not guaranteed.
- Ideally, your client should speak to a solicitor before his/her asylum interview to review the claim and prepare them (including emotionally) for the interview.

What can I do if...

My client was not able to see a solicitor before the Home Office interview?

Legal representatives are not funded to attend asylum interviews except in exceptional circumstances (for instance, in fast-track procedures, if the client is an unaccompanied minor or if the client has severe mental health problems). However, an adviser or representative may accompany asylum applicants to their interview, but only as an observer and to keep an independent record of the proceedings.

- Clients may ask for the interview to be tape recorded. They need to request this 24 hours in advance. But in any case, the BIA has a legal duty to record asylum interviews when the applicant requests this. If an applicant requests a tape recording when they arrive for their interview, the BIA should make every possible effort to meet this request. If the BIA does not have the necessary equipment at hand, it should delay the interview until it does.

My client is an unaccompanied minor?

For information about the asylum process for unaccompanied children seeking asylum, see [Asylum process for unaccompanied children seeking asylum](#).

My client wants his/her friend to interpret for him/her at the interview?

The Home Office will provide an official interpreter.

- Your client can bring his/her own interpreter. However, it is not recommended that family or friends interpret for an asylum applicant during the Home Office interview. It is vital that s/he is able to disclose everything that is relevant to his/her case at this first interview – including rape or torture, which many applicants may be too afraid to mention in the presence of family.

My client did not obtain a record of his/her interview?

- Have his/her solicitor request a copy of the interview record. The Home Office is legally required to provide asylum applicants with a record of the asylum interview.

Travel to Home Office interviews (including appeals)

All BIA supported asylum seekers should receive travel warrants for travel to Home Office interviews and appeal hearings. The travel warrant should come with the letter inviting your client to the interview.

What can I do if...

My client did not receive a travel warrant?

Your client should complete a travel application form if they need help with travel costs. In the fax, include your client's BIA/NASS reference number and his/her current address.

- Travel warrant applications for interviews at **Liverpool** ASU must be faxed to: 0151 237 0464. Any queries, call 0151 237 0017
- Travel warrant applications for interviews at **Croydon** ASU must be faxed to: 020 8633 0713. Any queries, call 020 8633 0672

Applicants must send the travel warrant application form to the appropriate office at least four working days before the interview date.

My client needs to travel to his/her appeal hearing?

The BIA Liverpool office handles all travel requests for appeal hearings, including those taking place in Croydon.

- Travel warrant applications for appeals must be faxed to: 0151 237 0464. Any queries, call 0151 237 0017

My client is unable to travel?

Only in extreme circumstances, for instance, if your client is very sick, should a client try to reschedule an appointment. You should contact his/her legal adviser to reschedule the appointment. Evidence, such as a medical report, must be provided.

My client travelled without a travel warrant?

S/he can apply for reimbursement by faxing a letter to the BIA Travel Section (fax: 0151 237 0464 for Liverpool; 020 8633 0713 for Croydon). The client will have to provide the original tickets as evidence.

For more information on travel, see the BIA policy bulletin 28 - www.ind.homeoffice.gov.uk > Applying > Asylum > Asylum support policy bulletins > Travel

Further representations and new evidence

Asylum applicants are expected to provide evidence to support their claim immediately, before a decision is made on their application. In some cases, asylum applicants can submit evidence later and request 'further representation'.

'Fresh claims' usually occur if there is substantive new evidence emerging after the person has exhausted all appeal rights, or if there has been a significant change in the political situation in the country of origin, or if the applicant has developed a life-threatening medical condition.

For more information about further representations and fresh claims, see *section 3* of the *Refugee Council Information Service* or the BIA policy instructions (www.ind.homeoffice.gov.uk > law & policy > policy instructions > asylum policy instructions > further representations and fresh claims)

What can I do if...

My client is unable to obtain all the evidence needed to support his/her claim in time?

Some applicants cannot obtain all the evidence needed to support their asylum claim in time for the asylum interview.

- Your client should inform his/her Case Owner that this evidence is outstanding when they apply for asylum or make a further representation. The Case Owner has the power to defer making a decision until it is received. There are special arrangements for outstanding medical reports from the Medical Foundation for the Care of Victims of Torture – asylum decisions can be delayed until after a medical appointment that may have some bearing on the application.

My client presents new evidence later in the asylum process?

New evidence, including changes in circumstances or changes in the country of origin, should be put forward immediately when it arises. Ensure the new evidence is given to the client's legal adviser in order to make a 'further representation'. The legal adviser may decide the new evidence is significant enough to warrant a fresh claim.

My client cannot afford to pay for a legal advisor to help with a fresh claim?

Legal help should be available from LSC provided there is evidence available that has not been previously considered.

My client's fresh asylum or human rights claim is refused?

If your client submitted information or evidence after exhausting all appeal rights on their original asylum claim, the Home Office will determine whether these further submissions are significantly different from the material previously considered. If so, then they amount to a fresh claim. If not, there is no further right of appeal.

If the Home Office accepts the newly submitted materials as a fresh claim, and then refuses the new claim for asylum, your client may have access to a judicial review. Speak to your client's legal representative.

Waiting for a decision

It is essential that asylum applicants keep the Home Office informed of their current address, because interview dates and decisions may be sent out by post. If an asylum applicant receives a negative decision, the time limits for lodging an appeal are very strict.

- Changes of address should be sent by recorded delivery to
 - your client's Case Owner; or
 - the Home Office (see *Contacts*); and/or
 - the Asylum and Immigration Tribunal (www.ait.gov.uk), where appropriate.

Asylum applicants cannot travel outside the UK while their asylum or human rights application is pending. The Home Office will treat travel abroad as a withdrawal of the application.

Asylum applicants are not eligible to have their immediate family members join them in the UK. But they may want to apply if they have strong compassionate reasons for doing so. They will need the help of a legal adviser.

What can I do if...

My client is concerned about the progress of his/her case?

- S/he may enquire at the Immigration Enquiry Bureau (IEB) on 0870 606 7766 or ask any of the Public Caller Units (PCU) in Glasgow, Liverpool, Birmingham or Croydon (see *Contacts*).
- If your client has been assigned a Case Owner, s/he can speak to them about the progress of his/her case.

Reporting

Asylum applicants supported by the BIA who live three miles or more from their reporting centre will be entitled to travel expenses.

Applicants who live within three miles of their reporting centre may qualify for expenses only in exceptional circumstances.

What can I do if...

My client did not claim travel expenses at the reporting centre?

The BIA will not pay for the first reporting event. Once your client has reported for the first time, s/he can then apply for all future travel.

- Advise your client to ask for reimbursement of travel costs at the reporting centre before leaving.

My client is expected to travel 3 hours each day to a reporting centre?

- Your client can make a request at the reporting centre to have his/her reporting requirements re-evaluated.
- If your client has been assigned a Case Owner, s/he can speak to his/her Case Owner if there is still a problem with reporting.

Detention

Asylum applicants who are detained have the right to a bail hearing, but they have to instigate the process and apply for it. Detainees can apply for bail to a chief immigration officer, an adjudicator, or the Secretary of State. But asylum applicants have practical difficulties in securing bail.

- Legal advisors should make representations for the release of their clients. See *Challenging Immigration Detention: A Best Practice Guide* (available from Immigration Law Practitioners Association: www.ilpa.org.uk)
- Bail for Immigration Detainees (BID) have published two Work Books, which are aimed at helping detainees apply for bail, see *Preparing Applications for Release* and *Representing yourself in Bail Applications* (www.biduk.org > getting out of detention > resources for detainees). Hard copies can be sent free of charge to any detention centre or prison. Email: outreach@biduk.org.
- Many detained asylum seekers depend on BIA asylum support for housing if/when released. But they do not qualify for BIA asylum support before being granted bail, as they are not technically destitute while in detention. With no address, the detainee will not get bail either. Some bail applicants use initial accommodation as a temporary address on their bail application and apply for BIA asylum support when they are released.
- If your client is in detention but intends to apply for bail, has been refused asylum and has exhausted all appeal rights, s/he can apply for section 4 support. On receiving the application, the BIA caseworker will then determine whether your client is eligible for section 4 support if released on bail. For more information see www.ind.homeoffice.gov.uk > applying > asylum > asylum support policy bulletins > general > Bail flow charts
 - Your client may apply for section 4 support using the standard section 4 application form (www.ind.homeoffice.gov.uk > applying > asylum support > section 4. Your client should flag up the fact that s/he intends to apply for bail on the form.

Appeals

Asylum applicants who wish to appeal against a refusal can get advice or representation from the Refugee Legal Centre, the Immigration Advisory Service, a private solicitor or a refugee community organisation. The Community Legal Services directory (www.clsdirect.org.uk) lists solicitors with a legal franchise for asylum work, as well as organisations exempt from registration which provide legal advice or representation. For more information, see the *Legal Advice* section above.

Before appealing, the prospective appellant must have a written notice of a refusal decision from the BIA, which sets out what the decision means and what the appeal rights are.

For information about the appeals process, see *section 3* of the [Refugee Council Information Service](#). Also, the Asylum and Immigration Tribunal has a very user friendly website with valuable information: (www.ait.gov.uk)

What can I do if...

My client wants to appeal his/her refusal of asylum?

Ideally, your client will have the help of a legal advisor when appealing his/her asylum refusal. However, if your client is struggling to find a legal adviser in time, they can lodge the appeal using an AIT form.

- They should get the relevant appeal form with the Home Office decision letter with guidelines on how to complete it. You can download an appeal form from the AIT website at: www.ait.gov.uk > forms and guidance.
- Your client must complete the form in full and send it to the AIT within ten working days of the date of the refusal decision letter. Make sure you include the Home Office decision letter with the appeal. Applicants whose cases are certified, and appeal from outside the UK have 28 days to submit their notice of appeal to the AIT. Send the completed appeal form together with the supporting documents to:
 - Asylum and Immigration Tribunal
 - PO Box 7866, Loughborough, LE11 2XZ
 - Fax: 01509 221699
- Ensure your client keeps a copy of all letters sent and received from the Home Office and the AIT.

My client needs to travel to his/her appeal hearing?

The BIA Liverpool office handles all travel requests for hearings, including those taking place in Croydon.

- Travel warrant applications for appeals must be faxed to: 0151 237 0464. Any queries, call 0151 237 0017

My client's application was certified as 'clearly unfounded' and wants to appeal?

Asylum applicants whose applications for asylum or protection on human rights grounds, which are certified as 'clearly unfounded' can only appeal from outside the UK. This is called a non-suspensive appeal.

- People wishing to submit a non-suspensive appeal can instruct a lawyer before their departure to submit the appeal. Such appeals are usually dealt with on paper only.

My client is in detention and wants to appeal?

People in detention must submit their notice of appeal to their custody officer within five days of being served the Home Office decision notice. If they are in one of the fast-track detention centres, they have to submit their appeal within two days of the decision notice being served to them.

My client has a query after having lodged his/her appeal?

S/he can contact the AIT as follows:

Asylum and Immigration Tribunal

PO Box 6987, Leicester, LE1 6ZX

Tel: 0845 6000 877

Fax: 0116 249 4130

Email: customer.service@tribunals.gsi.gov.uk

Voluntary return

An asylum seeker, a refugee or a person whose application has been refused may decide to leave the UK and return to their home country. A person may even decide to return home after being granted asylum, or any other form of leave to stay. This is called voluntary return, or voluntary repatriation.

What can I do if...

My client wants to return to his/her home country?

S/he may make their own arrangements to leave the UK and return. Or s/he could apply for help from one of the assisted voluntary return programmes run in the UK:

- The Voluntary Assisted Return and Reintegration Programme (VARRP) offers assistance to people wishing to return permanently to their country of origin. It is run by the International Organization for Migration (IOM). Applications for VARRP should be made to the IOM in the UK. You can download the application form from the IOM website at: www.iomlondon.org
- There are some country specific voluntary returns programmes that your client may be eligible for. Please see the Refugee Council website (www.refugeecouncil.org.uk > how we help > helping directly > voluntary returns) or *section 3* of the [Refugee Council Information Service](#).

My client isn't sure if it is safe for him/her to return home. Who can s/he speak to?

The following charities provide specialist and confidential, advice, information and informal counselling to refugees and asylum seekers thinking about returning to their country of origin (see [Contacts](#)).

- Choices (Refugee Action)
- Safe Haven Yorkshire
- Voluntary Return Project (Refugee Council)

Contacting family members abroad

Some refugees and asylum seekers may have lost contact with family members not in the UK. The International Tracing and Message Service of the British Red Cross (BRC) can help families separated through conflict, upheaval or natural disaster. It offers the following free services:

- Tracing service: enquiries can be made to find relatives with whom the family has lost contact due to war or disaster.
- Message service: the BRC helps to deliver family news internationally when normal means of communication have broken down due to war or disaster.
- Certification of detention: It can also provide certification of detention for those people who were visited by the International Committee of the Red Cross whilst imprisoned.
- The BRC also handles applications for travel assistance from refugees in the UK, for their close family members to be reunited with them in the UK.

Contact your local British Red Cross office, details of which you can find on: www.redcross.org.uk (click on "In the UK" and "In your area")

Further resources

www.advicenow.org.uk

Advicenow is an independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues including asylum and immigration.

www.asylumaid.org.uk

Refugee Women's Resource Project has published a wide range of information on issues affecting women seeking asylum in the UK.

www.asylumlaw.org

Online information tool for lawyers and advocates on asylum law to help them prepare good asylum cases. Partner organisations of this consortium are the National Immigrant Justice Center (US), FC Hamilton House Refugee Project (Canada) and Refugee and the Immigration Legal Centre (Australia).

www.ein.org.uk

The Electronic Immigration Network (EIN) provides online country information and asylum appeal case information to its members. It has a useful public resource section with immigration and asylum links. Search EIN's resource database for publications and reports on immigration and asylum issues at: www.ein.org.uk/resources/search.shtml

www.icar.org.uk

The Information Centre about Asylum and Refugees in the UK (ICAR) is an academic research and information organisation. ICAR aims to make available independent information on asylum in the UK. Resources include navigation guides to key issues and populations, briefings, ICAR statistics, digests of relevant publications, a resource directory and a series on mapping the UK. ICAR also has an online database of research on asylum and refugee issues in London.

www.ind.homeoffice.gov.uk

BIA's immigration rules, asylum policy instructions and notes, directorate instructions, and country information are all on this site.

www.irr.org.uk

The Institute of Race Relations runs an independent race and refugee news network.

www.refugeecouncil.org.uk

Publishes a wide range of information leaflets on aspects of the asylum process in many refugee languages on its multilingual website.