

# Seeking Refuge?

## A handbook for asylum-seeking women



Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.





Rights of Women's areas of expertise includes all forms of violence against women (including domestic and sexual violence) family, immigration and asylum law and we frequently run conferences and training on these issues.

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Rights of Women  
52-54 Featherstone Street  
London  
EC1Y 8RT

#### Key

-  Postal address
-  Telephone number
-  Email address
-  Fax number

For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Tuesday to Thursday 2-4pm and 7-9pm, Friday 12-2pm).

For advice on sexual violence, criminal, immigration and asylum law telephone 020 7251 8887 (lines open Monday 11am-1pm and Tuesday 10am-12noon).

Admin line: 020 7251 6575

Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: [info@row.org.uk](mailto:info@row.org.uk)

Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

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Disclaimer: The guide provides a basic overview of the laws, policies and procedures for the asylum process in the UK. This guide is for information purposes only and is not legal advice. If you are affected by any of the issues raised by this book you should seek legal advice as soon as you can. The information contained in this book is correct to July 2009. The law may have changed since then. Rights of Women cannot accept responsibility for any reliance placed on the legal information presented in this guide.

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**Rights of Women dedicates this book to the women worldwide who struggle to secure justice, equality and a future safe from violence.**

# Seeking Refuge?

## A handbook for asylum-seeking women

### Foreword

“Every year millions of people across the world are forced to flee their homes because of violence and persecution. Some of those people will seek refuge by making a claim for asylum here in the UK. Comic Relief understands how vulnerable those seeking refuge are, because of what has happened to them in their country of origin and the challenges they face here. Many asylum-seeking women arrive in the UK having experienced sexual violence, such as rape, or torture or other forms of violence. Sexual violence is currently such a serious problem worldwide that the Security Council of the United Nations consider it an issue of international peace and security.

Traumatic experiences, such as rape or torture, are extremely hard to deal with or even talk about, particularly with a stranger, such as a male interpreter, or in an unfamiliar environment, such as through a screen in a public office of the UK Border Agency. Yet this is what asylum-seeking women have to do, just days after arriving in the UK. Many asylum-seeking women do not understand how decisions about their cases are made and why, or what their rights are.

The way the asylum system is currently set up makes it difficult for women to disclose the abuse they have experienced and explain their need for protection. Comic Relief supports Rights of Women’s vital work because it helps to ensure that women get the information and advice they need throughout the asylum process. **Seeking Refuge?** is a fantastic resource. It explains, in clear and accessible language, the law that determines who is entitled to protection in the UK and how the asylum system works. It is essential reading for asylum-seeking women and all those who support them in their struggle to live lives free from violence and abuse.”

**Nalini Varma**  
Trustee of Comic Relief and Chair of the  
UK Grants Committee

“Rights of Women has been providing women with specialist legal advice for nearly 35 years. We understand how important it is for women to know and understand the law, and their legal rights, so that they can protect themselves and their families from violence.

We have written this book for asylum-seeking women because we recognise that they are particularly vulnerable. They often find it hard to find reliable and accessible legal information on asylum law and the process of claiming asylum in the UK. We hope that this book will help asylum-seeking women, and those that support them, understand the law that determines who is entitled to protection in the UK and how decisions are made. We hope that in this way we can help more women live lives free from violence here in the UK”.

**Emma Scott**  
Director, Rights of Women

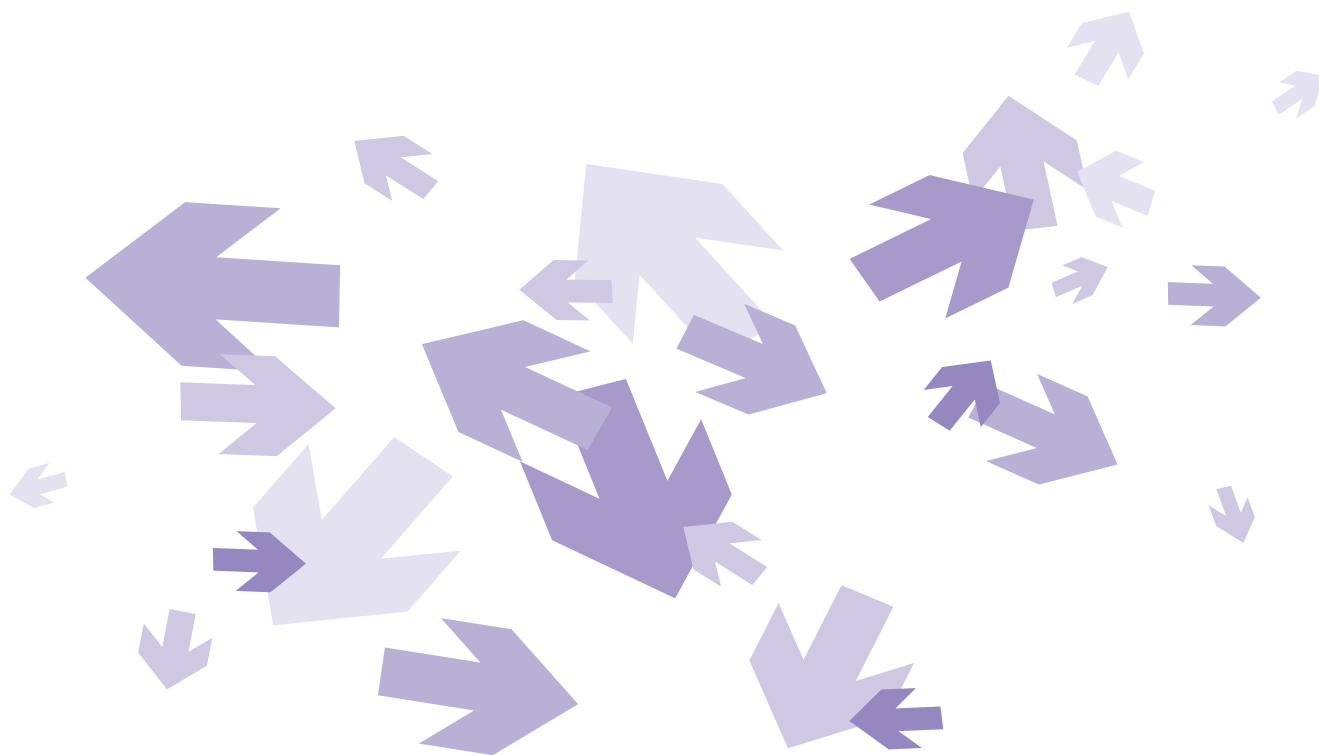
“Asylum-seeking people have nothing. There are no human rights. People here need things like safety, education, a job, a space for living. They don’t have these things. This means that all the time they are thinking, thinking, thinking. They are stressed and worried about their cases and what will happen in the future. It’s difficult to describe what it’s like being an asylum-seeker. You can’t visit your family, you miss them, you have to leave everything behind and you don’t understand what is happening to you. Some people get ill, mentally ill. It doesn’t make sense. Why are we treated like this?”

Women need support; if they don’t get support how can they live? When people have no way they think “what can I do?” They are desperate. We want to be safe, we want to work and take care of ourselves. Sometimes bad things happen. We know women who have had things happen to them, but because they had no papers they didn’t do anything about it. They don’t go to the police. There is no one to help them.

Women need to know what their rights are. We need good information and advice. In this book there is everything you need to know. There are a lot of addresses and information as well. When you read it, you will understand what your rights are and who to contact for help. Often, even if you have a solicitor, you still don’t understand your case and what is happening. People don’t explain things to you. If you don’t understand what the law is, how can you tell if something is wrong? There are many organisations that help with important things: Rights of Women is one of them and there are others in this book. If you have problems, you will know what to do, know who to ask about it.

Women helping other woman, that’s the best thing.”

**Rights of Women would like to thank Robby from Iran and Vasheen from Pakistan, two asylum-seeking women living in London, for their thoughts on this book.**



# Contents

<b>Chapter 1: Introduction</b>	8	<b>Chapter 3: The New Asylum Model: Non-detained cases</b>	21
About Rights of Women		Introduction	
How this book works and who it is for		Overview of the process	
Legal advice		Applying for asylum: on arrival or in-country	
Acknowledgements		The application process	
<b>Chapter 2: Am I entitled to protection in the UK?</b>	10	What is screening?	
Introduction		What happens if I am not detained?	
What is the law that decides who is entitled to protection in the UK?		What happens after screening? The first reporting event	
Who decides my case?		The asylum interview	
Refugee Convention		Decision	
What is persecution?		Things to remember	
What is a well-founded fear of persecution?		Support organisations	
Would you be safe anywhere else? Internal relocation		<b>Chapter 4: The New Asylum Model: The detained fast-track</b>	25
The Convention Reasons		Introduction	
What happens if you are persecuted because of an identity someone thinks you have? Imputed Convention Reasons		Overview of the process	
Women and the Refugee Convention		Applying for asylum: on arrival or in-country	
Is there any other international law that can help me make a claim under the Refugee Convention?		The application process	
The European Convention on Human Rights		What is screening?	
Who is entitled to Humanitarian Protection?		Why is my case in the Detained Fast-track?	
Who is entitled to Discretionary Leave?		Your rights in detention	
What is private and family life?		Medical examination	
Your right to be free from inhuman and degrading treatment		How can I get legal advice?	
Remaining in the UK for medical reasons		The asylum interview	
Remaining in the UK because of the conditions in your country		Decision	
European Union law		What happens if I need more time to prepare my case? Flexibility in the fast-track	
Things to remember		Things to remember	
Support organisations		Support organisations	

## **Chapter 5: Your Asylum Interview** 31

Introduction  
The interview  
Before the interview  
Recording the interview  
At the interview  
Supporting evidence  
At the end of the interview  
The Gender Guidelines  
Things to remember  
Support organisations

## **Chapter 6: The Case Resolution Directorate (Legacy Cases)** 36

Introduction  
The Case Resolution Directorate  
How do I know if the Case Resolution Directorate is dealing with my case?  
When will cases dealt with by the Case Resolution Directorate be decided?  
Is there any way that my case can be dealt with sooner?  
What will happen when my case is considered?  
How does the Case Resolution Directorate make decisions?  
Decision or review?  
Things to remember  
Support organisations

## **Chapter 7: Successful applications: an explanation of leave to remain in the UK** 41

Introduction  
Refugee Leave  
Humanitarian Protection  
Discretionary Leave  
Indefinite Leave to Remain  
Temporary Protection  
While applications are decided  
Tracing Family Members  
Things to remember  
Support organisations

## **Chapter 8: Negative Decisions and Appeals** 45

Introduction  
Refusal of your initial claim  
Appealing to the Asylum and Immigration Tribunal  
What are my chances of success on appeal?  
How do I appeal to the Asylum and Immigration Tribunal?  
Appeals from outside the country: the non-suspensive appeals process  
Appeals in detention  
Before the appeal  
Evidence at your appeal  
At the appeal hearing  
In the room where your appeal will be heard  
Preparing for giving evidence  
Giving evidence  
After you have given evidence  
Who has to prove what at my appeal?  
Representing yourself at your appeal  
The decision: after the appeal  
Appeals against a decision made by the Asylum and Immigration Tribunal  
Transfer of the Asylum and Immigration Tribunal  
Things to remember  
Support organisations

## **Chapter 9: Final refusal and removal**

56

Introduction

Legal advice

Voluntary Return and Assisted Voluntary Return

Can I return to the UK after I have left? Re-entry bans and voluntary departure

Removal

Campaigning against removal

I might be removed, what should I do?

Preparing for being taken into immigration detention

Can I return to the UK after I have been removed? Re-entry bans and removal

Can I be forced to leave the UK? Treatment on removal

Tracing Family Members

Things to remember

Support organisations

## **Chapter 10: Fresh claims**

61

Introduction

What is a fresh claim?

What happens if I don't have any new information? Further representations

What is new information?

Does the new information create a real chance of success?

Getting advice on a fresh claim

What happens if I make a fresh claim?

How will my fresh claim be decided?

What happens if the UK Border Agency does not accept my fresh claim?

What happens if my fresh claim is refused?

Things to remember

Support organisations

## **Chapter 11: Financial and other support through the asylum process**

65

Introduction

Support for asylum-seekers

Am I entitled to Asylum Support?

What will I get?

How can I apply for asylum support?

What if I am in detention?

How will I be given asylum support? The asylum support decision

What happens if my circumstances change?

Am I entitled to any extra payments?

What happens if someone in my family is violent to me? Domestic violence and financial support

Health care

Education

I have been refused asylum support, what can I do?

What happens when a decision is made on my case?

A positive decision

Support for refused asylum-seekers

Am I entitled to section 4 support?

Changes to section 4 support for people who are taking all reasonable steps to leave the UK

How will my support be paid?

How can I apply for section 4 support?

My section 4 support has been refused or taken away, what can I do?

Is there any other help available?

Health care

Education

Things to remember

Support organisations

## **Chapter 12: Useful organisations and contact details**

76

# 1 Introduction

## About Rights of Women

**Rights of Women** aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meet all women's needs.

We provide free legal advice on two telephone advice lines to women across England and Wales:

- For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Tuesday to Thursday 2-4pm and 7-9pm, Friday 12-2pm).
- For advice on sexual violence, criminal, immigration and asylum law telephone 020 7251 8887 (lines open Monday 11am-1pm and Tuesday 10am-12noon).

In addition to contacting our advice lines, you might also want to visit our website to download free legal information sheets on issues including domestic and sexual violence as well as our book **From Report to Court: a handbook for adult survivors of sexual violence**. Visit [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk) for more information on the law, your legal rights and our work.

## How this book works and who it is for

We have written this book for asylum-seeking and refugee women and the organisations that support them in the UK. We wrote it because women who contacted us for legal advice and support did not understand how the asylum process worked and what their rights were. We hope that if you are an asylum-seeking woman and you read this book, you will understand how and why decisions on your case are made and feel

more confident when you discuss your case. If you work with asylum-seeking women, we hope that this book will give you the information you need to support them and, where necessary, advocate on their behalf.

The book is divided into ten chapters which explain different parts of the process of gaining protection in the UK:

- Chapter 2 explains the *law* that determines who is entitled to protection in the UK. It explains the key provisions of the Refugee Convention and the European Convention on Human Rights.
- Chapters 3, 4, 5 and 6 explain the ways that *different* types of cases are decided, under both the New Asylum Model and the Case Resolution Directorate. (Case Resolution Directorate cases are sometimes called Legacy cases).
- Chapters 7 and 8 explain the different decisions that you may receive on your case, including appealing against negative decisions and the different types of *protection* you may be given in the UK.
- Chapter 9 explains what will happen if you are finally refused and facing removal from the UK.
- Chapter 10 explains what a fresh claim is and how it can be made.
- Chapter 11 explains the financial support that asylum-seekers and failed asylum-seekers are entitled to, as well as access to education and health care.
- Chapter 12 gives information about other organisations that may be useful to you and gives their contact details.

## Legal advice

This book has been written to provide you with information on the laws and policies that determine who is entitled to protection in the UK, and how decisions are made. This book cannot give you legal advice on your situation. If you are an asylum-seeker, or if you are thinking of claiming asylum, it is important that you get legal advice as soon as you can from a legal

representative. If you are supporting someone who is claiming asylum in the UK, you can assist them by making sure that they are getting legal advice.

A **legal representative** is a person who provides legal advice on the law and your rights. Your legal representative may be a **solicitor, barrister** or **immigration advisor**.

A **solicitor** is a qualified lawyer who is responsible for dealing with the preparation of cases. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk)

A **barrister** is a qualified lawyer who represents clients before courts and tribunals. If you appeal against a decision taken by the UK Border Agency (see Chapter 8), your solicitor may represent you in your appeal before the Asylum and Immigration Tribunal or arrange for a barrister to do it. Barristers are represented by the Bar Council [www.barcouncil.org.uk](http://www.barcouncil.org.uk) and are regulated by the Bar Standards Board [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

An **immigration advisor** is someone who is not a lawyer but who has the knowledge, skills and experience necessary to give immigration law advice. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to public funding (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and

representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

## Acknowledgements

Rights of Women would like to thank Catherine Briddick, our Senior Legal Officer, for writing this book. We would also like to thank Liz Barrett, an Associate at Bindmans LLP and Gerry Hickey, Legal Advisor at the Asylum Support Appeals Project for their invaluable contributions. This book would not be as practical and informative as it is without their time and expertise.

Rights of Women would like to thank all the staff who supported the writing of this book, particularly Mina Rai, for her comments and research and Emma Scott for making it all happen. Rights of Women would also like to thank our volunteers Ruth Revie, Celia Radice, Christine Quinn, Grace Rayner and Chris Bradley, who gave their valuable time and energy. Finally, we would like to thank Comic Relief, for funding and supporting this book and our work with asylum-seeking women and survivors of sexual violence.



# 2 Am I entitled to protection in the UK?

## Introduction

Many people are forced to leave their country and seek safety somewhere else. This Chapter will explain the law that determines who is entitled to protection in the UK. There are three different types of protection that a person may be given: Refugee Leave, Humanitarian Protection and Discretionary Leave. This section will explain the law that determines who is entitled to each type of protection.

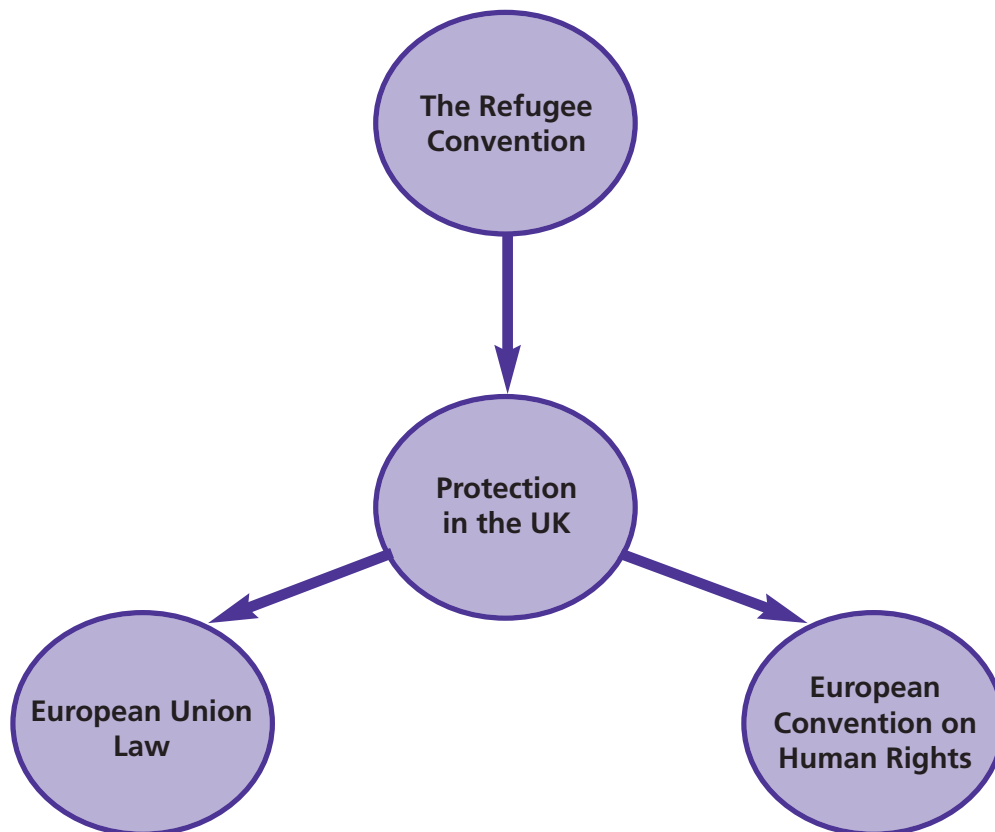
**The law discussed here is very complicated. This Chapter is written to give you information about the law but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or an immigration advisor.**

**You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## What is the law that decides who is entitled to protection in the UK?

There are three sources of law that determine who is entitled to protection in the UK:

- the Refugee Convention 1951;
- the European Convention on Human Rights 1950; and
- European Union Law.



This section will explain these three sources so that you know on what basis you may be entitled to remain in the UK.

For information about how claims are decided see Chapters 3, 4, 5 and 6. For information about the different types of leave to remain in the UK see Chapter 7. For information about appealing against a negative decision see Chapter 8.

## Who decides my case?

A claim for asylum or some other form of protection in the UK is decided initially by a **case-owner** in the **UK Border Agency**.

The UK Border Agency<sup>1</sup> is the part of the Home Office that deals with asylum, immigration and nationality issues. The Home Office is a department in the UK Government.

A **case-owner** is someone in the UK Border Agency who interviews people who have applied for asylum and makes the initial decision on whether or not they should be given permission to remain in the UK.

If your initial application for protection to the UK Border Agency is refused, you can appeal against it to the **Asylum and Immigration Tribunal**. If you do appeal, then the decision on your appeal is taken by an **Immigration Judge** who is independent of the UK Border Agency.

In order to decide whether or not you should be given protection in the UK, and what type of protection you should be given, the person who makes the decision (the case-owner at the UK Border Agency or the Immigration Judge at the Asylum and Immigration Tribunal) must consider all the relevant international and domestic law.

“ **A decision-maker is the person who makes a decision in your case. The decision-maker could be either a case-owner at the UK Border Agency or an immigration judge at the Asylum and Immigration Tribunal.** ”

## The Refugee Convention

The UK follows the law set out in the **1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol**, usually called the Refugee Convention. The Refugee Convention

is international law that tries to protect people who flee persecution in their country.

A person who is granted protection under the Refugee Convention will be given **Refugee Leave** for 5 years.

Article 1A of the Refugee Convention states that a refugee is someone who:

- has a well-founded **fear** of being **persecuted** for one of the following convention reasons:
  - o race
  - o religion
  - o nationality
  - o political opinion
  - o membership of a “particular social group”

AND

- is outside her home country;

AND

- her State is either **unwilling** or **unable** to protect her from the persecution.

“ **A country is the geographical area that a person lives in, such as England or Wales.** ”

“ **A State is the government of a country. The word ‘State’ refers to the official institutions responsible for controlling a country, such as local and national government, the police and the army.** ”

## What is persecution?

Persecution is a form of serious harm, such as the abuse of a fundamental human right. A fundamental human right is one of the rights that are most important, such as the right to life and the right to be free from torture.

<sup>1</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

Persecution may involve:

- Physical, sexual or mental violence or abuse.
- A legal measure, such as a law, which is discriminatory, or is applied in a discriminatory way. An example of this would be a law that applies only to women.
- Prosecution or punishment which is more than is necessary, or is discriminatory. An example of this would be putting someone in prison for doing something that is not criminal or harmful to others.
- Denial of a legal remedy which is discriminatory, or which results in a punishment which is more than is necessary. An example of this would be a State that has laws to forbid domestic violence and to punish family members who are violent, but which does not apply them, leaving women without protection.

Whether or not what you fear may happen if you are returned to your country would be considered persecution under the Refugee Convention also depends on who is responsible for it. This is also the case for any harm that you have already experienced. This means that whether or not a particular fear or harm would be considered persecution depends on what it is that you fear and who is responsible for it.

Persecution can be carried out by different people.

A **State actor** is someone who is linked to the State in your own country, such as a police or army officer, a Government official or a prison guard.

A **non-State actor** is someone who is not linked to the State in any way, for example, someone in your family, someone from your community or someone from a criminal gang or political group.

If you fear harm from a **State actor**, for example, a police or army officer, then any serious harm that you fear will be considered to be persecution.

If you fear harm from a **non-State actor**, such as a family member or criminal gang, it will only be considered to be persecution if it is serious and your State is unable or unwilling to protect you.

**Persecution = serious harm + the failure of State protection**

No State can protect all of its people from all forms of harm. However, States must provide a **“sufficiency of protection”** for their people. This means that States should take reasonable steps to protect people from persecution by, for example, properly investigating criminal offences and operating an effective legal system. This means that if you fear serious harm from a member of your family, you should be able to go to the police for assistance. The police should be able to investigate your concerns and, if necessary, take action against the person you fear. You should also be able to seek protection from the courts. If you fear serious harm but you are unable to get protection from the police or the courts, your State may be failing to provide a sufficiency of protection for you.

Finding out and deciding whether or not your State is willing or able to protect you will involve looking at the situation in your home country. This may involve getting an expert to write a report or looking at other reports that have been written on your country, as well as looking at decisions that have been made about your country in other decided cases (known as case-law).

## What is a well-founded fear of persecution?

In order for your claim to be successful under the Refugee Convention you have to show that you have a well-founded **fear** of being persecuted for one of the Convention reasons (race, religion, nationality, political opinion or membership of a particular social group).

A well-founded fear of persecution is one where:

- you fear that you, personally, will be harmed; and
- looking at the information available, your fear is reasonable.

This means that the person who is making the decision about your case is looking to see if you fear some future form of harm and whether there is any evidence that shows that your fear is justified. The fact that you have already been persecuted may show that your fear of possible future persecution is well-founded.

## Would you be safe anywhere else? Internal relocation

When considering your claim for protection, the decision-maker will consider whether you would be safe from the harm you fear in another part of your country. This is called *internal relocation* or the *internal flight alternative*.

Internal relocation is more likely to be an issue in your case if you fear persecution from non-State actors who live in a specific area, such as family members or criminal gangs who know where you are. It may be that you would be safe from people like this if you moved to another part of your country.

When deciding whether you should move somewhere else in your country, rather than being given protection in the UK, the decision-maker should consider whether:

- there is another part of the country where you could go that would be safe; and, if there is:
- whether it would be very unfair to expect you to go and stay there. The legal test used is whether or not it would be “*unduly harsh*”<sup>2</sup> to expect you to move.

When considering whether or not it would be unduly harsh for you to move to a different area of your country, the decision-maker should consider the financial, practical, social and cultural factors that affect the ability of women to move to a different area. This means that they should consider where you would live, how you could find somewhere safe and how you would be able to support yourself.

### Example of a case: AA (Uganda) [2008]<sup>3</sup>

In this case, the Court of Appeal held that it would be unduly harsh for AA, a woman who had experienced physical and sexual violence, to move to a different area in Uganda when she had no family or other support and may have to enter into prostitution to support herself.

## The Convention Reasons

The Refugee Convention does not protect people from general threats to their safety, such as threats that come from a war or a flood. Instead, you have to show that you fear persecution for one, or more, of the following *Convention reasons*:

- race;
- religion;
- nationality;
- political opinion; and / or
- membership of a “particular social group”.

Your *race* is your skin colour or your membership of a particular ethnic group or clan. A person may be persecuted because of their race by others of a different race to them. Women may be persecuted because of their role in having children. For example, women may be raped by members of another racial group to punish them, and so that they have children who are members of that other racial group.

Your *religion* is the beliefs that you have about whether or not there is a god or gods. Christianity, Hinduism, Islam, Judaism and Sikhism all involve believing in a god or gods, while other religious beliefs, such as humanism or ancestor worship do not involve a god. A person may be persecuted for their religious beliefs when their beliefs are different to those of their State, where they have changed their religion, or where they have no religion at all. Women may be persecuted for not following the rules of a religion.

Your *nationality* is your membership of a particular State or group. For example, a person born in Britain to British parents will be British. Your nationality may be determined by the place you were born, or it may be linked to other things such as your culture, ethnicity, language or political opinion. An example of someone who is persecuted for their nationality could be a woman who is punished for encouraging people who share her language and culture to set up their own country, or form links with another country which also shares her language and culture.

Your *political opinions* are your opinions, thoughts or beliefs on particular issues. Some examples of expressions of political opinion are:

<sup>2</sup>*AH (Sudan) v Secretary of State for the Home Department* [2007] 3 WLR 832

<sup>3</sup>*AA (Uganda) v Secretary of State for the Home Department* [2008] EWCA Civ 579

- not following customs or traditions by refusing to wear certain clothes;
- carrying out activities such as hiding people, passing messages or giving food and shelter; or
- involvement in the women’s movement.

You may be persecuted because of a political opinion that you have, or an opinion that someone else thinks that you have.

**Membership of a particular social group** is the most difficult of all the Refugee Convention grounds to understand. Under the Refugee Convention, a group will be a “particular social group” where:

- members of the group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to a person’s identity that she or he should not be made to change it; and / or<sup>4</sup>
- the group has a distinct identity in the relevant country because it is perceived as being different by surrounding society.

Persecution cannot be the only factor that defines the group. This means that the group must have an identity that is different to the harm that is feared.

An innate characteristic or common background could be your gender, sexual orientation (whether you are heterosexual or are a lesbian) or family membership. It does not matter if not everyone in the group sees themselves as part of it. Members of the group do not have to know each other, or work or live together (although they may do). A particular social group can be small, such as a family, or large, including all women in a particular country or area. Not every member of the group has to have been persecuted for a group to be found to exist. What is important is that you have a well-founded fear of persecution because of your membership of the group.

The fact that, in your country, violence against women is socially or culturally accepted is **not** relevant in deciding whether you are a member of a particular social group, or whether the harm you have experienced or suffered amounts to persecution.

Some examples of people who have been recognised as members of a particular social group in the UK are:

- women in Pakistan;
- women in Afghanistan;
- women in Kenya (particularly Kikuyu women under 65); and,

- women in Sierra Leone and / or women in Sierra Leone who are at risk of female genital mutilation; and
- people who have been trafficked from Moldova for the purposes of sexual exploitation (who have been forced into prostitution).

## What happens if you are persecuted because of an identity someone thinks you have? Imputed Convention Reasons

It may be that you have been persecuted because those responsible for the persecution believe (rightly or wrongly) that you are of a particular race, religion or political opinion, or that you are a member of a particular social group. This is called **imputing** an identity to a person. For example, a woman may be persecuted because her husband is known to hold a particular political view and those responsible for the persecution believe that she also holds that view.

The Refugee Convention protects individuals who have a well-founded fear of persecution because of an imputed Refugee Convention reason. This means that a woman who is persecuted because it is thought that she has the same political views as her husband could claim asylum on the basis of her imputed political opinion. She would be protected by the Refugee Convention.

## Women and the Refugee Convention

Women may be persecuted for many reasons but sometimes they are persecuted for their **gender**.

**Gender** is not only about whether you are a woman or a man, but includes all of the differences there are between women and men, including physical, social or cultural differences. Gender includes the way that women are treated because they are women, the way that they are supposed to dress or behave and the rights that they have (or do not have).

The Refugee Convention reasons do not include gender. This means that a woman who has experienced persecution because of her gender has to fit her claim for protection within one or more of the Refugee Convention reasons explained above.

Women may experience violence for a number of reasons. Sometimes women may experience violence **just because** they are women. Here are some examples of different kinds of violence that particularly affect women:

- Domestic violence and abuse: this is violence that is carried out by a woman's family, including her parents, her husband or her children.
- Sexual violence: this may involve forcing or pressuring a woman to have sex with someone she does not want to, or harming her sexually. Sexual violence occurs whenever a woman does not agree to the sexual behaviour, whether or not she knows the person responsible for it.
- Punishment for relationships outside marriage. For example, being punished for having sex with someone you are not married to.
- Punishment for being a lesbian or bisexual. A lesbian is a woman who wants to be in a relationship with another woman (rather than a man) while a bisexual woman is a woman who can be in a relationship with either a man or a woman (rather than only with men or only with women).
- Being forced into a marriage that you do not agree with or have not chosen.
- Not being allowed to end your marriage by divorce.
- Violence against you because others think that something that you have done or not done has affected your family's honour (this is often called "honour-based violence").
- Violence related to your dowry. For example, where others think that what is offered as a dowry is not enough, or where a woman is harmed because she wants to take back her dowry when her marriage has ended.
- Forcing a woman to have an abortion when she does not want to, or preventing her from having other children when she does not agree to this.
- Forcing a woman into prostitution, to have sex with men when she does not want to. A woman could be forced into prostitution in her own country or she could be taken to another country. Where a woman is taken to another

country or moved about within her own country so that she can be forced into prostitution, it is called **trafficking**.

- Female genital mutilation (FGM), where a woman's genitalia are altered or interfered with for a reason that is not a medical reason.

The UK Border Agency has two **Asylum Policy Instructions** which should be followed by case-owners when they deal with a woman's claim for asylum:

- Gender Issues in the Asylum Claim; and
- Victims of Trafficking.

The guidelines contain information about the forms of persecution women may face and how the Refugee Convention reasons should be interpreted to include these types of persecution.

You can download the guidelines from the UK Border Agency website here: [www.ind.homeoffice.gov.uk/policyandlaw/guidance/](http://www.ind.homeoffice.gov.uk/policyandlaw/guidance/)

Information for women asylum-seekers about the guidelines is also available from Asylum Aid (an independent charity) and can be downloaded here: [www.asylumaid.org.uk](http://www.asylumaid.org.uk)

## Is there any other international law that can help me make a claim under the Refugee Convention?

International human rights law aims to secure gender equality and respond to violence against women. This means that your legal representative, or you, if you are representing yourself, can use international law when arguing that you should be given protection in the UK. In the case of **Fornah**<sup>5</sup>, the House of Lords (which was the highest court in the UK until 1 October 2009) stated that the UK, which is a signatory to a number of important human rights treaties, must interpret and apply the Refugee Convention in a way which is compatible with these treaties.

<sup>4</sup>The Qualification Regulations as interpreted following the House of Lords' judgement in: *Home Department (Respondent) v. K (FC) (Appellant) Fornah (FC) (Appellant) v. Secretary of State for the Home Department (Respondent)* [2006] UKHL 46. For further information see *Rights of Women's' Focus on Women Winter 2006* which can be downloaded from: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

<sup>5</sup> *Fornah v Secretary of State of the Home Department* [2005] UKHL 46.

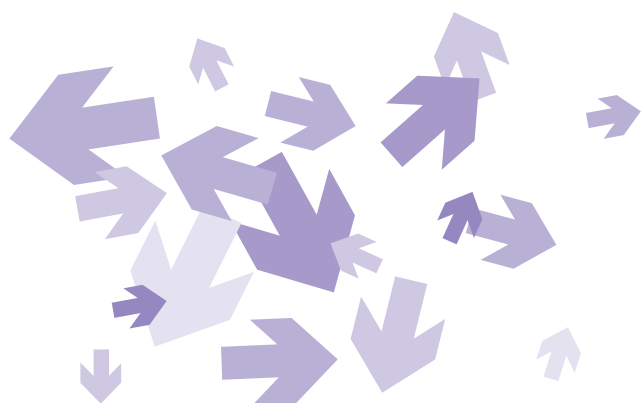
The main international human rights laws that the UK must follow are:

- International Covenant on Civil and Political Rights 1966 (ICCPR)  
[www2.ohchr.org/english/law/ccpr.htm](http://www2.ohchr.org/english/law/ccpr.htm)
- Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD)  
[www2.ohchr.org/english/law/cerd.htm](http://www2.ohchr.org/english/law/cerd.htm)
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)  
[www.un.org/womenwatch/daw/cedaw/](http://www.un.org/womenwatch/daw/cedaw/)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment 1984 (CAT)  
[www.unhcr.org/refworld/docid/3ae6b3a94.html](http://www.unhcr.org/refworld/docid/3ae6b3a94.html)
- Convention on the Rights of the Child 1989 (CRC)  
[www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm)

## The European Convention on Human Rights

The UK also has to follow the **Convention for the Protection of Human Rights and Fundamental Freedoms 1950** which is sometimes referred to as the ECHR. The ECHR is part of UK law through the **Human Rights Act 1998**. This means that as well as considering whether you are entitled to protection under the Refugee Convention, the decision-maker in your case also has to consider whether returning you to your country would be in breach of the UK's obligations under the ECHR.

The ECHR gives everyone in the UK, whether they are British or not, a number of important rights.



The human rights in the ECHR:

- Article 1 - obligation to respect human rights
- Article 2 - right to life
- Article 3 - prohibition (forbidding) of torture and inhuman or degrading treatment or punishment
- Article 4 - prohibition (forbidding) of slavery and forced labour
- Article 5 - right to liberty and security
- Article 6 - right to a fair trial
- Article 7 - right to not be punished unlawfully
- Article 8 - right to respect for private life
- Article 9 - right to freedom of thought, conscience and religion
- Article 10 - right to freedom of expression
- Article 11 - right to freedom of assembly and association
- Article 12 - right to marry and found a family
- Article 13 - right to an effective remedy
- Article 14 - prohibition (forbidding) of discrimination

The rights that are most relevant to women seeking asylum are:

- **Article 3 Prohibition of torture:** this article says that no one shall be subjected to torture, or to inhuman or degrading treatment or punishment. This right cannot be breached in any circumstances. This means that no one who is within the UK can be tortured or treated in a way that is inhuman or degrading. It also means that we cannot send or return someone from the UK; whether they are British or not, to a country or situation where there is a real risk that they may be tortured or suffer inhuman or degrading treatment.
- **Article 4 Prohibition of slavery and forced labour:** this article forbids forcing anyone into a situation of slavery, or forcing them to work when the person concerned has not agreed to this. This article offers protection to women who are forced into prostitution.

- **Article 8 Right to respect for private and family life:** this article says that everyone has the right to respect for his or her private and family life, home and correspondence (sending or receiving letters). The article states that public authorities (for example, the UK Border Agency) can only interfere with these rights if they are allowed by law, and only where it is necessary for certain good reasons, like public safety or to maintain immigration control (the control of people who enter and remain in the UK).

If you are successful in your claim under the ECHR, you may be given either **Humanitarian Protection** or **Discretionary Leave**.

## Who is entitled to Humanitarian Protection?

You will be granted *Humanitarian Protection* if you do not qualify under the Refugee Convention, but you have shown that there are substantial reasons for believing that:

- if you were returned to your home country, you would face a real risk of suffering *serious harm*; and
- your country is either unwilling or unable to protect you from this harm.

Serious harm includes:

- The death penalty or execution (for example, execution by the State because you have committed a serious crime).
- Unlawful killing (for example, murder by a member of your family).
- Torture, inhuman or degrading punishment. (Rape is considered to be a form of torture. Inhuman and degrading punishment is punishment that is harmful or humiliating, such as an assault. If the assault or beating is particularly severe it may be considered to be torture).
- A serious and individual threat to you because of indiscriminate violence in a war or conflict (for example, where you are particularly at risk of being killed during a war).

The concepts of *internal flight* and whether the State is able to offer *sufficient protection* that apply when an application is made for Refugee Leave (see above) also apply to applications for Humanitarian Protection.

## Who is entitled to Discretionary Leave?

You will qualify for Discretionary Leave if you do not qualify for Refugee Leave or Humanitarian Protection, but you can show that:

- returning you would be a breach of your right to private and family life (Article 8 ECHR); or
- returning you would be a breach of your right to be free from inhuman and degrading treatment (the second part of Article 3 ECHR).

Whilst some of the rights in the ECHR are *absolute* (cannot be infringed in any circumstances), others can be interfered with or limited in certain circumstances. The right to private and family life is one of the rights that can be interfered with by public authorities, such as the UK Border Agency. However, in order for this interference to be lawful, it has to be *proportionate* and for a *legitimate* reason. Maintaining immigration control is considered to be a legitimate reason for interfering with your private and family life. Immigration control is the control of who is allowed to enter and remain in the UK from other countries. However, any interference has to be proportionate; this means that it has to be no more than is needed.

Some rights in the ECHR are *absolute*; this means that they can never be limited. The right to be free from torture is an absolute right. This means that there are no circumstances when torture is allowed. Other rights can be interfered with in a way that is proportionate for a particular legitimate reason. A right is *interfered with* if it is limited or restricted in some way. Interference is *proportionate* if it is no more than is needed. A *legitimate reason* is one that is given in the ECHR, such as the maintenance of immigration control.

## What is private and family life?

Article 8 protects your right to a *private* life and your *right* to a *life* with your family.

Your *private* life includes things like your work or studies and your privacy. You will have established private life when you have been settled for a significant amount of time in a country.

Your **family** life is your relationships with members of your family. Your relationships with your husband, civil partner (your same-sex partner with whom you have entered into the legal relationship of civil partnership) and children are always considered to be family life for the purposes of Article 8.

Where the child is a young adult (aged 18 years old or over) who has not yet founded a family of their own, their relationship with their parents and other close family members is also family life<sup>6</sup>. Where the relationship is between adult brothers and sisters, or between adult children and their parents, their relationship will be considered to be family life where there is a dependence on each other that is more than the normal emotional ties between adult family members<sup>7</sup>. This could happen where an adult child cares for her parent, brother or sister because they have a physical or mental health problem. So, a woman who cares for her adult brother who has a mental health problem would be considered to have family life with him because her brother is dependent on her.

Two adult siblings who are not dependent on each other are not likely to be considered to have family life with each other.

Once the decision-maker has decided that you do have private and family life, he / she will go on to consider whether or not it would be possible for you to have that private and family life in your home country. The decision-maker will consider not only how your private and family life would be affected by your return to your country, but also how your family would be affected by your return<sup>8</sup>.

If your family life is with someone who is British, or present and settled in the UK (someone who has Indefinite Leave to Remain in the UK, ILR), the court will consider how being separated from them will affect both your and their family life.

If your family life is with people who do not normally live in the UK and who will be returned with you (for example, where you will be returned with your children), the court will consider what effect returning you and them would have on your and their family life.

The fact that your family life in your country would not be the same as your family life in the UK will not be enough to enable you to remain in the UK. In order to be granted protection in the UK, the effect of returning you to your country must be that you would be completely denied your family life there.

### **Example of a case: Beoku-Betts [2008]**

BB arrived in the UK when he was 17. He was from Sierra Leone and had suffered considerable harm there. BB had come to the UK initially as a student and some of his family, including his mother and his sisters, came with him. They were all given Indefinite Leave to Remain in the UK (ILR). BB had problems with his student visa and so applied to remain in the UK because of his relationship with his mother and sister (who would not return to Sierra Leone). His father had died and BB's mother relied on him for emotional support. Although he was at university, he came home at weekends and for the holidays. BB was given permission to remain in the UK under Article 8 by the House of Lords because, although he was now an adult, his mother was dependent on him and returning him would be a disproportionate interference with his and his mother's rights.

### **Example of a case: EM (Lebanon) [2008]**

EM and her son came to the UK so that she could continue to live with him as he was about to be handed over to his father. EM's relationship with her husband broke down because he was very violent towards her. She left her husband when she was pregnant and he never saw or had any relationship with their son. EM divorced her husband, but under Lebanese law, children have to be returned to live with their father once they reach the age of seven. In Lebanon, there is no way that a woman can remain living with her children after that age unless the father allows it. There was no guarantee that EM would be allowed to see her son following handing him over to his father. Instead of giving her son to his father, EM fled to the UK with her son and claimed asylum. Her claim was refused and her case went to the House of Lords. The House of Lords held that her right to family life with her son would be completely denied if she were returned to Lebanon.

## Your right to be free from inhuman and degrading treatment

Most claims brought on the grounds that returning someone to their country would breach their right to be free from inhuman and degrading treatment are about their need for medical treatment in the UK, or the conditions that they would face if they returned to their country.

## Remaining in the UK for medical reasons

Following the House of Lords case of **N (FC) v Secretary of State for the Home Department**<sup>9</sup>, which was upheld in **N v UK**<sup>10</sup>, obtaining permission to remain in the UK for medical reasons is *extremely difficult*, and will only be possible in very exceptional cases. This could include when a person is close to death and where there is no medical treatment available in the country they come from. When deciding your case, the decision-maker must consider the seriousness and stage of your illness, the availability of medical care in your country, and whether you would be supported by your family.

## Remaining in the UK because of the conditions in your country

If you are applying to remain in the UK because there are severe conditions in your country, then the situation must be *particularly serious*, involving, for example, no water, food or shelter. This means that the fact that life would be difficult for you is not a reason for giving you permission to remain in the UK. You have to show that, if you were returned to your country, there would be nowhere for you to live or you would not be able to feed yourself or find water.

## European Union law

As well as having to follow the Refugee Convention and the ECHR, the UK must also follow European Union (EU) law. The EU is a group of countries in Europe which share certain laws. The UK is a member of the EU.

The UK is a member of the European Union (the EU), an organisation of States who share certain common laws that enable the free movement of people, goods, money and services.

Members of the EU are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, the Irish Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

There are a number of EU laws, which are called Directives, that require the UK to maintain certain standards when deciding who is entitled to protection and who is not. These laws create a framework within the EU for dealing with refugees<sup>11</sup>.

One of these laws is the **Temporary Protection Directive**<sup>12</sup>. This enables States such as the UK to share the responsibility for protecting individuals in situations where many people have to flee an area at the same time.

Another relevant EU law is the **Qualification Directive**. The Qualification Directive sets out the minimum standards that should be followed by EU Member States in applying the Refugee Convention. The Qualification Directive also sets out criteria for giving protection to people whose cases are not covered by the Refugee Convention, including protection under Article 3 of the European Convention on Human Rights (see above).

Articles 2(e) and 15(c) of the Qualification Directive give protection to civilians who have fled armed conflict (such as civil war) but who would not be protected by the Refugee Convention or the European Convention on Human Rights.

Article 2(e) states that you should be given protection if you can show that if you were returned to your country, you would face a *real risk* of suffering *serious harm*. The protection given under Article 2(e) is humanitarian protection.

<sup>6</sup> *Maslov v. Austria* n° 1638/03 - 23/06/2008

<sup>7</sup> *Beoku-Betts v SSHD* [2008] UKHL 39

<sup>8</sup> *Beoku-Betts v SSHD* [2008] UKHL 39.

<sup>9</sup> *N (FC) v Secretary of State for the Home Department* [2005] UKHL 31.

<sup>10</sup> *N. v. United Kingdom* (Application no. 26565/05) you can read the judgement here: <http://cmiskp.echr.coe.int/Itkp197/view.asp?item=1&portal=hbkm&action=html&source=tkp&highlight=26565/05&sessionId=23492107&skin=hudoc-en>

<sup>11</sup> These include: *Dublin II* (Sept 03), *Reception Directive* (Feb 05), *Qualification Directive* (Oct 06) *Procedures Directive* (Dec 07)

<sup>12</sup> *Temporary Protection Directive* (Council Directive 2001/55/EC).

Article 15 states that serious harm includes the death penalty, execution, torture or a serious threat to a civilian's life because of indiscriminate violence in an armed conflict. A civilian is someone who is not a soldier. Armed conflicts may be wars between countries or wars between different groups of people in the same country (a civil war). Indiscriminate violence is violence that cannot be predicted or is random or arbitrary.

## Things to remember

- You have a right in international law to seek protection in the UK if your own State is unwilling or unable to protect you from persecution.
- In addition to the Refugee Convention, the UK also has to follow the European Convention on Human Rights. This means that if you are not entitled to protection under the Refugee Convention, you cannot be returned to your home country if certain rights, such as the right to be free from torture, inhuman or degrading treatment, would be breached.
- Where you are claiming protection in the UK from persecution or some form of serious harm in your home country, you will have to explain:
  - Who you fear the harm from, and why; what the harm is and why you fear that you, personally, are at risk.
  - If you fear harm from a non-State actor, whether your State is willing or able to protect you from the harm, and why.
  - Whether there is another part of the country that you could go to that would be safe and if not, why not.
- If you are claiming protection in the UK on the basis of your family life, you will need to explain:
  - Who your family life is with.
  - Whether or not they would return to your country with you (this is particularly important when your family life is with someone who is British, or has Indefinite Leave to Remain).
  - What would happen to your family life if you were forced to return to your country.

- If you are not entitled to protection under the Refugee Convention or the European Convention on Human Rights, you may be entitled to protection under the Qualification Directive. The Qualification Directive protects civilians from violence faced as a consequence of indiscriminate violence in an armed conflict such as a civil war.

## Support organisations

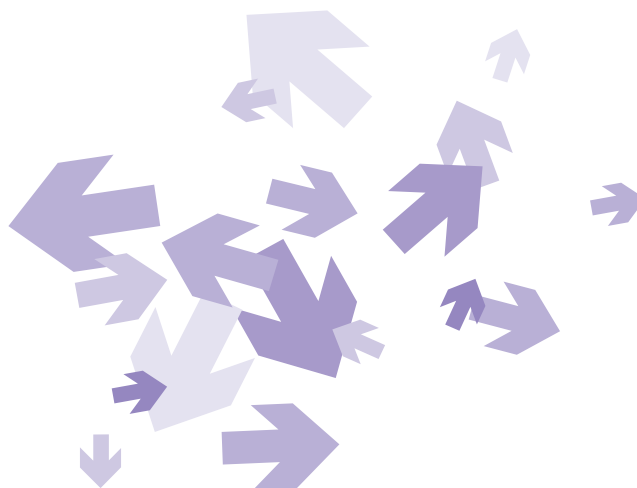
For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.



# 3 The New Asylum Model: Non-detained cases

## Introduction

This Chapter explains one of the processes that a person who applies for asylum may go through to have their claim decided.

All applications for asylum are considered by the **UK Border Agency**<sup>13</sup>. There are currently two systems in operation for deciding asylum claims: the **New Asylum Model** (NAM) and the **Case Resolution Directorate** (CRD). See Chapter 6 for information about the Case Resolution Directorate.

Some cases were dealt with under NAM from May 2005. From 5th March 2007, all new claims for asylum will be dealt with through NAM.

Under NAM there are currently two systems for determining applications: general casework and the detained fast-track. This Chapter explains the process you will go through in order to have your claim for asylum determined if your case is not put in the detained fast-track.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## Overview of the process

This flow chart provides an overview of the process of having a claim decided if your case is not put in the Detained Fast-Track.

Each stage of the process should take place at a particular time. However these times may be different to the days shown here depending on the nature of your case and where you are in the UK. There may also be delays in dealing with your case.

Under NAM it is hoped that these cases will be dealt with within 6 months by either integration or removal.

Some people can only appeal their cases from outside the UK. For information about appeals, see Chapter 8



<sup>13</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

## Applying for asylum: on arrival or in-country

You can apply for asylum in two ways:

- To an Immigration Officer on your arrival in the UK, at the airport, port or station; or,
- **In-country** (inside the UK) at an **Asylum Screening Unit**. You may be applying in-country because you were brought through immigration control or because you are here for another reason, such as studying or working, but something has happened, either in your personal life or in your country, which means it is no longer safe for you to return home.

If you are applying for asylum in-country, you have to apply **as soon as reasonably practicable** to an Asylum Screening Unit in Croydon or Liverpool. The Home Office interprets this to be **within 72 hours** of your arrival in the UK. If you have delayed claiming asylum, it is important that you explain the reasons for this, otherwise you may not be believed, or you may be refused financial support while your claim is being decided. If you have come to the UK with other members of your family, such as your children, you should take them with you when you apply for asylum.

### Asylum Screening Units:

Lunar House  
40 Wellesley Road  
Croydon  
CR9 2B  
0870 606 7766

Reliance House  
Water Street  
Liverpool  
L2 8XU  
0151 237 0405 or 0151 237 0473

It is very important that anyone who is considering applying for asylum gets legal advice and applies as soon as they are able to.

Your **legal representative** is the person who advises you on the law and your rights. Your legal representative may be a **solicitor** or an **immigration advisor**. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk). An immigration advisor is someone who is not a solicitor, but who is able to give immigration law advice. For information about immigration advisors, contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

Once you have claimed asylum, you will be screened (see below). This may happen on the same day that you claim asylum or the day after. Screening is the first part of the process of applying for asylum or some other form of protection in the UK.

## The application process

### What is screening?

Once you have claimed asylum, you will be **screened**. Screening involves checking your identity by having your fingerprints and photographs taken. You will be asked for some information about why you have claimed asylum, where you have come from, how you travelled to

the UK and what travel documents you used to get here. These questions are important as your answers may be used to make a decision about whether or not you should be given protection in the UK. You must therefore explain **why** you fear being returned to your country.

The screening process will also be used to find out whether you have claimed asylum before, whether you applied as soon as reasonably practicable, and whether you should be given financial support. For further information about financial support throughout the process, see Chapter 11.

When you are screened, you will be given some basic information about the asylum process. You can also ask for a female case-owner (see below) and a female interpreter, if you would prefer to be interviewed by women. The UK Border Agency will try to ensure that you are interviewed by a woman whenever possible. You may have one case-owner throughout your case or have different case-owners at different times, for example, a female case-owner to interview you and a different case-owner to make a decision on your case.

When your name and identity is confirmed, you will be given an **Application Registration Card (ARC)** to show that you have applied for asylum. This card is important as it confirms your status in the UK. If you are not given an ARC, you will be given a **Standard Acknowledgement Letter (SAL)** instead. The SAL is valid for a maximum of two months and should come with instructions on how you can get a valid ARC.

At the screening interview, it will be decided whether or not you should be detained while your case is decided. For further information about detention and the fast-tracking of cases, see Chapter 4.

## What happens if I am not detained?

If you claimed asylum in the port or airport you arrived in, and you have not been detained, you may be given **temporary admission**. Temporary admission is not a grant of leave to enter the UK. It is an alternative to detention, but does not give you any other rights (such as the right to claim welfare benefits). A woman with temporary admission is usually forbidden from working and may be given certain **conditions**, such as reporting to immigration officials.

If you claimed asylum in-country at an Asylum Screening Unit, and you have not been detained, you may be released subject to certain **reporting restrictions**. Reporting restrictions involve doing things such as reporting to a certain place at a certain time each week.

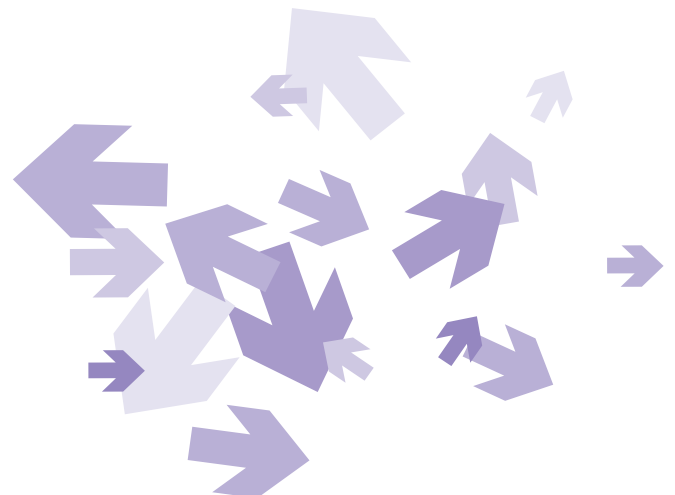
If you had a type of leave to remain in the UK when you claimed asylum, for example, if you had permission to be in the UK as a student or worker, then this leave continues until a decision on your case is made.

## What happens after screening? The first reporting event

After screening, you will be given the date you must first report to the UK Border Agency. At the first reporting event, you will be given a **case-owner**. It may be that you have the same case-owner throughout your case, or you may have different case-owners at different stages, for example, your asylum interview may be conducted by one case-owner, but the decision in your case may be made by another.

At the first reporting event, your case-owner will explain the asylum process to you. You can ask any questions that you have about your case. If you do not have a legal representative (see below), the case-owner will give you information about how you can find one.

“ **The case-owner is the person under NAM who is responsible for your case. You may have one case-owner throughout your case, or you may have different case-owners at different stages in the process.** ”



Case-owners have a number of responsibilities including:

- Meeting you at the first reporting event (see above).
- Being responsible for any reporting conditions that are imposed on you.
- Conducting your asylum interview.
- Working with your legal representative to clarify the issues in the case.
- Controlling the progression of your case by altering the times that certain things are done (for example, the date of the interview), if flexibility is required.
- Making an initial decision on whether you should be granted protection in the UK, or whether your claim should be refused.
- Ending your case by either assisting you with your integration in the UK, or arranging for your re-documentation and removal.

Your legal representative (or you, if you don't have a legal representative) should be in close contact with your case-owner(s) throughout the process.

## The asylum interview

The asylum interview is a *very important* part of the process in deciding your application for asylum. For information about the interview, and the evidence that may be provided to a case-owner to help them make a decision, see Chapter 5.

## Decision

After the interview, the case-owner will examine all the information and evidence which you and your legal representative have put forward, and decide whether or not you should be given protection in the UK.

## Things to remember

- It is important to claim asylum as soon as reasonably practicable. If you have delayed in claiming asylum, it is important that you explain the reasons for this.

- When you are screened to check your identity, you will be asked questions about why you cannot return home. It is important to answer these questions clearly, as your answers may be used to decide whether or not you should be given protection in the UK.
- If you are not detained, you may be given temporary admission or be released subject to certain reporting restrictions.
- You can ask for a female case-owner, so that you are interviewed by another woman. You can also ask for a female interpreter. You may have the same case-owner throughout the asylum process, or you may have different case-owners at different stages of the process.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.

# 4 The New Asylum Model: The detained fast-track

## Introduction

This Chapter explains one of the processes that a person who applies for asylum may go through to have their claim decided.

All applications for asylum are considered by the **UK Border Agency**<sup>14</sup>. There are currently two systems in operation for deciding claims for asylum: the **New Asylum Model** (NAM) and the **Case Resolution Directorate** (CRD). See Chapter 6 for information about the Case Resolution Directorate.

Some cases were dealt with under NAM from May 2005. From 5th March 2007, all new claims for asylum will be dealt with through NAM.

## Overview of the process

This flow chart provides an overview of the process of having a claim decided if you are in the Detained Fast-Track

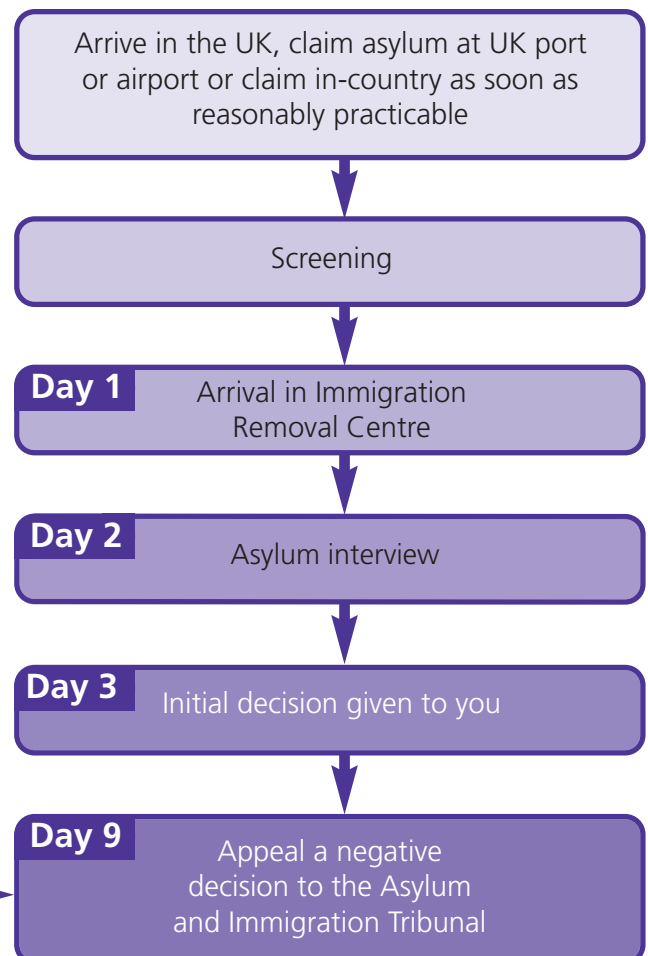
Under the detained fast track the different stages of the process take place on particular days on a very tight timescale. It is sometimes possible to have these timings changed: see below for further information.

Cases that are dealt with under the detained fast track are usually resolved within 21 days.

Some people can only appeal their cases from outside the UK. For information about appeals, see Chapter 8

Under NAM there are currently two systems for determining applications: *general casework* and the *detained fast-track*. This Chapter will give you information about the process you will go through in order to have your claim for asylum determined, if you are in the detained fast-track.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**



<sup>14</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

## Applying for asylum: on arrival or in-country

You can apply for asylum in two ways:

- To an Immigration Officer on your arrival in the UK, at the airport, port or station; or,
- **In-country** (inside the UK) at an **Asylum Screening Unit**. You may be applying in-country because you were brought through immigration control, or because you are here for another reason, such as studying or working, but something has happened, either in your personal life or in your country, which means it is no longer safe for you to return home.

If you are applying for asylum in-country, you have to apply **as soon as reasonably practicable** to an Asylum Screening Unit in Croydon or Liverpool. The Home Office interprets this to be **within 72 hours** of your arrival in the UK. If you have delayed in claiming asylum, it is important that you explain the reasons for this, otherwise you may not be believed, or you may be refused financial support while your claim is decided. If you have come to the UK with other members of your family, such as your children, you should take them with you when you apply for asylum.

### Asylum Screening Units:

Lunar House  
40 Wellesley Road  
Croydon  
CR9 2B  
0870 606 7766

Reliance House  
Water Street  
Liverpool  
L2 8XU  
0151 237 0405 or 0151 237 0473

It is very important that anyone who is considering applying for asylum gets legal advice and applies as soon as they are able to.

Once you have claimed asylum you will be screened (see below). This may happen on the same day that you claim asylum, or on the day after. Screening is the first part of the process of applying for asylum or some other form of protection in the UK.

## The application process

### What is screening?

Once you have claimed asylum you will be **screened**. Screening involves checking your identity by having your fingerprints and photographs taken. You will be asked for some information about why you have claimed asylum, where you have come from, how you travelled to the UK and what travel documents you used to get here. These questions are important, as your answers may be used to make a decision about whether or not you should be given protection in the UK. You must therefore explain why you fear being returned to your country.

The screening process will also be used to find out whether you have claimed asylum before, whether you applied as soon as reasonably practicable and whether you should be given financial support. For further information about financial support, see Chapter 11.

When you are screened you will be given information about the asylum process. You can also ask for a female case-owner (see below) and interpreter if you would prefer to be interviewed by a woman. The UK Border Agency will try to ensure that you are interviewed by a woman whenever possible. You may have one case-owner throughout your case or have different case-owners at different times, for example, a female case-owner to interview you and a different case-owner to make a decision on your case.

When your name and identity is confirmed you will be given an **Application Registration Card** (ARC) to show that you have applied for asylum. This card is important as it confirms your status in the UK. If you are not given an ARC, you will be given a **Standard Acknowledgement Letter** (SAL) instead. The SAL is valid for a maximum of two months and should come with instructions on how you can get a valid ARC.

At the screening interview it will be decided whether or not your case will be put in the **detained fast-track**.

“ **The case-owner is the person under NAM who is responsible for your case. You may have one case-owner throughout your case or you may have different case-owners at different stages in the process.** ”

Case-owners have a number of responsibilities including:

- Meeting you at the first reporting event (see above).
- Being responsible for any reporting conditions that are imposed on you.
- Conducting your asylum interview.
- Working with your legal representative to clarify the issues in the case.
- Controlling the progression of your case by altering the times that certain things are done (for example, the date of the interview), if flexibility is required.
- Making an initial decision on whether you should be granted protection in the UK or whether your claim should be refused.
- Ending your case by either assisting you with your integration in the UK or arranging for your re-documentation and removal.

Your legal representative (or you, if you don't have a legal representative) should be in close contact with your case-owner(s) throughout the process.

## Why is my case in the Detained Fast-track?

It is UK Border Agency policy that any asylum claim may be considered suitable for the detained fast-track where it appears, after screening, to be one where a **quick decision** may be made.

The policy referred to is the **Detained fast-track and detained non-suspensive appeals – intake selection (21/07/08)**. You can download a copy from the UK Border Agency website at: [www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/](http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/)

The decision to deal with a case in the detained fast-track is taken on a case-by-case basis. There are some people who **should not** be detained:

- Women who are 24 or more weeks pregnant.

- Unaccompanied asylum-seeking children, whose dates of birth are accepted by the UK Border Agency.
- Those with a medical condition requiring care 24 hours a day.
- Those with physical and / or learning disabilities requiring care 24 hours a day.
- Those with a disability, except disabilities that can be managed easily.
- Those with serious mental health problems, such as schizophrenia, who require treatment in a hospital.
- Those with an infectious or contagious disease, such as TB, which cannot be managed in a detention centre.
- Those who have independent evidence from an expert organisation (such as the Poppy Project) that they have been a victim of trafficking (that they have been brought into the UK and forced into prostitution).
- Those who have independent evidence (from a doctor, for example) that they have been tortured. Torture is serious physical or mental harm. Torture includes beating someone, or harming them physically in other ways. Rape and other types of serious sexual violence are considered to be torture.

If you are in one of these groups, you must tell your case-owner and your legal representative as soon as possible. Your legal representative can then take steps to try to have you released from detention.

If you are not in one of the above groups, you can be considered for detention if your case could be decided **quickly**.

According to UK Border Agency policy, most claims for asylum can be decided quickly, unless there is evidence indicating otherwise. Evidence which may show that a quick decision is not likely includes:

- Where it appears that either you or the UK Border Agency will need to make further enquiries, or obtain evidence that would support your case, and it appears that this will take longer than the time allowed under the detained fast-track. Further enquiries could involve things such as getting a medical report or researching the situation in your country.
- Where it is likely that documents that you have

in support of your claim need to be translated, and it appears that this will take longer than the time allowed under the detained fast-track.

If you are detained, you will be taken to Yarl's Wood, an Immigration Removal Centre which deals with women whose claims are decided in the detained fast-track.

## Your rights in detention

Women in detention have certain rights, including the right to a medical examination and the right to legal advice.

## Medical examination

The **Detention Centre Rules 2001**<sup>15</sup> set out how detention centres should be run.

Under Rules 34 and 35, you should be given a medical examination within the first **48 hours** of your detention. This examination should be carried out by a doctor who will take notes of what you say and any injuries he or she notices.

It is important that you tell the doctor about:

- any physical or mental health problems that you have;
- any injuries that you have and how you got them;
- whether you have been tortured (torture is when someone causes you serious physical harm);
- if you have been raped or sexually assaulted (rape is also a type of torture); and
- if you are pregnant, or think you might be pregnant.

It is important to tell the doctor all of this because, under Rule 35 of the Detention Centre Rules 2001, healthcare workers at Immigration Removal Centres who believe that a woman has been tortured, or has a particular illness or condition, have to report this to the manager of the Immigration Removal Centre. The report will then be given to the person who is responsible for your detention, and also to your case-owner. The report will be used to see whether you should be kept in detention or released, and could also be useful in your asylum claim. It can also be used to arrange for you to be referred to a specialist organisation which may be able to arrange medical treatment for you, or to provide you with a report for your case.

## Medical examinations and detention: the case of PB [2008]

PB claimed asylum in the UK. She was from Cameroon and had been raped and tortured. PB was detained when she claimed asylum and her case was dealt with under the detained fast-track. Her asylum application and an appeal had been rejected. The Home Office then started proceedings to remove PB to Cameroon and legal steps were taken to try and prevent her removal.

The Home Office then admitted that PB had not been given a medical examination when she had first been detained as required by the **The Detention Centre Rules 2001**. If the examination had been done when it should have been, PB would have had independent evidence that she had been tortured. The judge found that this report would have resulted in her release from detention, and would have been important evidence in her asylum claim. Consequently the judge found that PB's detention had been against the law and gave her £38,000.

If you are not given a medical examination your detention will be considered unlawful, following the case of **PB [2008]**<sup>16</sup>, and you should seek legal advice.

## How can I get legal advice?

There are a number of legal representatives who work with women in detention. You will be given a legal representative to assist you with your case if you are eligible for public funding (otherwise known as legal aid).

Your **legal representative** is the person who advises you on the law and your rights. Your legal representative may be a **solicitor** or an **immigration advisor**. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk). An immigration advisor is someone who is not a solicitor, but who is able to give immigration law advice. For information about immigration advisors, contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

On the day you arrive in detention, or the next day, you will be given time to see your legal representative. It is important to give your legal representative as much information about yourself and your case as you can. This information will help them present your case. For information about the law that determines whether or not a person can remain in the UK, see Chapter 2.

It is also important to tell your legal representative about any torture or harm you have suffered and any health issues that you have (see above), as this may enable them to challenge the decision to detain you, and help get you released.

## The asylum interview

The asylum interview is a very important part of the process in deciding your application for asylum. For information about the interview and the evidence that may be provided to a case-owner to help them make a decision, see Chapter 5.

## Decision

After the interview, the case-owner will examine all the information and evidence you and your legal representative have put forward and decide whether or not you should be given protection in the UK.

## What happens if I need more time to prepare my case? Flexibility in the fast-track

One of the concerns about the detained fast-track is the speed with which decisions are taken. Many lawyers and others have argued that cases are dealt with too quickly for a fair decision to be taken. Consequently, to try to ensure that people in detention have their case dealt with fairly, a flexibility policy was introduced to set out in what circumstances the timetable for dealing with cases should be changed.

The policy is the **Detained fast-track processes (2005)**. You can download a copy from the UK Border Agency website at: [www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/](http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/)

The policy states that a case should be taken out of the detained fast-track where the short time given to prepare and present a case means that a decision cannot be reached fairly. The language used by the policy is **“with a requisite degree of fairness”**. This means that, if you think that you do not have enough time to prepare or present your case, you should tell your legal representative and case-owner. Your legal representative can take legal steps to try to get you released from detention.

The policy also sets out a number of factors that should lead a case-owner to either vary the timetable or take your case out of the fast-track.

Your case should be taken out of the fast-track where:

- complicated issues emerge that cannot be dealt with on the fast-track timetable. For example, where an expert report is needed on your country and you need time to find an expert to prepare it.

The fast-track timetable should be changed to give you more time where:

- You say that you are unwell and do not want to continue with an interview. The interview should be delayed and you should be given medical attention.

<sup>15</sup> Statutory instrument 238/2001, the rules are made pursuant to section 153 of the Immigration and Asylum Act 1999 and came into effect on 2nd April 2001 see <http://www.opsi.gov.uk/SI/si2001/20010238.htm> for further information.

<sup>16</sup> PB [2008] EWHC 364 (Admin)

- Your legal representative does not come, or come on time. Your interview should then be delayed.
- There is no interpreter. Your interview should then be delayed until one is available.
- You are distressed or too tired and your legal representative thinks that you need more time before your interview. The interview should then be delayed for a day.
- More time is needed for your legal representative to put forward relevant information after your interview. The decision should then be delayed if it would be unfair not to do so.

If one of these things has happened or is happening to you, you should tell your legal representative and case-owner.

## Things to remember

- You can ask for a female case-owner and interpreter to interview you.
- If you are taken into immigration detention you have certain rights, including the right to a medical examination and legal advice.
- While all claims may be decided in the detained fast-track, there are certain people who should not be detained, such as torture survivors. If you think that you should not be detained, you should tell your legal representative and your case-owner. Your detention can be challenged by your legal representative.
- Decisions in the fast-track are made on a fixed timescale. However, case-owners can take a case out of the fast-track or give you more time in certain circumstances. There is a policy that sets out when more time may be needed to prepare a case. If you think that you need more time, for example before an interview, tell your legal representative and your case-owner.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.



# 5 Your Asylum Interview

## Introduction

All applications for asylum are considered by the **UK Border Agency**<sup>17</sup>. There are currently two systems in operation for deciding claims for asylum: the **New Asylum Model** (NAM) and the **Case Resolution Directorate** (CRD). See Chapter 6 for information about the Case Resolution Directorate.

Some cases were dealt with under NAM from May 2005. From 5th March 2007, all new claims for asylum will be dealt with through NAM.

Under NAM there are currently two systems for determining applications, *general casework* (see Chapter 3) and the *detained fast-track* (see Chapter 4).

Whichever process you go through, your *asylum interview* is very important, as it is your chance to explain why you need protection in the UK.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. For information about organisations that provide legal advice, see Chapter 12 at the end of this book.**

## The interview

Decisions about who should be given protection in the UK are initially taken by *case-owners* in the UK Border Agency. Case-owners also carry out asylum interviews.

“ **The case-owner is the person under NAM who is responsible for your case. You may have one case-owner throughout your case or you may have different case-owners at different stages in the process.** ”

Case-owners have a number of responsibilities including:

- Meeting you at your first reporting event.
- Being responsible for any reporting conditions that are imposed on you.
- Conducting your asylum interview.
- Working with your legal representative to clarify the issues in the case.
- Controlling the progression of your case by altering the times that certain things are done (for example, the date of the interview), if flexibility is required.
- Making an initial decision on whether you should be granted protection in the UK or whether your claim should be refused.
- Ending your case by either assisting you with your integration in the UK or arranging for your re-documentation and removal.

Your legal representative (or you, if you don't have a legal representative) should be in close contact with your case-owner(s) throughout the process.

<sup>17</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

You will be told when and where your asylum interview will take place. You **must** attend your asylum interview. If you do not, your claim can be refused because you have failed to cooperate with an important part of the asylum process. If you do not think that you are medically or emotionally able to attend your interview, you (and your legal representative if you have one) can ask for it to be postponed to a later date. You will need medical evidence to do this, either from your doctor or a specialist who has been supporting you. If something happens on the day of your interview that stops you from attending, you must contact your legal representative and your case-owner as soon as possible.

Your **legal representative** is the person who advises you on the law and your rights. Your legal representative may be a **solicitor** or an **immigration advisor**. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk). An immigration advisor is someone who is not a solicitor but who is able to give immigration law advice. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself

If you have children, you should arrange for someone to look after them while you are being interviewed, because there are **no childcare facilities** in many places where interviews take place. It is not possible to apply for any extra money from the UK Border Agency to pay for this.

You should think about who comes with you to your interview. You may have to answer questions about things that you do not want your children or anyone else, such as your husband, to know about. For example, you may not want your family to know that you were raped, as you may not have told them about this, or any other harm you have suffered. However, information like this is very important for your case, so you need to tell your case-owner about it during your interview. You may not, therefore, want your husband or another member of your family to go to the interview with you, but you may want a friend or someone from a specialist support organisation.

Legal representatives are allowed to attend interviews to take notes. They are not allowed to answer questions for you, but they can try to make sure that the interview is fair.

Publicly-funded legal representatives are **not paid** to attend asylum interviews. The only exceptions to this rule are if:

- you are in **detention**; or
- you have a severe mental health problem, **not** including post-traumatic stress disorder (PTSD). You and your legal representative will have to provide medical evidence to show this.

If you can afford it, you can pay privately to have a legal representative attend the interview with you.

If English is not your first language, the UK Border Agency will provide an interpreter for you. Whether or not you are allowed to take your own interpreter is a matter for your case-owner to decide. You can ask for a female interpreter, but whether or not one will be provided will depend on whether there is a woman available who speaks your language. The interpreter is there to interpret for you. They are not there to assist you or provide you with advice. If there is something that you want advice on, you should contact your legal representative.

When making their decision your case-owner must:

- examine what you have told them about your case at the interview and any other evidence you may have;

- look at the *law* that determines who is entitled to remain in the UK; and
- decide whether, according to the law, you are entitled to some form of protection in the UK.

The law that determines whether or not someone is entitled to remain in the UK is set out in:

- the Refugee Convention 1951;
- the European Convention on Human Rights 1950; and
- European Union Law.

For further information about these, see Chapter 2.

This means that you must give your case-owner as much information as possible about yourself, why you left your country and why you cannot return there.

## Before the interview

If possible, you should seek legal advice on your case from your legal representative before your interview. Your legal advisor can discuss the interview with you and answer any questions that you may have. Your legal advisor can also talk to you about your case and prepare a statement for you to hand to your case-owner at the start of the interview. A statement is a document that outlines what you say about your case. If your legal representative prepares a statement for you to give to your case-owner, then that statement will be the basis of your interview. Your case-owner will read it and then ask you questions.

If your legal representative does not prepare a statement for you, or if you have not been able to see a legal representative before your interview, then you may find it useful to think about what you want to say before the interview and **plan** how you will say it.

## Recording the interview

Asylum interviews can be recorded on tape so that there is an accurate record of what was said. It is very important that you have an accurate record of your interview in case there is a disagreement about what you (or the interpreter) did, or did not, say. You should, therefore, ask for your interview to be *recorded* on tape. If possible, you should do this at least 24 hours before the interview. However, the UK Border

Agency has a *legal obligation* to *record* asylum interviews when *requested*, so you can ask for your interview to be recorded on the day, if necessary. This may mean that your interview is delayed.

## At the interview

The interview is the *basis of your claim for protection* in the UK. This means that during the interview, you must tell your case-owner as much as possible about yourself, what you have experienced and why you need protection in the UK. You may have already given some information about yourself and what has happened to you to your case-owner, your legal representative or to someone else who works for the UK Border Agency, for example, when you were screened to have your identity checked. However, you will need to *repeat* all of this at the interview.

You may be asked questions about particular issues by the case-owner. However, you *must* tell the case-owner as *much* as possible about your case, whether or not she (or he) asks you questions about particular issues. You may find this very difficult.

Sometimes women find it hard to talk about certain things, for example if they have been raped or have experienced sexual violence. Even if it is difficult for you to talk about these things, it is *very important* that you tell the case-owner about it in the interview. If you are tired or upset during your interview you can ask for a break. If there is more that you want to tell the case-owner about a particular issue you should give them that information. This means that you should tell the case-owner about it, whether or not they have asked a question about the issue. The case-owner may not know about your case or what your country is like. At the end of the interview, the case-owner will ask you a question, such as: "Is there anything else that you want to say?" You should make sure at this point that you have said everything that you want to. If the case-owner does not give you time to tell her (or him) everything, you should say that there is more that you want to say, but that you are not being given enough time.

## Supporting evidence

You may have documents that confirm who you are, or something that is part of your case, such as a political party membership card. If you have evidence that supports what you say, you should show it to your legal representative and take it with you to the interview. You should ensure that

you have **copies** of any evidence you give to the UK Border Agency. Alternatively you can keep the originals and give **certified copies** of documents to the UK Border Agency. A certified copy is a photocopy of the document that is sworn to be true by your solicitor. Your legal representative can also give your case-owner any other evidence that may be useful in your case, such as a medical report.

### At the end of the interview

At the end of the interview, your case-owner will give you a copy of the interview notes that were taken and a copy of the interview tape. You should keep these safe and give them to your legal representative.

## The Gender Guidelines

The UK Border Agency has two **Asylum Policy Instructions** that should be followed by case-owners and other UK Border Agency staff when dealing with women's claims for protection in the UK. These are:

- Gender Issues in the Asylum Claim (known as the Gender Guidelines); and
- Victims of Trafficking.

The Gender Guidelines go through the different types of harm that women may face and how the law should be interpreted for women who seek protection in the UK.

The Gender Guidelines state that:

- Case-owners and interviewers **should be aware** of the effect that having experienced sexual violence may have had on you.
- Case-owners should take into account information about your country, including information about women's political and legal rights.
- You should also be interviewed alone, particularly if you have experienced sexual violence or are likely to have experienced it.

The Gender Guidelines also contain important procedural safeguards (protections for asylum-seeking women); including the right to have a female case-owner and interpreter at your interview. You (or your legal representative) should ask for a female case-owner and interpreter before the day of your interview if you can, but the UK Border Agency says that requests made on the day of interview will be met where possible.

If the UK Border Agency does not follow the Gender Guidelines, you should discuss it with your legal representative. They may be able to make representations on your behalf to the UK Border Agency based on the guidelines or, if necessary, complain about the way you were treated.

You can download the Gender and Trafficking Guidelines from the UK Border Agency website here: [www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/](http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/)

Information for women asylum-seekers about the guidelines is also available from Asylum Aid (an independent charity) and can be downloaded here: [www.asylumaid.org.uk](http://www.asylumaid.org.uk)

## Things to remember

- Your asylum interview is **very important** as it is your chance to tell your case-owner why you had to leave your country and why you cannot return there.
- You should tell your case-owner any information that is relevant to your application and provide any evidence that you have which could support your claim.
- There is a legal obligation on the UK Border Agency to record asylum interviews. You should ask for your interview to be recorded.
- Under the **Gender Guidelines**, you can ask for a female case-owner. You can also ask for a female interpreter. You (or your legal representative) should request a female interpreter or case-owner in writing before your interview. Requests made on the day of the interview should be accommodated whenever possible.

## Support organisations

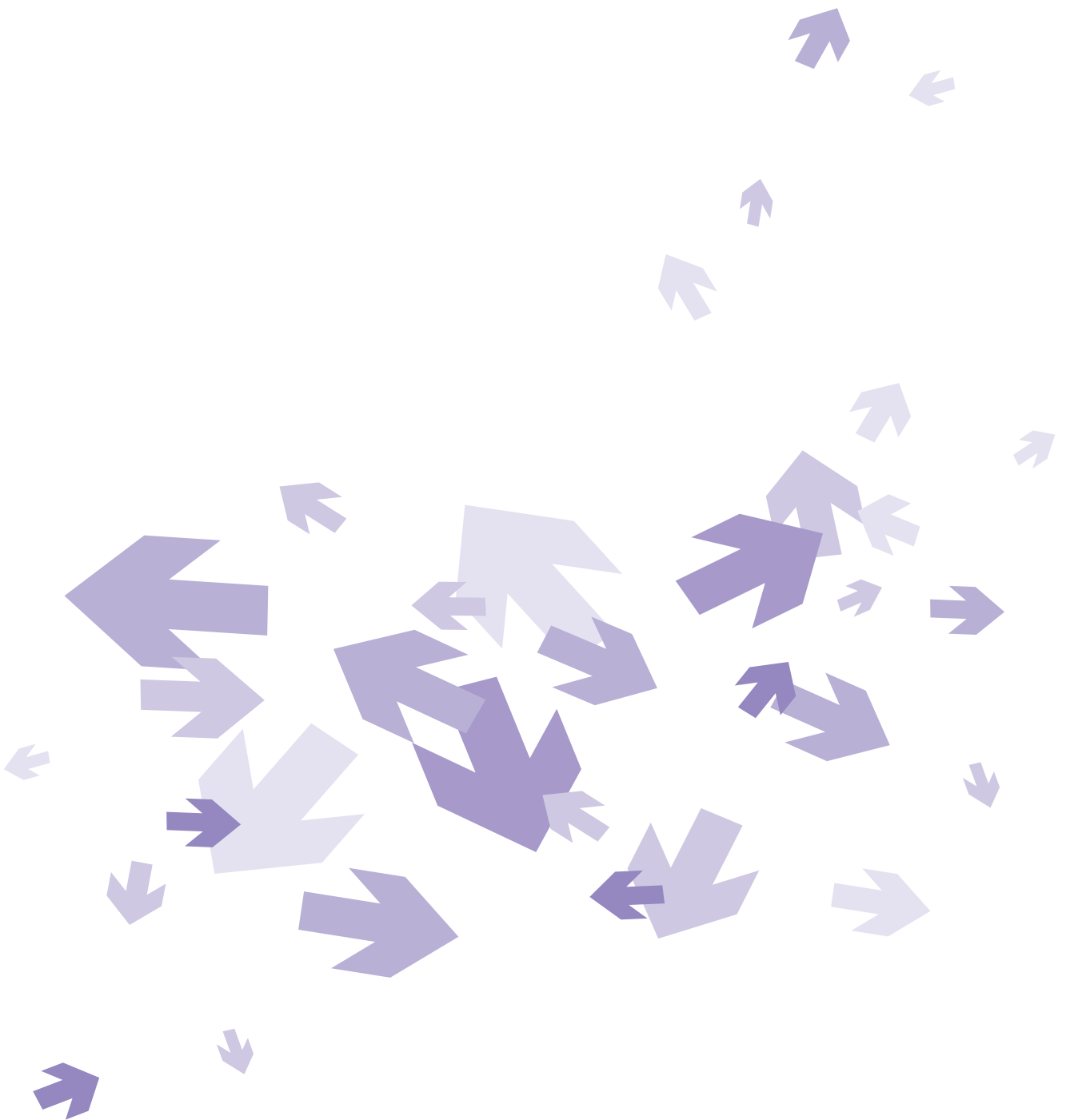
For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.



# 6 The Case Resolution Directorate (Legacy Cases)

## Introduction

All applications for asylum are considered by the **UK Border Agency**<sup>18</sup>. There are currently two systems in operation for deciding claims for asylum: the **New Asylum Model** (NAM) and the **Case Resolution Directorate** (CRD).

Some cases were dealt with under NAM from May 2005. From 5th March 2007, all new claims for asylum will be dealt with through NAM. Under NAM there are currently two systems for determining applications, general casework (see Chapter 3) and the detained fast-track (see Chapter 4).

The Home Office estimates that when NAM was started, there were between 400,000 to 450,000 asylum cases that had not been finally decided. This estimate includes cases where there has never been a decision on the application and cases which have had a decision, but where the case is still ongoing, for example cases in which a new application has been made. These cases are not dealt with by NAM, but by a department in the UK Border Agency called the Case Resolution Directorate. Cases that are decided by the **Case Resolution Directorate** are sometimes called **legacy cases**.

This Chapter will explain what the **Case Resolution Directorate** is, and how it deals with cases.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## The Case Resolution Directorate

### How do I know if the Case Resolution Directorate is dealing with my case?

Your case will be dealt with by the Case Resolution Directorate if:

- it had not been decided by 1st April 2007;
- you made an asylum claim at some point before that date; and
- your case is not being dealt with under NAM.

Cases dealt with by the Case Resolution Directorate are sometimes called legacy cases.

You **cannot** ask for your case to be a legacy case; either your case is dealt with by the Case Resolution Directorate or it is not. Cases **cannot** be moved between NAM and the Case Resolution Directorate. There is **no amnesty** for these cases. This means that there is **no general policy** to grant leave to remain in the UK to people whose cases are decided by the Case Resolution Directorate.

“ **I have heard that there is an amnesty for legacy cases, how can I apply?** ”

“ **Many people think that there is an amnesty for legacy cases and want to apply for it. This is not true. There is no amnesty for legacy cases and you cannot ask for your case to be a legacy case. Either your case is decided by the Case Resolution Directorate because it meets the criteria explained above, or it is not.** ”

There are a number of different teams within the Case Resolution Directorate dealing with legacy cases. You can confirm that your case is being dealt with by the Case Resolution Directorate and find out which team is responsible for it by contacting the Immigration Enquiry Bureau and asking them. If your claim for asylum was made before 5th March 2007, you can find the postal address for the Case Resolution team that has been allocated your case. To do this, you will need your Home Office reference number, which you will type into the Allocation Finder on the UK Border Agency's website. The Allocation Finder will then give you details about who is dealing with your case. If your claim for asylum was made after 5th March 2007, then you can ring the Immigration Enquiry Bureau for information about who is dealing with your case.

### Immigration Enquiry Bureau

0870 606 7766

Textphone: 0800 389 8289

Opening times: Monday-Thursday  
09.00-16.45 and Friday 09.00-16.30.

### Allocation Finder

If your claim for asylum was made before 5th March 2007, you can find the postal address for the Case Resolution team that has been allocated your case by visiting [www.bia.homeoffice.gov.uk/asylum/oldercases/who-is-processing-my-case](http://www.bia.homeoffice.gov.uk/asylum/oldercases/who-is-processing-my-case) and entering your Home Office reference number into the Allocation Finder.

## When will cases dealt with by the Case Resolution Directorate be decided?

The UK Border Agency aims to have dealt with all legacy cases by **19th June 2011**.<sup>19</sup> However, because there are so many cases to deal with, you will not be given a date for when a decision will be made on your case.

Three types of cases are currently being given priority:

- Cases where the speedy removal of the asylum applicant is thought possible.
- Cases where a decision to grant some form of protection in the UK is likely.
- Cases where the individual is receiving financial support.

Another priority is where it is thought that the person who has claimed asylum is a risk to the public, for example, because they have committed serious criminal offences. These cases may be dealt with by the Case Resolution Directorate, or by a team that deals with non-British prisoners; the Criminal Casework Directorate.

## Is there any way that my case can be dealt with sooner?

The Case Resolution Directorate states that it will consider prioritising "truly exceptional or compassionate" cases where there are "compelling" reasons to do so.<sup>20</sup> There is guidance on what circumstances may be considered exceptional and compassionate in a document called Case Resolution Directorate – Priorities and Exceptional Circumstances, which can be downloaded from the UK Border Agency website. Some examples given in the guidance include where the person concerned requires medical treatment abroad, or where a delay in reaching a decision will lead to a risk of suicide or self-harm.

Case Resolution Directorate – Priorities and Exceptional Circumstances can be downloaded from:

[www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicy/instructions/](http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicy/instructions/)

If you think that there are exceptional or compassionate reasons for your case being dealt with sooner, you should talk to your legal representative. They can then contact the Case Resolution Directorate and explain why your case should be dealt with as a priority.

<sup>18</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

<sup>19</sup> Home Secretary announcement to Parliament on 19th July 2006.

<sup>20</sup> <http://www.ukba.homeoffice.gov.uk/asylum/process/oldercases/140639/>

Your **legal representative** is the person who advises you on the law and your rights. Your legal representative may be a **solicitor** or an **immigration advisor**. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk) An immigration advisor is someone who is not a solicitor, but who is able to give immigration law advice. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

## What will happen when my case is considered?

You should be contacted when your case is going to be considered by the Case Resolution Directorate. The Case Resolution Directorate will contact you, rather than any legal advisor you may have had in the past. It is therefore important that the Case Resolution Directorate knows your address.

You **may** be asked to complete a questionnaire which will ask you the reasons why you want to stay in the UK. The letter you get will say when the questionnaire has to be completed and returned to the UK Border Agency. It is important to complete the questionnaire on time. If you are not sent a questionnaire, it is because the Case Resolution Directorate believes that it has all the

information it needs to make a decision on your case. You **cannot** photocopy another person's questionnaire and send it to the Case Resolution Directorate. If you do this it will not lead to your case being considered.

Whether or not you are asked to complete a questionnaire, it is important to **seek legal advice** as soon as you are contacted by the Case Resolution Directorate.

Your legal representative can ensure that the questionnaire is completed correctly and / or that the Case Resolution Directorate has all the information it needs to make a decision on your case.

Once the questionnaire has been returned to the Case Resolution Directorate, your case will be given to a case-owner, who will be responsible for resolving your case. You can and should continue to provide updated information to the Case Resolution Directorate after you have sent back your questionnaire. You may have to attend an interview with a case-owner. For more information about interviews, see Chapter 5.

There are some people who may not be contacted by the Case Resolution Directorate before a decision is made on their case. This may be because there is a risk that the person will disappear, or because they are considered to be a threat to the public (because they have committed serious criminal offences). Finally, a person may not be contacted because the Case Resolution Directorate is going to take steps to remove them from the UK. If you are taken into detention, seek legal advice immediately. For information about removals, see Chapter 9.

## How does the Case Resolution Directorate make decisions?

There are no published rules that say how cases dealt with by the Case Resolution Directorate should be decided. However, the Case Resolution Directorate should follow **paragraph 395C** of the **Immigration Rules** when making decisions, as well as looking at the **law** that determines who is entitled to protection in the UK.

The law that determines whether or not someone is entitled to protection in the UK is set out in:

- the Refugee Convention 1951;
- the European Convention on Human Rights 1950; and
- European Union Law.

The most relevant law for legacy cases is likely to be **Article 8** of the **European Convention on Human Rights**. Article 8 protects a person's rights to private and family life. For further information about Article 8 and the law that determines who is entitled to protection in the UK, see Chapter 2.

“ **The Immigration Rules are the rules that determine who may or may not enter and remain in the UK.** ”

Paragraph 395C of the Immigration Rules says that before a decision is made to remove you, the decision-maker should consider all the relevant factors, including:

- your age;
- how long you have been in the UK;
- the strength of your connections with the UK;
- your personal history, including your character, behaviour and, if you have been working, your employment record;
- your home and family circumstances;
- whether you have a criminal record and if you have, the type of offence you were convicted for;
- any compassionate circumstances; and
- arguments made by you or your legal representative.

This means that when making a decision, the Case Resolution Directorate will look at all the circumstances of your case and why you want to remain in the UK. They will look at the law that determines who is entitled to protection in the UK and the different factors in paragraph 395C of the Immigration Rules.

You can read paragraph 395C of the **Immigration Rules** by looking here: [www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part13/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part13/)

## Decision or review?

The Case Resolution Directorate is not making new decisions on cases; they are reviewing the circumstances of each case.

If, after reviewing your case, the Case Resolution Directorate thinks you should be allowed to stay, you will be given a form of leave to remain in the UK. For information about different types of leave, see Chapter 7.

If, after reviewing your case, the Case Resolution Directorate starts to try to remove you, you may be able to challenge this by appealing to the **Asylum and Immigration Tribunal** (which is independent of the UK Border Agency). You must seek legal advice as soon as any action to remove you is taken.

## Things to remember

- The Case Resolution Directorate is the part of the UK Border Agency that is dealing with legacy cases. You can find out if your case is a legacy case by contacting the Immigration Enquiry Bureau.
- The UK Border Agency aims to have dealt with all legacy cases by 19th June 2011. Some cases will be decided before others. The Case Resolution Directorate is prioritising cases where a decision can be made quickly, where the person is receiving financial support or where they are a risk to the public. You may be able to get your case dealt with sooner if there are compelling compassionate or exceptional reasons.
- In reviewing a case, the Case Resolution Directorate will consider the law that determines who should be given protection in the UK and the factors listed in paragraph 395C of the Immigration Rules.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

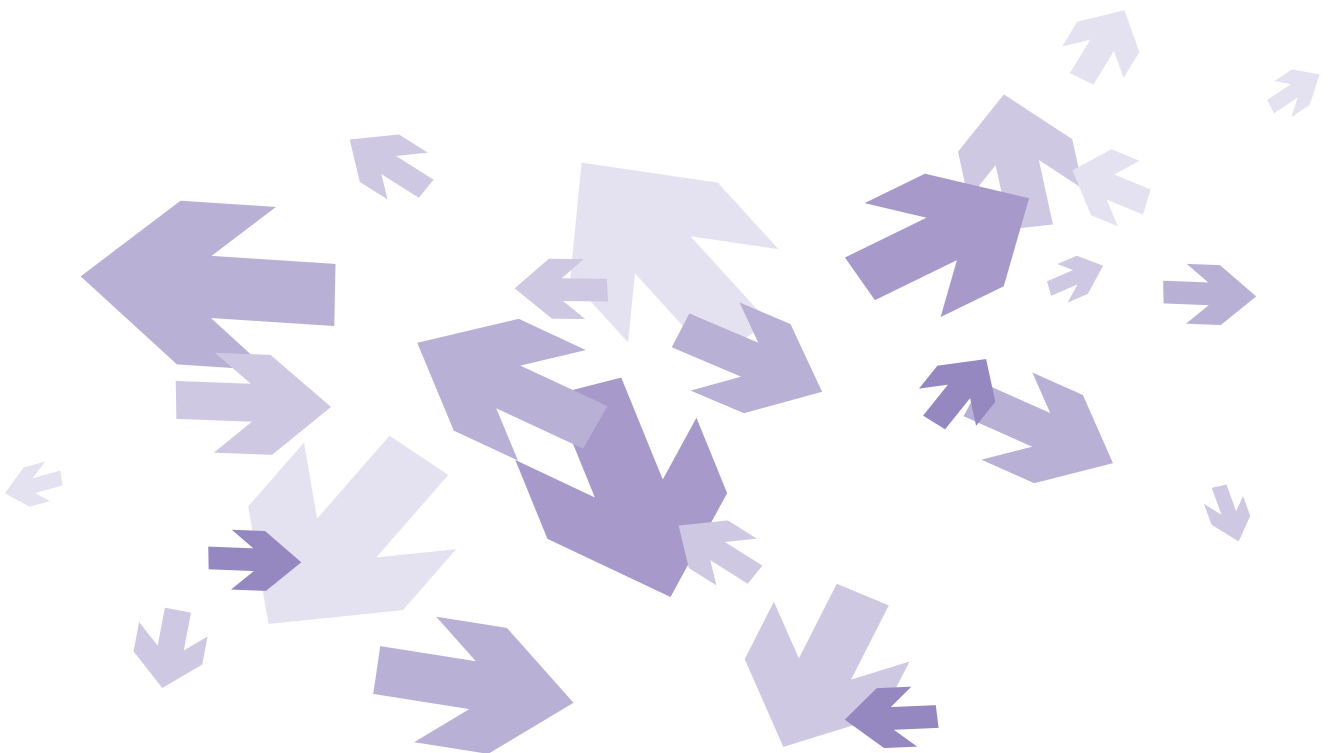
To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

For information about returning to your country of origin, see:

- Choices (organised by Refugee Action)
- International Organisation for Migration

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.



# 7 Successful applications: an explanation of leave to remain in the UK

## Introduction

If you have been successful in your application for protection in the UK, you will be given a form of *leave to remain* in the UK. The type of leave that you get and the rights that you have, for example, whether you can work or have family members come and join you, will depend on the type of your case and when your application was decided. This Chapter will describe the different types of leave, so that you know what your rights are.

**Leave to remain** in the UK is permission, from the Home Office, to live in the UK. There are many different types of leave to remain. Some are for particular amounts of time, such as five years, while others allow you to remain in the UK for the rest of your life. Different types of leave have different rights that go with them. You need to know what type of leave you have and for how long, so that you know what your rights are.

This Chapter will explain:

- Refugee Leave
- Humanitarian Protection
- Discretionary Leave
- Indefinite Leave to Remain
- Temporary Protection

For information about the law that determines who is entitled to which form of leave, see Chapter 2.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal**

**advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## Refugee Leave

**Refugee Leave** (formerly Refugee Status) is given for **five years** to those who are recognised as refugees under the Refugee Convention. If you have Refugee Leave, you have the right to work and claim housing support and welfare benefits. Anyone who was dependent on your claim, such as your husband or children, will also usually be given Refugee Leave. Certain members of your family who are not in the UK, such as children or your husband, can apply for **family reunion** to come and join you.

**Family reunion** is the ability to be reunited with certain members of your family. This only applies to people who were members of your family before you were forced to leave your country. Family members who are eligible for family reunion are your husband, civil partner and any children you have who are under 18. Other members of your family, for example, your elderly parents, may be allowed to come to the UK if there are strong, compassionate reasons.

If you have Refugee Leave you are entitled to make an application to the UK Border Agency<sup>21</sup> for a refugee travel document which will enable you to travel to other countries. You may go anywhere you would like to with the travel document except your own country. If you do obtain a refugee travel document and you want to travel abroad, you will need to check with that country's embassy as you may need a visa to travel there. For further information about applying for travel documents, talk to your legal advisor, or visit the UK Border Agency website at: [www.ukba.homeoffice.gov.uk/ukresidency/traveldocuments/](http://www.ukba.homeoffice.gov.uk/ukresidency/traveldocuments/).

<sup>21</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

Towards the end of your five year period of Refugee Leave (but not more than 28 days before it expires or after it has expired), you can apply for **Indefinite Leave to Remain** (ILR, see below). It is important to apply before your leave expires because, if you do not, you may be subject to active review, which is a full review of your need for protection in the UK. This means that the UK Border Agency will look at all of your circumstances and the circumstances in your country to see whether you should still be allowed to remain here.

## Humanitarian Protection

Humanitarian Protection is given for **five years** to those who do not qualify for protection under the Refugee Convention, but have shown that there are substantial reasons for believing that, if they were returned to their country, they would face a real risk of suffering serious harm.

If you have been granted Humanitarian Protection, you have the right to work and claim housing support and welfare benefits. Any dependents on your claim, such as your husband or children, will also usually be given Humanitarian Protection. If you were given Humanitarian Protection on **or after 30th August 2005**, certain members of your family who are not in the UK, such as children who are under 18 or your husband, can apply for **family reunion** to come and join you.

If you have Humanitarian Protection, you can make an application to the UK Border Agency for a Home Office document known as a certificate of travel. You may do this because you are either unable to get a passport or other identity documents from

your country, or because you fear the authorities in your country. You may go anywhere you would like to with the travel document except your own country, although many countries do not accept certificates of travel. If you do want to apply for a certificate of travel, you should make sure that the country you want to travel to will accept it. For further information about applying for travel documents, talk to your legal advisor or visit the UK Border Agency website at: [www.ukba.homeoffice.gov.uk/ukresidency/traveldocuments/](http://www.ukba.homeoffice.gov.uk/ukresidency/traveldocuments/)

Towards the end of the five year period of leave (but not more than 28 days before it expires or after it has expired), you can apply for ILR. It is important to apply before your leave expires because, if you do not, you may be subject to active review, which is a full review of your need for protection in the UK. This means that the UK Border Agency will look at all of your circumstances and the circumstances in your country to see whether you should still be allowed to remain here.

## Discretionary Leave

Discretionary Leave may be given in a number of types of cases, including where you have successfully argued that you have a right to remain in the UK because your removal would breach your right to private and family life. Different types of cases will be given different amounts of Discretionary Leave.

The following explains the different types of leave different people may be given, whether it can be extended and how much leave they need to have before they can apply for ILR.

Person	Discretionary Leave usually given	ILR
Those whose removal may result in, <b>degrading treatment</b> because they have serious physical or mental health problems.	Granted leave initially for 3 years but can then apply for a further 3 years.	Can apply for ILR after 6 years.
Those whose removal would be an interference with their right to <b>private and family life</b> which is more than is allowed by law.	Granted leave initially for 3 years but can then apply for a further 3 years.	Can apply for ILR after 6 years.
Those who would qualify for Refugee Leave or Humanitarian Protection but are excluded from it, because, for example, they have committed <b>"serious criminal offences"</b> .	Granted leave for 6 months. Can then apply for a further 6 months.	Can apply for ILR after 10 years.

Unlike Refugee Leave or Humanitarian Protection, if you have Discretionary Leave, your case will be subject to a full review when you apply to extend your leave or apply for ILR. This means that when you apply for a further period of discretionary leave, the UK Border Agency will look at all of your circumstances and the circumstances in your country to see whether you should still be allowed to remain here.

If you have Discretionary Leave, you have the right to work and claim housing support and welfare benefits. Your relatives cannot apply for family reunion, but they may be able to join you by making an application under the *Immigration Rules* (the rules that determine who may enter or remain in the UK).

**“ Under the Immigration Rules, people outside of the UK can apply to come to the UK to work, study or join members of their family. However, there are a number of restrictions on who can come to the UK under the Immigration Rules and those who are allowed, have to show how they could live and financially support themselves. You can find out more about the Immigration rules by visiting: [www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/](http://www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/) ”**

If you have discretionary leave, you should try to keep your own national passport valid so that you can travel if you wish to. However, you can apply to the UK Border Agency for a certificate of travel in certain circumstances, such as where your own country has refused you a passport unreasonably, or you have a good reason to fear your country's authorities. For further information, talk to your legal advisor or visit the UK Border Agency website at: [www.ukba.homeoffice.gov.uk/ukresidency/traveldocuments/](http://www.ukba.homeoffice.gov.uk/ukresidency/traveldocuments/)

## Indefinite Leave to Remain

Indefinite Leave to Remain (ILR), sometimes referred to as “settlement”, is the right to live in the UK for an unlimited amount of time. If you have ILR, you have the right to work and claim housing support and welfare benefits.

You will have to pay an application fee of £820 when you apply for ILR. You will also have to show that you have enough knowledge of English and “life in the UK” in addition to meeting the legal requirements.

You can show that you meet the English language and life in the UK requirements by:

- Passing a “*Life in the UK Test*”. The test is a computer-based, multiple choice test, based on the book: 'Life in the United Kingdom: A Journey to Citizenship' (2nd edition, 2007), which costs £9.99<sup>22</sup>. The standard of English required to complete the test is English for Speakers of Other Languages (ESOL) entry level 3. There are currently 90 places across the UK where you can take the test. The test itself costs £34 and you can take it more than once, so if you fail, you can keep taking it until you pass. For further information about the Life in the UK requirements, visit [www.lifeintheuktest.gov.uk](http://www.lifeintheuktest.gov.uk) or contact their helpline on 0800 0154245.
- Attending a *combined ESOL and citizenship course*. These courses are run by further education colleges or community colleges. Whether or not you have to pay for them depends on your financial situation.

The Life in the UK requirements apply to everyone aged 18-65, unless they can provide medical evidence that they have a permanent physical or mental problem that prevents them from taking the test or studying an ESOL course.

It is important that when you apply for ILR, you can show that you meet these requirements. If your leave is coming to an end (but not more than 28 days before it expires, or after it has expired), and you cannot show that you meet the requirements, you should apply for an extension of leave and then apply for ILR when you are able to meet the requirements.

It is possible to lose ILR in certain circumstances, such as where someone has committed a criminal offence or has been out of the UK for a significant period of time, usually over two years.

<sup>22</sup> Copies of 'Life in the United Kingdom: A Journey to Citizenship' (2nd edition, 2007) can be bought from bookshops ordered on line from: <http://www.tsoshop.co.uk/bookstore.asp?trackid=001261&FO=1240167>

## Temporary Protection

This form of protection was introduced by the **EU Temporary Protection Directive**<sup>23</sup> to enable States to share the responsibility for protecting people in crisis situations, where many people have to leave an area quickly.

Temporary Protection will be given for **12 months** with the possibility that this may be extended for further periods of six months. If you have been granted Temporary Protection, you will be able to work and must be given medical, welfare and housing assistance.

## While applications are decided

When you apply for an extension of leave or for ILR, providing that the application was made before the end of your original leave, you keep the leave you have while your application is being decided. This is also the case if your application for further leave, or for ILR, is refused, and you are appealing against the refusal. This means that you will still be able to work, claim housing support or claim welfare benefits while your application or appeal is being decided.

If you are applying for leave after the expiry of your original period of leave (for example, if you applied for ILR after your Humanitarian Protection expired), you are an overstayer. Overstayers are not in the country lawfully and are committing a criminal offence. Being an overstayer may affect any future application that you make for ILR and citizenship, as well as your right to appeal a negative decision on your case. Overstayers cannot work or access welfare benefits and housing support. If you are an overstayer you should seek legal advice.

## Tracing family members

If you have lost contact with family members who you think are still in your country, you may want to make contact with them. The **British Red Cross** runs an International Tracing and Message Service to help families who have been separated because of a conflict or natural disaster. For further information about the International Tracing and Message Service visit: [www.redcross.org.uk](http://www.redcross.org.uk)

## Things to remember

- If you receive a positive decision on your case, you will be given a form of leave to remain in the UK. This will usually be Refugee Leave, Humanitarian Protection or Discretionary Leave.

- The type of leave that you get and the rights that you have, for example the right to have family members come and join you, will depend on the type of your case and when your application was decided. It is important that your leave to remain in the UK does not run out. If it does, you will become an overstayer.
- If you are given Refugee Leave or Humanitarian Protection, you can apply for Indefinite Leave to Remain after five years. If you are given Discretionary Leave, you can apply for Indefinite Leave to remain after six years. You will have to pay an application fee of £820 when you apply for ILR. You will also have to show that you have enough knowledge of English and “life in the UK”, in addition to meeting the usual legal requirements.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women’s Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

For information about housing, welfare benefits or other issues related to living in the UK:

- Community Legal Advice
- DirectGov: public services in one place
- Refugee Integration and Employment Service (RIES)

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.

# 8 Negative Decisions and Appeals

## Introduction

Many people are forced to leave their country and seek safety somewhere else. A claim for asylum or some other form of protection in the UK is decided initially by a **case-owner** in the **UK Border Agency**<sup>24</sup>. The UK Border Agency is the part of the Home Office that deals with asylum, immigration and nationality issues. If your initial application for protection to the UK Border Agency is refused, you can **appeal** against it to the **Asylum and Immigration Tribunal**. This section will explain how you can appeal against a negative decision to the Asylum and Immigration Tribunal and what your options are, if your appeal is also refused.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## Refusal of your initial claim

A claim for asylum or some other form of protection in the UK is decided initially by a **case-owner** in the **UK Border Agency**.

**“ The case-owner is the person who is responsible for your case. You may have one case-owner throughout your case, or you may have different case-owners at different stages in the process. ”**

Case-owners have a number of responsibilities including:

- Conducting your asylum interview.
- Working with your legal representative to clarify the issues in the case.
- Controlling the progression of your case by altering the times that certain things are done (for example the date of the interview), if flexibility is required.
- Making an initial decision on whether you should be granted protection in the UK, or whether your claim should be refused.

Your legal representative (or you, if you don't have a legal representative) should be in close contact with your case-owner(s) throughout the process.

When making a decision about whether or not you should be offered protection in the UK, the case-owner should consider:

- the information and evidence that you have given them. This will include what you have said in your interview and any other evidence that you have provided (for example, from other witnesses, or in a medical or other report); and,
- the relevant law.

There are three sources of law that determine who is entitled to protection in the UK:

- the Refugee Convention 1951;
- the European Convention on Human Rights 1950; and
- European Union Law.

<sup>23</sup> Temporary Protection Directive (Council Directive 2001/55/EC).

<sup>24</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

The **case-owner** may decide that you are not entitled to Refugee Leave, and instead give you another form of protection, for example Humanitarian Protection or Discretionary Leave. Alternatively, the case-owner may decide that you are not entitled to any form of protection and refuse your application.

You may be able to appeal against a decision to refuse you protection, or to give you a form of protection that is different to what you applied for, to the **Asylum and Immigration Tribunal** (the AIT). You should seek legal advice from your legal representative on whether or not you can appeal against a decision.

## Appealing to the Asylum and Immigration Tribunal

Appeals against initial decisions are heard by Immigration Judges in the AIT who may be accompanied by non-legal members of the tribunal. Immigration Judges and non-legal members are **independent** of the UK Border Agency and the Home Office.

As the person appealing against the decision, you will be referred to as the **appellant** while the Home Office is the **respondent**. You are both **parties** to the proceedings, which are controlled by the Immigration Judge. The **hearing** is the investigation that takes place before an Immigration Judge at the AIT, to decide whether or not you are entitled to protection in the UK.

Decisions in appeals are given in writing and called **determinations**. The Immigration Judge will decide whether the appeal against the decision is successful or not. This is known as the decision being **allowed** or **dismissed**.

You can find out more about the AIT by visiting their website: [www.ait.gov.uk](http://www.ait.gov.uk)

The rules setting out the procedure for appeals are the **Asylum and Immigration Tribunal (Procedure) Rules 2005** you can read them here: [www.opsi.gov.uk/si/si2005/20050230.htm](http://www.opsi.gov.uk/si/si2005/20050230.htm)

The purpose of the Procedure Rules is to ensure that appeals are dealt with as **“fairly, quickly and efficiently as possible”** (Rule 4).

## What are my chances of success on appeal?

Your legal representative will be able to advise you on the strengths and weaknesses of your case on appeal.

However, many people whose applications are refused initially by the UK Border Agency are given a form of protection on appeal. For example, in the last three months of 2008, 70% of applications decided by the UK Border Agency under the New Asylum Model were refused. 19% of applicants were given Refugee Leave and 11% were granted Humanitarian Protection or Discretionary Leave. Of those who appealed against a refusal to the AIT, 25% were successful<sup>25</sup>.

## How do I appeal to the Asylum and Immigration Tribunal?

The letter from the UK Border Agency that sets out their decision to refuse you protection will include information about how you can appeal against the decision and a form to enable you to do this.

People who are represented at their appeals by a qualified solicitor, barrister or immigration representative have a much better chance of being successful in their appeal than those who do not. As soon as you receive your decision from the UK Border Agency you should get legal advice on what it means and how to appeal. The AIT is unlikely to postpone (put back) your appeal because you have not found legal representation in time.

The appeal form must be completed in full and sent to the AIT within 10 working days of the date of the refusal decision letter. If you are in detention or have to appeal your decision from outside of the UK, different time limits apply (see below). You must also include the Home Office decision letter with the completed notice of appeal. Your legal representative will complete the notice of appeal for you and ensure that the correct procedure for appealing against the decision is followed.

Your **legal representative** is the person who advises you on the law and your rights. Your legal representative may be a **solicitor** or an **immigration advisor**. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk) An immigration advisor is someone who is not a solicitor, but who is able to give immigration law advice. For information about immigration advisors, contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk) Barristers are qualified lawyers who represent clients before courts and tribunals. Barristers are represented by the Bar Council [www.barcouncil.org.uk](http://www.barcouncil.org.uk) and regulated by the Bar Standards Board [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

The type of appeal form you have to complete depends on whether or not your appeal will be heard while you are in the UK. If you are appealing from within the UK, the form to complete is: **AIT 1 form Notice of Appeal from inside the United Kingdom**. This form and the notes that accompany it will be sent to you with your decision letter and can also be downloaded

from the AIT website here:  
[www.ait.gov.uk/FormsGuidance/standardAppealForms.htm](http://www.ait.gov.uk/FormsGuidance/standardAppealForms.htm)

## Appeals from outside the country: the non-suspensive appeals process

Some people who claim asylum are only allowed to appeal against a decision refusing them protection from outside of the UK once they have returned to their own country. These types of appeals are called non-suspensive appeals (or NSA).

Under section 94 of the **Nationality, Immigration and Asylum Act 2002**, the countries to which the non-suspensive appeals process applies to at the moment are:

- Albania
- Bolivia
- Bulgaria
- Brazil
- Ecuador
- Ghana (men only)
- India
- Jamaica
- Macedonia
- Moldova
- Mongolia
- Nigeria (men only)
- South Africa
- Romania
- Sri Lanka
- Serbia
- Ukraine

If you are a woman from Nigeria or Ghana, the non-suspensive appeals process does **not** apply to you. It only applies to male asylum-seekers from these countries.

The UK Border Agency can make changes to this list and add countries or parts of countries (such as a particular area or region) to the list at any time.

If you come from one of the above countries, your initial application for protection in the UK is decided in the same way as all other asylum applications. It is only when a decision is made to

<sup>25</sup> *Control of immigration: quarterly statistical summary, UK, October – December 2008 (second edition) page 11*  
[www.homeoffice.gov.uk/rds/pdfs09/immig408.pdf](http://www.homeoffice.gov.uk/rds/pdfs09/immig408.pdf) For further information about statistics on asylum, immigration and nationality issues visit: <http://www.homeoffice.gov.uk/rds/immigration-asylum-stats.html>

refuse you protection that the UK Border Agency will decide whether or not your appeal should be decided under the non-suspensive appeals process.

If you are from one of the above countries, the UK Border Agency will decide that your claim should be decided under the non-suspensive appeals process unless your case is **not clearly unfounded**.

A claim is clearly unfounded if it is so clearly without substance that it is bound to fail<sup>26</sup>. This means that claims are clearly unfounded if, when looking at them, the UK Border Agency thinks that they are almost certain to fail.

In a later Court of Appeal decision<sup>27</sup>, it was decided that the factors which should be taken into account when deciding whether or not a claim is clearly unfounded are:

- the facts of the case;
- how the facts of the case relate to what is known about the country the asylum-seeker has come from;
- whether the account that the asylum-seeker has given can be believed, either entirely or in part; and,
- whether, if the account can be believed, it comes within the relevant law (see Chapter 2).

An example of a case that would be clearly unfounded would be where a woman claimed asylum in the UK, but in her application stated that she did not fear harm and instead came to the UK to work. Alternatively, a claim could be clearly unfounded if a person could have gone to another part of their country to be safe.

If you think that your appeal should be held within the UK, you should seek legal advice as soon as possible.

Your legal representative can challenge the decision to make your appeal one that is heard outside of the UK through judicial review proceedings. **Judicial Review** is the process through which decisions taken by the UK Border Agency (and other public authorities) can be challenged before a court. In considering whether or not your claim is clearly unfounded, the court will look carefully at your application and any supporting evidence that you have.

If you have to appeal against your decision from outside the UK (because your claim is to be decided under the non-suspensive appeals process), you have to submit your notice of appeal to the AIT within **28 calendar days** of leaving the

UK. The type of appeal form you have to complete is: **AIT 3 form Exercising your right of appeal after having left the UK**. This form and the notes that accompany it will be sent to you with your decision letter. They can also be downloaded from the AIT website here: [www.ait.gov.uk/FormsGuidance/standardAppealForms.htm](http://www.ait.gov.uk/FormsGuidance/standardAppealForms.htm). In addition to discussing your appeal with your legal representative, you should also talk to her (or him) about how you can stay in touch with them when you are in your country.

## Appeals in detention

If you are in detention, you will have to submit your notice of appeal within **five working days** of being given the Home Office decision notice.

If your case is being decided under the **detained fast-track**, you have to submit your notice of appeal within **two working days** of being given the Home Office decision notice. For further information about the detained fast-track, see Chapter 4.

You can give your notice of appeal to the officers in the detention centre who are responsible for you. They will give it to the AIT immediately. The Home Office must then give you and the AIT the documents for the appeal.

The rules setting out the procedure for appeals in the detained fast-track are the **Asylum and Immigration Tribunal (Fast-track Procedure) Rules 2005** you can read them here: [www.opsi.gov.uk/si/si2005/2005\\_0560.htm](http://www.opsi.gov.uk/si/si2005/2005_0560.htm)

There are a number of legal representatives who work with women in detention. You will be given a legal representative to assist you with your case if you are eligible for public funding (otherwise known as legal aid). On the day you arrive in detention, or the next day, you will be given time to see your legal representative. It is important to give your legal representative as much information about yourself and your case as you can. This information will help them to present your case.

Your legal representative will also be able to advise you on a negative decision and appealing against it.

Due to the speed in which decisions are taken in the fast-track, your legal representative (or you, if you don't have one) can apply to the AIT for your appeal:

- to be adjourned (to take place on a date later than it is supposed to); or
- to be transferred (taken out) from the fast-track (see the Fast-track Procedure Rules 13(b)(c), 28 and 30).

Under **Rule 28** of the **Fast-track Procedure Rules**, a fast-track appeal can only be adjourned when:

- There is not enough time to hear the appeal.
- One of the parties to the appeal, either you or the Home Office, has not been properly given the information about when and where your appeal will take place (information is properly given to you and the Home Office when it has been given to you in the way described by the Procedure Rules).
- The AIT is satisfied by evidence given to them that:
  - the appeal cannot be justly determined (decided fairly) on the date it is arranged for; and
  - there is a date in the future (not more than 10 days after the original hearing) when it can be justly determined (decided fairly).

Your legal representative may ask for an adjournment if, for example, you are too unwell to attend your hearing on the date that it is set.

Under **Rule 30** of the **Fast-track Procedure Rules**, a case can be taken out of the fast-track when:

- all the parties agree to it;
- the AIT is satisfied that there are **exceptional circumstances**, which mean that the appeal cannot be justly determined; or
- the Home Office has not followed a rule or a direction of the AIT and the AIT is satisfied that your case would be harmed by that failure if the appeal were to go ahead.

Some examples of **exceptional circumstances** that may result in a case being taken out of the fast-track are where:

- A case is unsuitable for the fast-track because it is too complicated.

- Further evidence is needed, such as a medical or other expert report, in preparation for the appeal.
- Further research is needed to prepare the appeal.

When asking the AIT to have the case taken out of the fast-track, your legal representative will have to show not only that there are **exceptional circumstances**; but that these mean that the appeal cannot take place in the fast-track.

If your case is taken out of the fast-track, you are likely to be released from the fast-track detention centre.

If your legal representative is unable to represent you in your application to be taken out of the fast-track or appeal, for example, because you are not entitled to public funding, you can represent yourself.

## Before the appeal

The following sections on appeals and preparing for them apply to you whether or not you are in detention.

As stated above, it is important to get legal advice and representation at any appeal. When you get a legal representative (who may be a solicitor or an immigration advisor, see above) he or she will tell the AIT that they are representing you. This is important, as documentation about your appeal will be sent both to you, and to your legal representative. If you change your address, it is vital that you tell both your legal representative and the AIT, to ensure that documents are sent to the right address. If you do not do this you will not receive important information, such as when and where your appeal is being held.

Once you have completed the correct notice of appeal and sent it to the AIT, the AIT will give it to the Home Office as soon as they can.

Once the Home Office has received the notice of appeal, they must send you and the AIT the documents that are **relevant** to the appeal (Rule 13 of the Procedure Rules). This may include:

- the refusal letter and any reasons they have for refusing you protection in the UK;

<sup>26</sup> *R (Yogathas) v Secretary of State for the Home Department and R (Thangarasa) v Secretary of State for the Home Department* [2002] UKHL 36

<sup>27</sup> *R (L and another) v Secretary of State for the Home Department* [2003] EWCA Civ 25

- any unpublished documents that they refer to in their refusal; and
- a record of your asylum interview.

The AIT may tell the Home Office to do this by a particular day, otherwise it must be done as soon as possible and no later than 2pm on the working day before the date of any hearing. This hearing will usually be the **Case Management Review Hearing** (see below).

It is important that your legal representative checks that the information given by the Home Office includes all of the documents and evidence that you gave them as part of your claim for protection, and that you want to rely on in your appeal. If the Home Office does not produce a document that you want to rely on, you should give it to the AIT yourself.

In addition to this exchange of information, your legal representative will also arrange for other documents, such as any witness statements or expert reports, to be given to the AIT and the Home Office. Your legal representative may also do other things to prepare your case, including:

- Instructing experts to give evidence for you.
- Researching the situation in your country.
- Looking at other determinations made by the AIT that are relevant to you and your country.
- Instructing a barrister (see above) to advise on the preparation of your appeal and represent you.

Most asylum appeals will have a **Case Management Review Hearing** arranged within a couple of weeks of the AIT receiving your notice of appeal.

The purpose of the Case Management Review Hearing is to make sure that your appeal is prepared properly, and that both your representative and the Home Office have the information that they need. Practical issues, such as whether you need an interpreter at your appeal, should also be decided at this hearing.

The date of the appeal hearing itself will also be set. How long you will have to wait before your appeal is heard will depend on the number of cases that a particular AIT has to deal with. If you have a legal representative, you do not need to attend the Case Management Review Hearing if he or she is attending, although you may do so if you would like to.

## Evidence at your appeal

At your appeal, you can rely on any evidence that is relevant to your case. This could be evidence from witnesses, documentary evidence or what you say about why you need protection in the UK. If you have documents that are not written in English, these must be properly translated. It is also a good idea to bring any original documents that you have with you to the appeal, so that you can show them to the Immigration Judge.

## At the appeal hearing

Appeals in the Asylum and Immigration Tribunal (the AIT) are heard in places across the UK, including in detention centres. You will be told when and where your appeal will be held. It is extremely important to attend your appeal as, if you do not, it may go ahead without you. If there is some reason why you are not able to attend your appeal, for example, because you are seriously ill, you must contact your legal representative and the AIT as soon as possible.

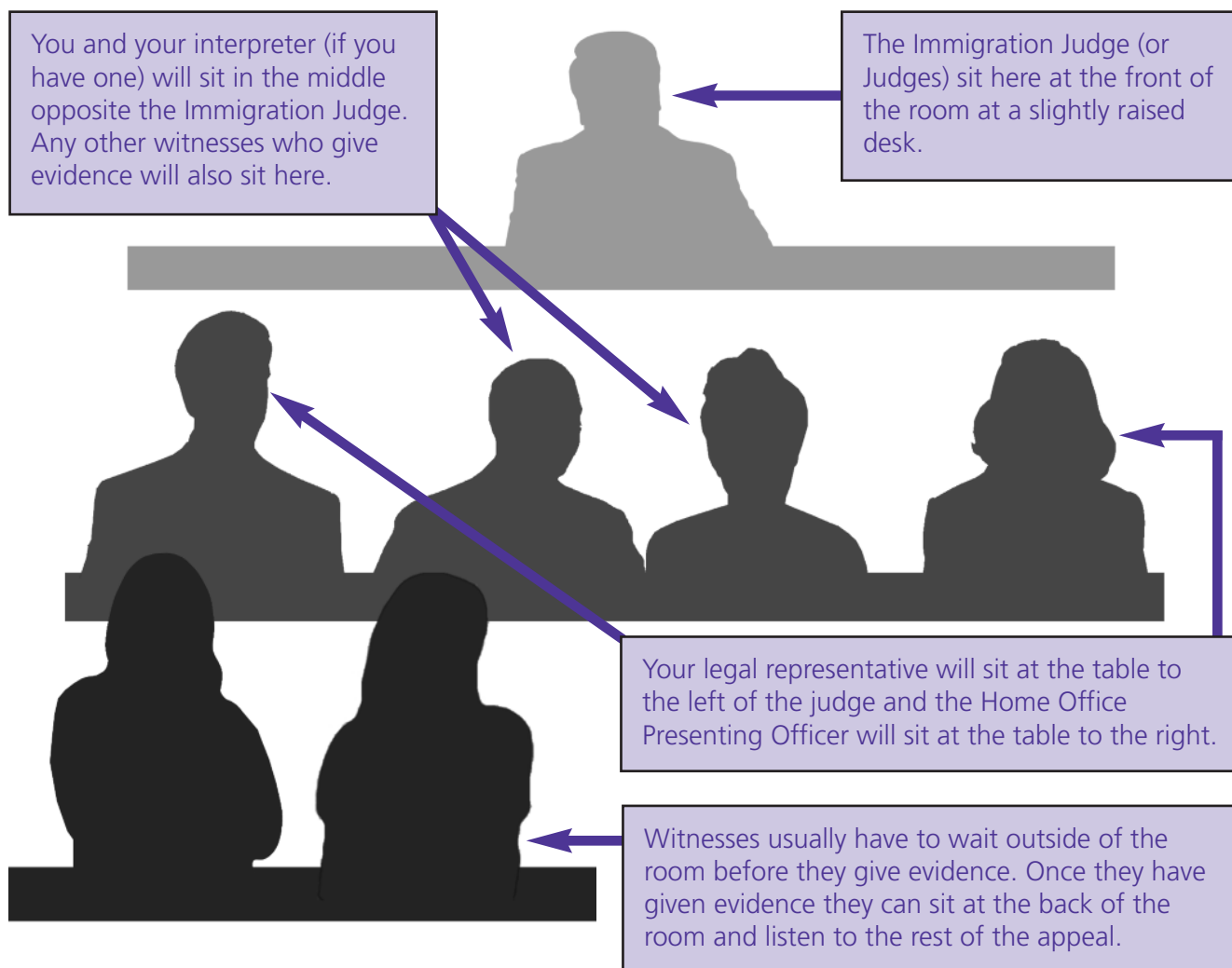
In addition to the Immigration Judge or Judges (and any other tribunal members) the following people usually attend appeals:

- You and your legal representative (if you are appealing from outside the UK, it will just be your legal representative who attends on your behalf).
- Your interpreter, if you need one.
- A representative of the UK Border Agency called a **Home Office Presenting Officer**. This will usually be a different person from the case-owner in the UK Border Agency who made the initial decision in your case.
- Any experts that are giving evidence, for example, a doctor who wrote a report on injuries that you received, or on the situation in your country of origin.
- Any witnesses that you have.

For many people, attending an appeal is frightening. It is therefore important to discuss anything that you are not sure about, or do not understand, before or during the hearing, with your legal representative. Your legal representative will also be able to tell you how to prepare for the hearing.

## In the room where your appeal will be heard

This picture shows where people usually sit in the room where your appeal will be decided:



### Preparing for giving evidence

It is very important that you, and any other witnesses who are going to attend the hearing and give evidence, are **prepared** for answering questions before the Immigration Judge. The process of answering questions at your appeal is called **giving evidence**.

Before the hearing, your legal representative will prepare a written **statement** for you. Your statement is your account of what happened to you, and why you need protection in the UK. Your statement is very important, as it is your evidence in your case. You should **re-read** your statement before the appeal, as well as reading any other witness statements and important documents.

When you give evidence to the AIT you will be asked questions, however you will not be asked to go through all the details of your case as these

should be in your statement. You should discuss your appeal with your legal representative to make sure that you understand what the issues in the case are. This will enable you to understand why you may be asked certain questions, either by the Immigration Judge or the Home Office Presenting Officer.

### Giving evidence

As you are appealing against the decision of the UK Border Agency, you will usually give evidence first. You will be asked by your legal representative to confirm that the statement he or she has prepared for you is true and correct. Your statement is the basis of your case. It should explain why you think you should be given protection in the UK. Your legal representative may then ask you some additional questions.

Once you have confirmed that your statement is correct and answered any additional questions from your legal representative, you will be asked questions by the Home Office Presenting Officer. This is called **cross-examination**. Cross-examination is used by the Home Office Presenting Officer to test whether or not you are telling the truth. You may be asked questions based on your statement, or on your asylum interview. You may be asked questions about your country and how you got to the UK. It is important that you answer these questions clearly and accurately. If you do not understand the question or know the answer, you should say so. If you are not sure about something, for example, the date on which something happened, it is important not to guess.

After cross-examination, your legal representative may ask you some additional, final questions, to clarify any points raised in cross-examination.

The Immigration Judge may also ask you questions. He or she can do this at any time while you are giving evidence.

## After you have given evidence

After you have given evidence, any other witnesses that you have may be called to give evidence. After all the witnesses have been heard, the Home Office Presenting Officer will make a speech to the Immigration Judge setting out why he or she thinks that the decision to refuse you protection in the UK was correct. Your legal representative will then make a speech setting out why the decision was wrong, and why you should be granted protection in the UK. The arguments made by both the Home Office Presenting Officer and your legal representative will include:

- their view of the evidence, including what you and any witnesses said at the hearing;
- the situation in your country; and
- how the law should be applied to your case.

## Who has to prove what at my appeal?

At the AIT, it is the responsibility of the person who says something to prove that what they are saying is true. This means that if you are arguing that you should be given Refugee Leave in the UK, it is for you, and your legal representative, to prove that you are entitled to this type of protection under the Refugee Convention. You do not need to prove that it is certain that you would be harmed if you were

returned to your country. Instead, you have to show that there is a **“real risk”** that if you were returned to your country you would be persecuted or face serious harm. For information about persecution and serious harm, see Chapter 2.

Your legal representative, or you, if you don't have one, has to explain to the AIT why there is a **real risk** that if you were returned to your country, ***you would face persecution or some other form of serious harm.***

## Representing yourself at your appeal

You may find it useful to read this section whether or not you have legal representation.

If you are unable to get legal representation for your appeal, you can represent yourself. You can get free legal advice from Rights of Women's legal advice line on **020 7251 8887 (telephone) or 020 7490 2562 (textphone)**. The advice line is open on **Mondays 11am-1pm** and **Tuesdays 10am-12 noon**.

If you are representing yourself, it is important that the AIT and the Home Office know where you are living, so that they can send you information about your case. It is also important that you attend any Case Management Review Hearing that is arranged, as well as the appeal itself.

If you are representing yourself, the AIT cannot ask you to do anything to prepare the case unless they are sure that you are able to do what they ask. This means that the Home Office will be responsible for preparing the papers for the appeal.

It is important that you tell the AIT and the Home Office about any witnesses that you are bringing to your appeal, and about any other evidence that you will be relying on. It is also important that you make sure that any witnesses you have attend the hearing, and that you take to the hearing any relevant documents you have.

When an asylum-seeker is representing herself, it is the responsibility of the Immigration Judge to make sure that the appeal is carried out in a way that is fair. This means making sure that you understand what is happening, and that you have the time that you need to explain why you should remain in the UK.

The process of deciding the appeal is the same, whether or not a person is represented. This means that you will usually start the appeal hearing by explaining why you need protection in the UK. Once you have done this, you will be cross-examined (see above) by the Home Office Presenting Officer. You can then call any witnesses that you have and ask them questions. They will then be cross-examined. The Home Office Presenting Officer will then explain why he or she thinks you should not be given protection in the UK. You will then have the opportunity to respond to this, and to explain why you think that you should be given protection in the UK.

It is very important that you prepare for your appeal.

You can prepare for your appeal by:

- Thinking about what you want to say in your evidence. You can write yourself notes, or a timeline (a list in order of what happened to you and when it happened), to make sure that you say everything in the appeal that you need to.
- Thinking about any other evidence that you have which supports what you are saying. This could be documentary evidence, such as a party membership card, or it could be information that you have about your country. You might have a witness who can confirm what you say. If you have any supporting evidence, it is important that you tell the AIT and the Home Office about it before the hearing. These are issues that should be discussed at the Case Management Hearing.
- Thinking about how your case fits into the law on protection.
- If you want protection in the UK from persecution or some form of serious harm in your home country, you should make sure that you explain:
  - o Who you fear the harm from, why, what the harm is and why you fear that you, personally, are at risk.
  - o If you fear harm from a non-State actor, whether your State is willing or able to protect you from the harm and why.
  - o Whether there is another part of the country that you could go to that would be safe and if not, why not.

You have to explain to the AIT why there is a **real risk** that if you were returned to your country, **you would face persecution or some other form of serious harm**.

- If you are claiming protection in the UK, or seeking to remain in the UK, on the basis of **your family life**, you should explain:
  - o Who your family life is with.
  - o Whether or not they would return to your country with you (this is particularly important when your family life is with someone who is British, or has Indefinite Leave to Remain).
  - o What would happen to your family life if you were forced to return to your country.

For detailed information about the law that determines who is entitled to protection in the UK, see Chapter 2.

## The decision: after the appeal

The decision made by the Immigration Judge is called a **determination**. It is usually given in writing.

In most cases, the Immigration Judge(s) will not give you a decision on your appeal on the day that your appeal is heard. Instead, they will write their determination afterwards and send it to the Home Office, who will then send it to you. In some cases, the Immigration Judge will give you a decision at the hearing and explain his or her reasons for it later, in the determination.

You should seek legal advice on your determination. You can do this by discussing it with your legal representative or, if you do not have one, by contacting one of the organisations given at the end of this Chapter for advice.

If the Judge allows your appeal, you may be given protection in the UK. Depending on your case, you may be given **Refugee Leave**, **Humanitarian Protection**, **Discretionary Leave** or **Indefinite Leave to Remain in the UK**. For information about positive decisions and the rights that you have, see Chapter 7.

However, if the Judge allows your appeal the Home Office may then appeal against the decision. If the Home Office decides to challenge the determination of the AIT, it must tell you about it at the same time that they give you the determination.

If the Immigration Judge decides that you are not entitled to protection in the UK, your appeal against the UK Border Agency's initial decision will be *dismissed*. It is important to get legal advice as soon as you are refused protection, as it may be possible to challenge this decision.

## Appeals against a decision made by the Asylum and Immigration Tribunal

It may be possible to appeal against, or challenge the decision of an Immigration Judge. However, this can only be done in certain circumstances, such as if the Immigration Judge made an *error of law* (a mistake about the law and how it should be applied in your case).

If the Immigration Judge has made an *error of law*, then your case can be *reconsidered*. Reconsideration involves having a new hearing about your case and why you should be given protection in the UK, before a different Immigration Judge(s) in the AIT.

There are also circumstances where it may be possible to appeal a decision to the Court of Appeal, or The Supreme Court.

The law on appealing determinations is complex. If you are considering appealing a determination you should seek legal advice from your legal representative, or one of the organisations listed below.

If you are unable to appeal against a decision to refuse you protection to any other court, you have exhausted (finished) your rights to appeal and you become removable. For information about removal, see Chapter 9.

## Transfer of the Asylum and Immigration Tribunal

The Government makes decisions in a number of different areas of law that individuals may want to appeal against. For example, a person who has been refused welfare benefits or criminal injuries compensation may want to appeal against that decision to someone independent. If they do, then the place that they can appeal to is the *First-tier Tribunal*. A tribunal is a type of court. The main function of the *First-tier Tribunal* is to hear appeals against decisions taken by the Government in certain areas of law, including welfare benefits, criminal injuries compensation and asylum support law.

In 2009, the Government decided to transfer the Asylum and Immigration Tribunal into the Tribunal structure, so that it sits alongside the other Tribunals. It is expected that this transfer will happen sometime in 2010. This will mean that sometime in 2010, appeals against decisions taken by case-owners in the UK Border Agency will be heard in the *First-tier Tribunal*.

The *First-tier Tribunal* is independent of the Home Office and decisions in the tribunal will be taken by judges. The rights of those who are appealing against a decision taken by their case-owner in the UK Border Agency will not be affected by this change. However, the procedure for applying for a *reconsideration* of a determination will change, as an application for an order for reconsideration will be made first to the *First-tier Tribunal* and, if they refuse, to the *Upper Tribunal* (rather than the Administrative Court, as is the case now). The process for judicially reviewing some types of decisions may also be changed by the transfer of the AIT.

The law on appealing determinations is complex. If you are considering appealing a determination and you want to know more about whether or not these changes affect you, you should seek legal advice from your legal representative, or one of the organisations listed below.

For more information about the *First-tier Tribunal* and the types of decisions that can be appealed against, visit: [www.tribunals.gov.uk](http://www.tribunals.gov.uk)

## Things to remember

- A claim for asylum or some other form of protection in the UK is decided initially by a *case-owner* in the **UK Border Agency**. You may be able to appeal against a decision to refuse you protection, or to give you a form of protection that is different to what you applied for, to the **Asylum and Immigration Tribunal** (the AIT).
- Appealing against the decision of the **UK Border Agency** to the AIT is complicated, as is appealing against the decision of the AIT. It is therefore important that throughout these processes, you seek legal advice. If you do not have a legal representative, you should contact one of the support organisations listed below for advice.

- At your appeal, your legal representative (or you, if you do not have one) has to explain to the AIT why there is a real risk that if you were returned to your country, you would face persecution or some other form of serious harm.
- If your appeal is successful, you may be given Refugee Leave or some other form of protection in the UK.
- If your appeal is unsuccessful, you will be refused protection and you should seek legal advice straight away. It may be possible to challenge the decision of the AIT. If you are unable to appeal against a decision to refuse you protection to any other court, you have exhausted (finished) your rights to appeal and become removable.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

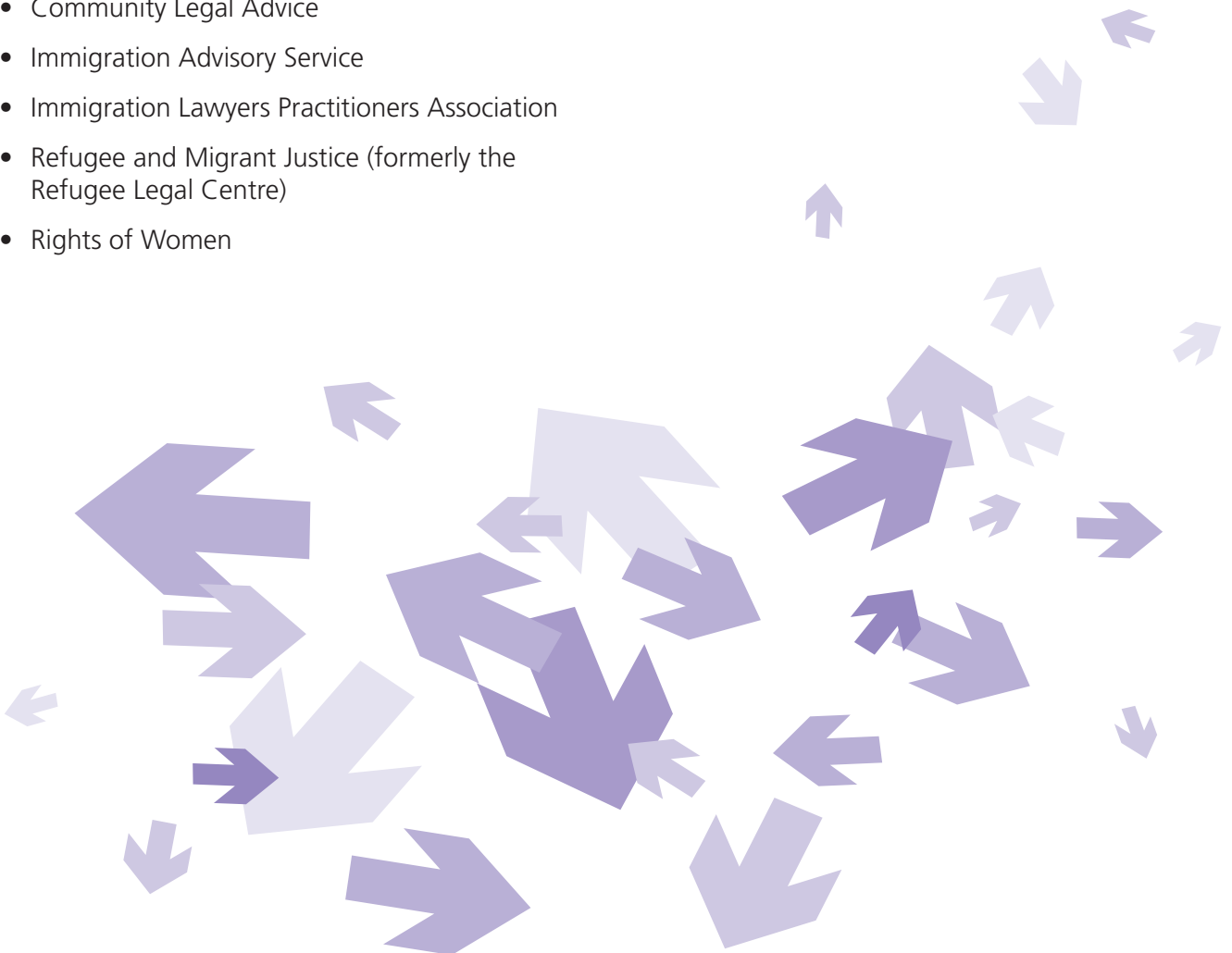
To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

For information about returning to your country of origin, see:

- Choices
- International Organisation for Migration

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.



# 9 Final refusal and removal

## Introduction

If you are unable to appeal against a decision to refuse you protection any further, you have exhausted (finished) your rights to appeal. If you have exhausted your rights to appeal, steps may be taken to return you to your country. This is called removal. You can return to your country voluntarily, or you can be taken into immigration detention and forcibly removed. This section will explain the options that are available to people who have had their claim for protection in the UK finally refused.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## Legal advice

It is important to seek independent legal advice before making decisions about returning to your country. For example, many women are dependent on their husband's claim for protection in the UK and when that is refused, they become removable along with him. However a woman in this situation may be able to make her own application for protection. For information about the law that determines who is entitled to protection in the UK, see Chapter 2.

Alternatively, you may be able to make a fresh claim. A fresh claim is a new claim for protection in the UK made by someone who has already made a claim for protection in the past, but who has had their original claim finally refused. In order to have a fresh claim, you must have new and relevant information about why you should not be returned to your country that creates a real chance that you will be given protection in the UK. For further information about fresh claims, see Chapter 10.

Your *legal representative* is the person who advises you on the law and your rights. Your legal representative may be a *solicitor* or an *immigration advisor*. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk) An immigration advisor is someone who is not a solicitor, but who is able to give immigration law advice. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

*Barristers* are qualified lawyers who represent clients before courts and tribunals. Barristers are represented by the Bar Council [www.barcouncil.org.uk](http://www.barcouncil.org.uk) and regulated by the Bar Standards Board [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to *public funding* (also known as *legal aid*). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

## Voluntary Return and Assisted Voluntary Return

Voluntary return is when a person **chooses** to return to their country, rather than being returned there by the UK Border Agency<sup>28</sup>.

There may be benefits to returning to your country voluntarily, including:

- control over when, where and how you leave the UK;
- being able to return to the UK sooner than you could if you were removed (this relates to **re-entry bans**, see below for more information); and
- financial support for travel arrangements, and to help you resettle in your country.

There are two ways in which you can return to your country voluntarily:

- Voluntary Return: this is when you arrange and pay for your return to your country.
- Assisted Voluntary Return: this is when you chose to return to your country, but you are given financial or other support to enable you to do this.

There are organisations that help people who want to return to their country.

**Choices**, which is run by Refugee Action, provides confidential, independent advice to those who are thinking about returning to their country. They also have female advisors who you can talk to in confidence. This means that they will not tell anyone, including any of your family members or the Home Office, what you tell them.

For information about **Choices** and their services for women see: [www.refugee-action.org.uk/ourwork/choices/default.aspx](http://www.refugee-action.org.uk/ourwork/choices/default.aspx)  
For general information about **Choices**, please telephone **020 7654 7713** or email: [choices@refugee-action.org.uk](mailto:choices@refugee-action.org.uk)

The **International Organisation for Migration** (the IOM) is an independent international organisation which helps people who want to return to their country. The IOM provides information and support, as well as arranging **Assisted Voluntary Returns**.

The IOM works closely with the UK Border Agency and they will check with them whether or not you are eligible for assisted voluntary return. They will also inform the UK Border Agency that you have taken their assistance to return to your country.

To find out more about the **International Organisation for Migration** visit: [www.iomlondon.org](http://www.iomlondon.org) or telephone: **0800 783 2332**.

## Can I return to the UK after I have left? Re-entry bans and voluntary departure

It is important to get legal advice on the implications of returning home either voluntarily, or under an Assisted Voluntary Return Programme (like those organised by the International Organisation for Migration). This is because under recently introduced rules, people who leave the UK following a refused asylum claim can, in some circumstances, be **prevented from returning** to the UK for certain periods of time. This is called a **re-entry ban**. These rules will apply to you if you have ever:

- been an overstayer in the UK;
- been treated as an illegal entrant;
- breached a condition of your stay in the UK;
- used deception to seek entry into the UK; or
- used deception to seek leave to remain in the UK.

Even if you fall into one of these categories, these rules do not apply if you are applying to return to the UK to be with your husband, partner or other family members, in certain circumstances.

If you leave the UK on an Assisted Voluntary Return Programme, you may be prevented from coming back to the UK for **up to five years**. The number of years that you cannot return to the UK for will depend on your individual circumstances. If you leave the UK voluntarily at your own expense, you will only be prevented from returning to the UK for **up to twelve months** (although, again, this will depend on your own personal circumstances).

<sup>28</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

## Removal

No one can be removed from the UK without first being given removal directions. Removal directions are given to people who the UK Border Agency plans to return to their country. They usually set out the date and time of the planned removal, where the person will be removed to and how they will be removed. In some cases it will not be possible to appeal against the giving of removal directions.

If you have been given removal directions, it is **very important** that you get legal advice immediately as it may be possible to prevent or put back your removal in certain circumstances. This may involve making a fresh claim for protection in the UK. For further information about fresh claims, see Chapter 10.

Alternatively, or in addition to making a fresh claim, your legal representative may be able to challenge the removal directions by judicial review. At the same time, they may seek an order from the court to forbid the UK Border Agency from removing you.

Judicial review is the way that certain decisions taken by the UK Border Agency (or other public authorities) can be challenged in the Courts. Judicial reviews will be successful if the UK Border Agency has acted unreasonably or unlawfully in trying to remove you. In order to decide whether the UK Border Agency has acted reasonably or lawfully, the judge hearing the judicial review will look at the reasons given by the UK Border Agency for removing you to check whether:

- they have taken into account everything that they should have done; and,
- they have not taken into account anything that is not relevant to your case.

If your judicial review is successful, the Court can make an **order** to forbid the UK Border Agency from removing you.

## Campaigning against removal

In addition to taking legal steps to try and prevent your removal, you might also want to start a political campaign. An **Anti-Deportation Campaign** is a campaign to keep you and your family in the UK. It may involve seeking support from people in your community, or your **Member of Parliament** (MP).

The **National Coalition of Anti-Deportation Campaigns** campaigns against the removal of individuals and families. For information about

starting or supporting a campaign, visit: [www.ncadc.org.uk](http://www.ncadc.org.uk)

## I might be removed, what should I do? Preparing for being taken into immigration detention

If you are removable, you may be taken into **immigration detention** at any time to enable the Home Office to return you to your country. This could involve Immigration Officers coming to your house at a particular time and taking you and your family into detention, or being taken into detention when you report. You will not be told in advance that a decision has been taken to detain you.

If you are in a position where you may be removed because you have exhausted your rights to appeal, it is a good idea to be as prepared as possible for being taken into immigration detention. This is important, because you may only be given your removal directions when you are in immigration detention. If you are taken into immigration detention you will need to be able to contact your legal representative quickly, so that he or she can advise you on your situation and then, if necessary, take legal action to try to prevent your removal.

You should therefore ensure that you always carry the following with you at all times:

- A **mobile telephone that is not able to take photos, or give access to the internet**. Telephones that can take photos or access the internet will be taken from you if you are detained. It is very important to have a telephone that you can keep with you if you are detained, as this will enable you to contact your legal representatives, or others who can help you.
- Your name and date of **birth**, plus the names and dates of birth of all your family members.
- Your **Home Office reference number** (and those of your family members).
- Your **Home Office port reference number** (and those of your family members).
- The telephone number of your **legal representative**, including his or her emergency number.
- The telephone number of your **MP**, if you have been in contact with them, including his or her emergency number.

- If you, or any member of your family, have had any medical problems, the telephone number of your **doctor**.
- The telephone numbers of any **friends**, or others who are supporting you.

You should also ensure that you have a **file** that contains all your legal documents. If you have accommodation then you should keep this next to your front door so that, if Immigration Officers come to your house, you can take the file with you into detention. If you are homeless, or moving between different places, you should keep this file with you at all times.

The file should contain copies of all the **legal documents** that relate to your claim for protection in the UK. Documents that are given to you by the Home Office are **your** property. This means that you should have copies of all the documents that relate to your case. You can ask your legal representative to give you copies of these. It is a good idea to give another copy of your file to someone you **trust**, who is not going to be taken into detention. This will enable them to give the file to a legal representative, or others who are assisting you, such as your MP.

## Can I return to the UK after I have been removed? Re-entry bans and removal

It is important to get legal advice on the implications of being returned to your country by the Home Office, rather than leaving the UK voluntarily. This is because, under recently introduced rules people who leave the UK following a refused asylum claim can, in certain circumstances, be prevented from returning to the UK for certain periods of time. This is called a **re-entry ban**. The amount of time that you can be prevented from returning depends on how you left the UK, and on your own personal circumstances. These Rules will apply to you if you have ever:

- been an overstayer in the UK;
- been treated as an illegal entrant;
- breached a condition of your stay in the UK;
- used deception to seek entry into the UK; or
- used deception to seek leave to remain in the UK.

Even if you fall into one of these categories, these rules do not apply if you are applying to return to the UK to be with your husband, partner or other family members, in certain circumstances.

If you are removed, you may be prevented from coming back to the UK for **up to ten years**. However, the number of years that you cannot return to the UK for will also depend on your personal circumstances.

## Can I be forced to leave the UK? Treatment on removal

When you are removed, you will be escorted from the Immigration Removal Centre and throughout your journey until you arrive in your country. If the UK Border Agency is removing you, and your removal is in accordance with the relevant law, then your escorts are entitled to use force, for example, by handcuffing you, to enable them to remove you. However, during the removal they are not allowed to use force that is either **unnecessary** or **unreasonable**.

Whether or not the force that is used is necessary or reasonable will depend on all of the circumstances of the case, including your behaviour. This means that it will be lawful for the person removing you to use physical force, for example, by holding you, if you are violently trying to stop your removal.

However it would be unlawful to use force against someone who is not resisting removal, or to use more force than is necessary, for example kicking or hitting someone who is in handcuffs. If you experience violence, either in a detention centre or on removal, you should seek legal advice, as it may be possible to report the violence to the police and / or claim compensation from the UK Border Agency.

Any force that is used against you during an **unlawful removal** (one that is not legally correct, for example where the court has ordered that you should not be removed) will be an assault. You will be able to claim compensation from the UK Border Agency for the harm you have experienced.

## Tracing family members

If you have lost contact with family members who you think are still in your country, you may want to make contact with them. The **British Red Cross** runs an International Tracing and Message Service to help families who have been separated because of a conflict or natural disaster. For further information about the International Tracing and Message Service, visit: [www.redcross.org.uk](http://www.redcross.org.uk)

## 9.6 Things to remember

- You can leave the UK *voluntarily* at any time. You can arrange and pay for this yourself, or you can be helped to return through an Assisted Voluntary Return Programme.
- If you are given *removal directions*, you should seek legal advice straight away as it may be possible to challenge your removal, for example by *judicial review* and / or making a **fresh claim**.
- If it is possible that action will be taken to remove you, you should prepare for this by making sure that you have a telephone, useful telephone numbers and a file with all your legal documents prepared. This is so that if you are taken into *immigration detention*, you can contact your legal representative or anyone else who is supporting you. You will not be told in advance that a decision has been taken to take you into immigration detention.
- Once you have left the UK you may be prevented from returning for a certain period of time. This is called a *re-entry ban*. It is important to get legal advice on returning to your country, because the length of time that you have to wait before you can return to the UK is linked to how you left (whether you left the UK voluntarily or were removed), as well as the circumstances of your case.
- The people who escort you during your removal are allowed to use force to enable them to return you to your country. However, they are not allowed to use force that is either *unnecessary* or *unreasonable*. Whether the force used against you is either necessary or reasonable will depend on all the circumstances of the case.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

For information about returning to your country, contact:

- Choices
- International Organisation for Migration

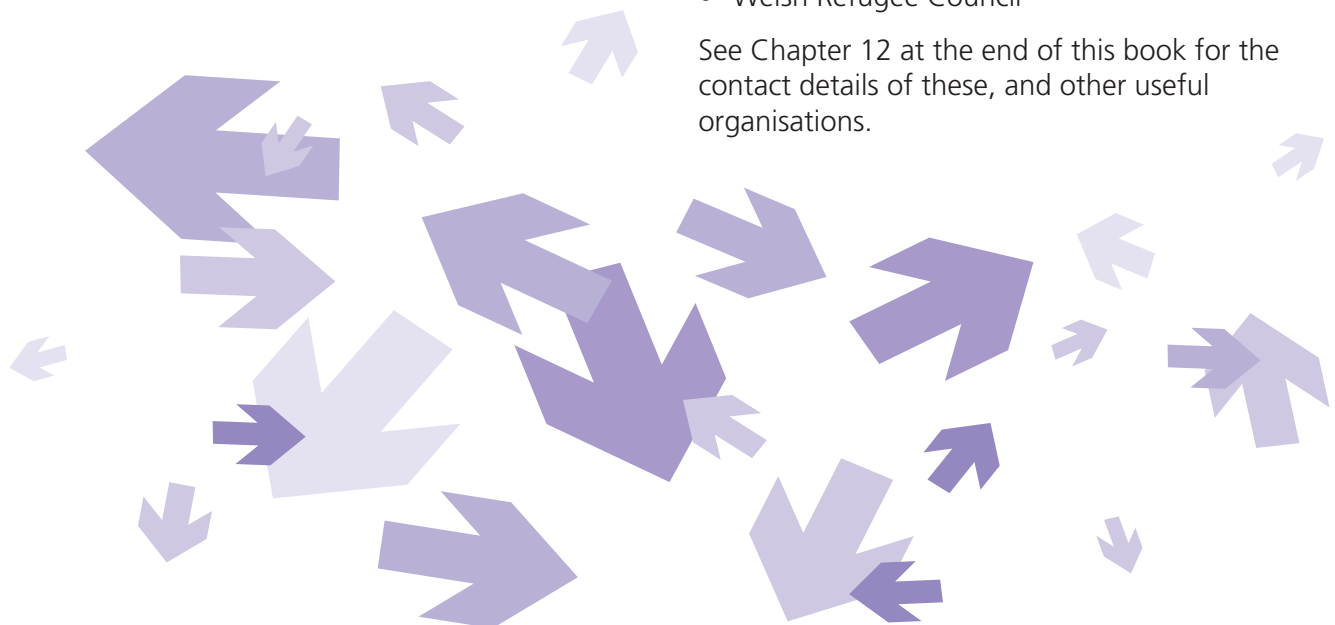
For information about campaigning to stay in the UK, contact the **National Coalition of Anti-Deportation Campaigns**.

For information and support on applying for bail from detention, contact **Bail for Immigration Detainees**.

If you want to discuss removal or returning to your country, you can also contact your local One Stop Service:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.



# 10 Fresh claims

## Introduction

A *fresh claim* is a new claim for protection in the UK made by someone who has already made a claim for protection in the past that has been finally refused. In this section we will explain what a fresh claim is and when a fresh claim can be made.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that provide legal advice.**

## What is a fresh claim?

A fresh claim is a new claim for protection in the UK made by someone who has already made a claim in the past that has been finally refused.

Your claim will have been finally refused if you have exhausted your rights to appeal against it. This means that you cannot appeal against the decision any further.

If you have been given a decision that you do not agree with and you are appealing against it, you are still an asylum-seeker, and so cannot make a fresh claim for protection. If you have new information on your case and are appealing against a negative decision, you should tell your solicitor or immigration representative about it or seek legal advice about whether the information should be included in your appeal.

In order to have a fresh claim, you have to have arguments or information that are significantly different from what has been considered in the past. This information will only be significantly different if it:

- has not already been considered; and

- taken together with your previous asylum claim, creates a realistic prospect of success.

This means that you cannot make a fresh claim that is based on information in your previous asylum claim. You need to have information that is new, and that has not already been considered by your case owner or an Immigration Judge.

The law that determines what is a fresh claim for asylum is set out in paragraph 353 of the Immigration Rules, which you can find here: [www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part12/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part12/)

## What happens if I don't have any new information? Further representations

If your claim has been finally refused and you do not have any new information about your situation, you can still make further representations to the UK Border Agency<sup>29</sup>. Further representations are arguments or submissions that are made to the UK Border Agency, and which are based on the information that was given in the claim for protection that has been refused.

In the further representations, your solicitor or immigration advisor may repeat information in your claim, highlight any particular compassionate circumstances in your case and request that you are granted protection in the UK.

One difference between a fresh claim and further representations is that a fresh claim contains new information that has not been considered by either the UK Border Agency or an Immigration Judge, where further representations do not. Another difference is that if your claim is accepted as a fresh claim, the UK Border Agency will have to make a new decision on your case and, if they refuse to

<sup>29</sup> It used to be called the Border and Immigration Agency (the BIA) and before that the Immigration and Nationality Directorate (the IND).

grant you protection in the UK, you will have a new right to appeal against that decision. If, after making further representations to the UK Border Agency, you are refused protection in the UK, you do not have a **new right of appeal** against that decision. It may, however, be possible to challenge that decision by judicial review. This is a very complex area of law, so you will need to seek legal advice.

## What is new information?

There is no limit on what counts as new information, other than that it must not have been considered before by the UK Border Agency or an Immigration Judge.

The following are examples of what might count as new information. However, because there is no limit on what counts as new information, this list is not exhaustive. If you think you might have new information that could enable you to make a fresh claim, you should get legal advice from a solicitor or immigration advisor as soon as possible.

Examples of new information:

- Information that relates to **you and your safety**, should you have to return to your country. This might include:
  - o information about a friend or family member who has been arrested or harmed;
  - o new documentation, such as an arrest warrant or judgement against you;
  - o information from an expert, in the form of a report on your physical or mental health;
  - o a new threat to your safety, such as from a member of your family;
  - o a change in your circumstances since your claim was decided, for example, if you have left your husband, or you have had a child.
- Information about **your country**. This might include:
  - o a change in who is in Government;
  - o a change in the law;
  - o the start of a war or a conflict; or,
  - o the worsening of a conflict, or a conflict moving into an area that was previously safe.
- A change in the **law**, including:
  - o a new piece of legislation, such as a new Act of Parliament, Directive of the European

Union or the coming into force of a new piece of international law (for example Council of Europe Convention on Action against Trafficking in Human Beings, which the UK Government ratified in 2008);

- o a change to the Immigration Rules;
- o a change in case law, for example, following a new decision from the European Court of Human Rights, the House of Lords, Court of Appeal or the Asylum and Immigration Tribunal.

### Example of a change in case law: RN (Returnees) Zimbabwe CG [2008] UKAIT 00083

RN was a teacher in Zimbabwe who had claimed asylum in the UK the day after she arrived here. RN had not been involved in political activities, but she was a teacher and she claimed that she would be at risk if she was returned, as she would be assumed to be a supporter of the opposition Movement for Democratic Change (the MDC). RN was also concerned that she would face retribution from her former boyfriend, who had been violent towards her and her mother.

RN's case was refused and arrangements were made for her removal to Zimbabwe. RN appealed against this decision and, following a number of hearings, the Asylum and Immigration Tribunal (AIT) found that those at risk of persecution in Zimbabwe were not limited to those who actively supported the MDC, but also included anyone who could not demonstrate loyalty to Zanu-PF. Teachers, as a group, were also considered to be at risk because it was assumed that they were involved in political activities. Despite recent improvements in the political situation in Zimbabwe, the AIT found that the power sharing agreement had not removed the real risk of persecution or other serious harm to certain Zimbabweans.

As a result of this decision, many Zimbabweans who have had previous claims for asylum refused may have fresh claims. You can read the judgement by looking here: [www.ait.gov.uk/Public/DeterminationDetails.aspx?Id=2184](http://www.ait.gov.uk/Public/DeterminationDetails.aspx?Id=2184)

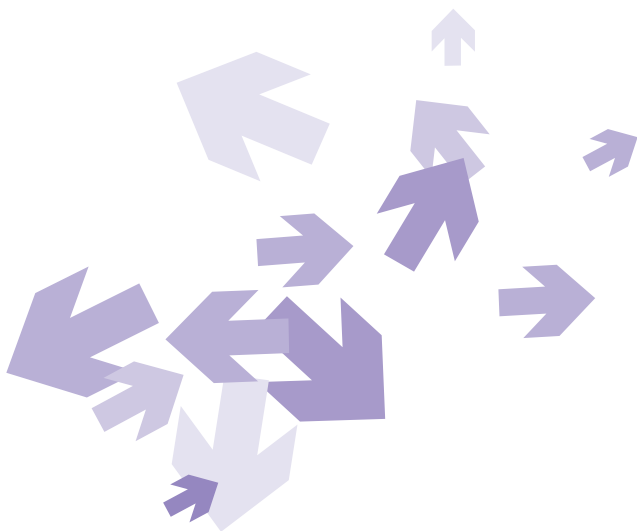
If you think your situation may be affected by this decision, you should seek legal advice.

## Does the new information create a real chance of success?

As well as providing information that is new, the information must also create a real chance of success. This means that the information has to be capable of making the decision-maker think that, despite the fact that your previous claim for asylum failed, you are **now** at risk of persecution or some other form of serious harm. If the information is new but does not create a real chance of success, then you will not have a fresh claim.

## Getting advice on a fresh claim

If you think that you have new and relevant information, you should seek advice from either a solicitor or an immigration advisor. They will find out about the claim(s) you have made in the past, look at what information was considered and why your claim was unsuccessful. They will then be able to advise you on whether the information you have is indeed new, and then whether it creates a real chance of success. As well as looking at the decisions made in relation to your case, your solicitor or immigration advisor will also have to examine the information itself. This will include finding out where it has come from and whether it is reliable. It may also include getting an expert's opinion (for example, on whether a particular document is genuine), or carrying out research. This may be particularly important if your previous claim was unsuccessful because it was decided that you were not credible (that you were not telling the truth).



Your **legal representative** is the person who advises you on the law and your rights. Your legal representative may be a **solicitor** or an **immigration advisor**. A solicitor is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk) An immigration advisor is someone who is not a solicitor, but who is able to give immigration law advice. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

**Barristers** are qualified lawyers who represent clients before courts and tribunals. Barristers are represented by the Bar Council [www.barcouncil.org.uk](http://www.barcouncil.org.uk) and regulated by the Bar Standards Board [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

Depending on your financial circumstances and the merits of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge. However, not all legal representatives do publicly-funded work and there are limits on the work that a publicly-funded legal representative can do on a case. For further information about public funding and getting legal advice, talk to your legal representative or contact Community Legal Advice [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

If you are not entitled to public funding, you may have to pay for legal advice or, if you cannot afford this, represent yourself.

## What happens if I make a fresh claim?

If you make a fresh claim, you will be entitled to financial support from the UK Border Agency. When you have made a fresh claim you can apply for section 4 support, which consists of self-catering accommodation and vouchers. When you apply for this support, you will not have to say

that you are prepared to take steps to leave the UK. The basis of your claim for financial support is your fresh claim.

Once your fresh claim is accepted by the UK Border Agency (this means that they agree that it contains new and relevant information and they are now deciding whether you are entitled to protection), you will then be entitled to Asylum Support, which consists of cash payments and accommodation. For more information about financial support for asylum-seekers, see Chapter 11.

## How will my fresh claim be decided?

Once you have made a fresh claim, you have to wait for a decision to be made on it by the UK Border Agency. There is no timescale for dealing with these applications, so it is impossible to say how long it will take for a decision to be made on your case. The fact that your claim is accepted as a fresh claim does not mean that you will be granted protection in the UK. The law that will be considered when deciding your fresh claim is the same as the law that applies to other asylum applications. For further information about this, see Chapter 2.

## What happens if the UK Border Agency does not accept my fresh claim?

If the UK Border Agency refuses to accept that the new information you provide amounts to a fresh claim, then you can challenge that decision by judicial review. This is a very complex area of law, so you will need to seek legal advice.

## What happens if my fresh claim is refused?

If your fresh claim is refused, you will have a new right of appeal against the decision to an Immigration Judge at the Asylum and Immigration Tribunal. This is a very complex area of law, so you will need to seek legal advice. For further information about appeals, see Chapter 8.

## Things to remember

- If you have made a claim for asylum that has been finally refused, but you have new information that:
  - has not already been considered; and

- taken together with the previously considered material, creates a realistic prospect of success;

you may have a fresh asylum claim.

- If you make a fresh asylum claim, you can apply for financial support.
- If you make a fresh claim that is accepted by the UK Border Agency, they will have to make a **new** decision on your case. If they refuse to grant you protection in the UK, you will have a **new** right to appeal against that decision.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

For information about Asylum Support law and appeals at the Asylum Support Tribunal, contact the **Asylum Support Appeal Project**.

If you want to discuss an asylum support problem with someone, contact your local One Stop Service such as:

- Refugee Action
- Refugee Council
- Migrant Helpline
- North of England Refugee Service
- Welsh Refugee Council

For information about returning to your country of origin, see:

- Choices
- International Organisation for Migration.

See Chapter 12 at the end of this book for the contact details of these, and other useful organisations.

# 11 Financial and other support through the asylum process

## Introduction


If you have made an application for protection in the UK, you may be entitled to *asylum support* while a decision is made on whether or not you will be allowed to remain in the UK. Asylum support includes cash payments and accommodation.

Whether or not you are entitled to asylum support depends on your financial situation, your personal circumstances (such as whether you have a health problem or disability) and what stage your application for protection in the UK is at. This Chapter will give you information on what financial and other support you may be entitled to, and what support is available for those who have had their claim for protection refused.

**The law discussed here is very complicated. This Chapter is written to give you information about the law, but it is not legal advice. Asylum support law is a different area of law to immigration and asylum law. If you have applied for protection in the UK, or are thinking about doing this, it is very important that you seek legal advice from a solicitor or immigration advisor. You can also contact Rights of Women's legal advice line. See Chapter 12 at the end of this book for information about organisations that may be able to assist you with immigration law and / or asylum support law issues.**

**“ Asylum support is the financial support that asylum-seekers who have not had a decision made on their case receive. It may include cash for essential things and accommodation. Asylum support used to be called NASS support. ”**

For more information about the law that determines who is entitled to protection in the UK, see Chapter 2.

 If you have a question about your asylum support, you should ask your *case-owner* or, if you don't have a *case-owner*, you can contact the **Asylum Support Customer Contact Centre** on **0845 602 1739** (open 09.00-21.00 Monday to Friday but not bank holidays).

**“ The case-owner is the person who works for the UKBA who is responsible for your case. You may have one case-owner throughout your case or you may have different case-owners at different stages in the process. ”**

Case-owners have a number of responsibilities including:

- Interviewing you.
- Making an initial decision on whether you should be granted protection in the UK or whether your claim should be refused.

Your legal representative (or you, if you don't have a legal representative) should be in close contact with your case-owner(s) throughout the process.

## Support for asylum-seekers

### Am I entitled to Asylum Support?

You are entitled to asylum support if you meet all of these criteria:

- You are aged 18 or over (those under 18 years of age are cared for by Local Authorities).
- You have made an application for protection that has not been decided by the Home Office. A claim for protection is either a claim for asylum (under the **Refugee Convention 1951**), or under Article 3 of the **European Convention on Human Rights 1950**. (For further information about these, see Chapter 2).
- Your claim for protection was made at an Asylum Screening Unit in Croydon or Liverpool, or at the port or airport when you entered the UK.
- You are *destitute*. You are destitute if you do not have a place to live and/or money to buy food.

If your claim for asylum has been finally refused, you are not entitled to receive full asylum support under **section 95** of the **Immigration and Asylum Act 1999**. However, you may be entitled to support under **section 4**, which is covered later on in this Chapter (see below).

### What will I get?

Under **section 95** of the **Immigration and Asylum Act 1999**, asylum applicants can apply for:

- *cash* payments; or
- *housing*, offered on a *no choice* basis anywhere in the UK, unless there are exceptional circumstances (this is sometimes called dispersal); or
- cash payments and housing.

You can receive support for yourself and for any dependents that you have, such as your husband and any children who are under 18 years old.

Asylum applicants are *not* allowed to claim welfare benefits while their application for protection is decided, or do any paid work unless they have been given permission to work by the Home Office. Permission is only ever given in cases where there has been no decision at all on the application for protection after one year.

### How can I apply for asylum support?

You can apply for asylum support at any time before a decision is made on your case. Most people apply for asylum support soon after they have claimed asylum in the UK. While your application for financial support is being decided by the UK Border Agency you may be given short term, emergency accommodation in an accommodation centre.

In order to apply for asylum support, you need to complete an **Asylum Support Application Form** or **NASS 1**. You can download a copy of the form and information on how to fill it in correctly from the UK Border Agency website at: [www.ukba.homeoffice.gov.uk/asylum/support/apply/](http://www.ukba.homeoffice.gov.uk/asylum/support/apply/)

You can get help filling in the form from One Stop Services.

*One Stop Services* are run by charities who assist asylum-seekers and who are independent of the UK Border Agency. They do not make decisions about who is given protection in the UK, but they can give you information and support. If you want to discuss a problem with someone, contact your local *One Stop Service* such as:

- Refugee Action  
[www.refugee-action.org.uk](http://www.refugee-action.org.uk)
- Refugee Council  
[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)
- North of England Refugee Service  
[www.refugee.org.uk/welcome.htm](http://www.refugee.org.uk/welcome.htm)
- Migrant Helpline  
[www.migranthelpline.org.uk](http://www.migranthelpline.org.uk)
- Welsh Refugee Council  
[www.welshrefugeecouncil.org](http://www.welshrefugeecouncil.org)

You can find your local One Stop Service by looking here [www.ukba.homeoffice.gov.uk/asylum/helpandadvice/onestopservices/](http://www.ukba.homeoffice.gov.uk/asylum/helpandadvice/onestopservices/)

### What if I am in detention?

If you are taken into immigration detention and are applying for bail, you will need to have an address for your application to be successful. If you were in accommodation that was provided as

part of your asylum support and you can return there, you can use that accommodation as your bail address. This will be possible where you have family members who were not detained with you and are still in the accommodation. If you are in detention and have no accommodation, and you want to apply for bail, you can apply for asylum support so that you have an address. For information on how to do this, speak to your legal representative or contact **Bail for Immigration Detainees**.




*Bail for Immigration Detainees* (BID) is an independent charity that challenges immigration detention in the UK. For more information about BID and applying for bail, visit: [www.biduk.org](http://www.biduk.org) or telephone: 020 7247 3590 (10 am-12 pm, Monday to Thursday. If you ring outside of these times leave a message)  
Fax: 020 7247 3550.

## How will I be given asylum support? The asylum support decision

If your application for asylum support is successful, you may be given *cash payments and/or accommodation*.

You can receive cash-only support if you already have somewhere to live, for example, with your friends or family.

The details of what you are given will be set out for you in an *asylum support agreement*. As well as saying what support you are being given, the agreement also explains on what conditions the support is given.

Conditions you are given may include:

- Travelling to the accommodation given to you, as arranged by the UK Border Agency.
- Living at the address given to you (this means that you cannot live somewhere else).
- Following any rules in the place where you live. These rules usually involve things like not damaging property, or not being disruptive or violent to other people.
- Collecting your cash support once a week, on any day from Monday to Friday, from the post office where it has been arranged. You will be told where this is.

- Following any requirements for reporting to the UK Border Agency.
- Answering any questions you are asked by the UK Border Agency about your asylum application as quickly as possible.

When you get your asylum support agreement, it is important that you read it through carefully and understand it. You will be asked to sign it, to say that you understand the conditions given to you.

Cash payments will be paid to you every week. You will need to go to your local post office to collect your payment. You will need to take your *Application Registration Card* (ARC) every time. The amount of money that you get will depend on your personal and family circumstances.

At the time of writing this Chapter, you may be entitled to:

Person	Amount of money per week
Couple who are married or in a civil partnership	£69.57
Single parent aged 18 or over	£42.16
Single person aged 25 or over (not including single parents)	£42.16
Single person aged 18-24 (not including single parents)	£35.13

Pregnant women and families with young children may be entitled to more money. See below for further information.

*Accommodation* will be arranged for you. It may be anywhere in England or Wales. If your accommodation is somewhere different to where you are now, arrangements will be made to enable you and your family to travel there.

You will not be given a choice about where your accommodation is, unless there are exceptional circumstances, for example, if you have to remain in a particular area in order to receive specialist medical treatment (e.g. from the Medical Foundation or the Helen Bamber Trust).

If you have problems with your accommodation, for example, because there is something that needs to be repaired, you can ask your accommodation provider for it to be repaired. If you have problems with your accommodation provider because they do not repair things you should contact your local One Stop Shop.

## What happens if my circumstances change?

You have to tell the UK Border Agency of any **change** in your personal or family circumstances that could affect your asylum support. This includes things such as if:

- you, or any of your family, change your name;
- any of your children reach their 18th birthday;
- you move to a different place;
- you get married or divorced;
- you separate from your partner;
- you have to go into hospital because you are unwell;
- you, or your partner, become pregnant or have a baby;
- any of your children leave school;
- any of your children leave home;
- any other family members join you in the UK;
- any family member living with you in the UK leaves you to live somewhere else;
- anyone else joins you in your accommodation or leaves you;
- you are put in prison because you have committed a criminal offence;
- you get money that you have not already told the UK Border Agency about (for example, if a friend or family member gives you money);
- you get money after selling something; or
- you no longer want the UK Border Agency to give you accommodation.

## Am I entitled to any extra payments?

Women who are pregnant, or who have children who are under three years old, are entitled to extra payments, which are given every week on top of the amount that is paid in asylum support:

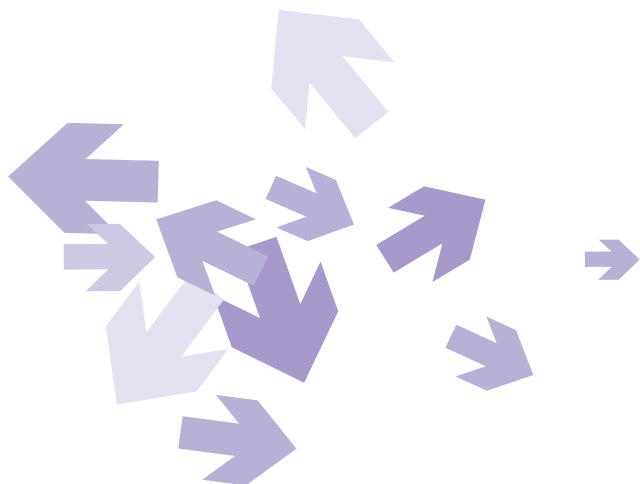
Person	Amount of extra money per week
Family with a baby under 12 months old	£5
Pregnant women	£3
Children aged between 1-3 years	£3

Women who are pregnant, or who have a newborn baby, are also entitled to apply for a **maternity payment of £300**.

You must apply for the maternity payment very close to the time when the baby is born: less than a month before the baby is due or within two weeks of the baby's birth. You **have** to supply one of the following kinds of evidence of your baby's birth:

- an original, full **birth certificate**; or
- an original **MAT B1 form** (this is a form that is provided by a doctor or midwife, as evidence of your baby's birth or expected birth); or
- another original, formal evidence of the birth.

In addition to these extra payments, if you are in need of care and attention because of health problems (for example, if you are elderly, disabled or in the late stages of pregnancy) you may be entitled to support from your Local Authority. This support is available under section 21 of the **National Assistance Act 1948**, which allows Local Authorities to provide those in need of care and attention with accommodation and support. If you think that you may be entitled to this, you should contact your Local Authority and ask for an assessment of your needs. You can find their details in a telephone book, or by looking online.



## What happens if someone in my family is violent to me? Domestic violence and financial support

Domestic violence affects one in four women in the UK. The Government defines domestic violence as:

**“...any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality.”**

This definition includes violence from family members other than your partner, for example, from your father-in-law, or from your son.

Almost all domestic violence is directed by men against women, but domestic violence does happen in same-sex relationships and, in some cases, by women against men. Although we refer here to the abuser as ‘he’, we understand that this is not always the case.

Domestic violence is **never** acceptable. If you are experiencing domestic violence, there are a number of ways in which the law can protect you. Contact Rights of Women or one of the other specialist organisations whose details are given below, and in Chapter 12.

### Help for women experiencing domestic violence

In an emergency, contact the police by dialling **999**. The police may be able to protect you from violence and / or arrest the person who is harming you.

In addition to, or instead of, contacting the police, you can seek protection from violence from the courts, by getting an order against your abuser. For further information about your rights, contact Rights of Women for legal advice (the number for our advice line is given in Chapter 12).

For confidential advice and support, you can contact the National Domestic Violence Helpline on 0808 2000 247 or visit: [www.womensaid.org.uk](http://www.womensaid.org.uk)

The UK Border Agency has a domestic violence policy, *Policy Bulletin 70 “Domestic Violence”*, which should be followed by all those who are responsible for administering asylum support, including the person who provides your

accommodation and your case-owner. *Policy Bulletin 70* refers to “NASS” but it applies to all those who are involved in administering asylum support.

Asylum Support Policy bulletins are available to download from: [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylum-supportbulletins/accesstosupport/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylum-supportbulletins/accesstosupport/)

Other Policy Bulletins that may be useful are:

- Policy bulletin 37 on maternity payments
- Policy bulletin 78 on additional payments for pregnant women and women with children

*Policy Bulletin 70* says that:

- If you report domestic violence to your accommodation provider or the UK Border Agency, your confidentiality should be protected.
- Accommodation providers and One Stop Services must have, and display, information about domestic violence, and what you can do to get support.
- The accommodation provider must maintain emergency response arrangements that can respond to the needs of women in crisis situations. This means that you should be assisted in an emergency, whatever the time, or day of the week. This should include things like taking you and any children you have to alternative, safe accommodation if it is necessary. The accommodation provider does not need the UK Border Agency’s agreement to do this, but they must inform the UK Border Agency of what they have done as soon as possible.
- If it is not possible to give you alternative accommodation, or if you do not want it, you should be referred to a women’s refuge and / or your Local Authority for an assessment of your needs.
- The UK Border Agency should pay the **reasonable costs** of your and your children’s, accommodation in a refuge.

- If you report domestic violence, an urgent case conference should be arranged (usually within one week) to decide on an action plan to ensure that your needs are met.

If the person who is abusing you is your husband and you are a dependent on his claim, you must get legal advice as soon as possible. You may then be able to make your own, separate, claim for protection in the UK.

## Health care

You are entitled to free health care while a decision is being made on your claim for protection in the UK. Health care in the UK is given by the **National Health Service** (called the NHS). You can register with a local doctor, called a GP, and you are also entitled to receive any care you need in hospital.



For further information about the NHS and what health care you may be entitled to, read this information sheet:

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4122587](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4122587)

**In an emergency dial 999 for help.** For other health enquiries, ring NHS Direct on **0845 46 47** or visit: [www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk)

In each area of the country a local NHS Primary Care Trust organises the provision of health care. You can find out more about services in your area by looking here:

[www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx?WT.srch=1](http://www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx?WT.srch=1)

If you are receiving asylum support, you should be given an **HC2 certificate**. You should receive the certificate either when you are in initial accommodation (while you wait for a decision on your application for asylum support to be decided), or when you are given asylum support.

An HC2 certificate is a document issued by the UK Border Agency, which allows asylum applicants who are receiving asylum support to get:

- free NHS prescriptions;
- free NHS dental treatment;
- free NHS wigs and fabric supports;

- free NHS eyesight tests;
- vouchers towards the cost of spectacles; and,
- refunds of necessary travel costs to and from hospital for NHS treatment under the care of a consultant. (A consultant is a doctor with expertise in a particular area. Your GP can refer you to see a consultant).

You and any dependents that you have should be on the same certificate. The HC2 is valid for 6 months. If you are still receiving asylum support at this point (because you are still waiting for a decision to be made on your case), you can apply for another HC2.

You can read the UK Border Agency policy on HC2 here: [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/hc2certificates.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/hc2certificates.pdf?view=Binary)

## Education

The children of asylum applicants and children who are applying for asylum have the same right to education as British children. Education for children is organised by your Local Authority. It is their responsibility to make sure that there are enough places for children to go to school in your area, and that any special educational need your child has is met. In the UK, children between the ages of five and sixteen years must go to school. This means that you have a legal responsibility to ensure that your child goes to school.

For more information about schools and education visit Direct Gov at: [www.direct.gov.uk/en/Parents/Schools/learninganddevelopment/index.htm](http://www.direct.gov.uk/en/Parents/Schools/learninganddevelopment/index.htm)

## I have been refused asylum support, what can I do?

How you can challenge a decision not to give you asylum support depends on why you have been refused it.

If you are refused support because the UK Border Agency believes that you did not claim asylum as soon as reasonably practicable after you arrived in the UK (this is taken to mean **within 72 hours** of your arrival), then you will have to go to court in

order to challenge the decision<sup>30</sup>. The UK Border Agency can only refuse you support for this reason if they think that your human rights would not be breached<sup>31</sup>. This will usually be because you have applied for cash-only support because you have somewhere to live, and the UK Border Agency believes that you can support yourself. If you are in this situation, you will need to get advice as soon as possible from your legal representative. They will be able to advise you on starting proceedings against the UK Border Agency.

If the UK Border Agency decides that you are not entitled to asylum support (for example, because they believe that you are not destitute), or that you are no longer entitled to receive the asylum support you are currently receiving (for example, because you have broken one of the rules of your accommodation), they will write to you and explain the reasons for this. If you disagree with their decision, you can **appeal** against it to the **First-tier Tribunal Asylum Support**.

Asylum support law is different from immigration law, so the legal representative assisting you with your claim for protection in the UK may not be able to advise on issues relating to your asylum support. If your legal representative is unable to assist you with an appeal, contact a One Stop Shop or seek support from the **Asylum Support Appeals Project** (see below).

The First-tier Tribunal Asylum Support hears appeals against decisions made by the UK Border Agency in relation to asylum support. You can find out more about the Tribunal by visiting: [www.asylum-support-tribunal.gov.uk](http://www.asylum-support-tribunal.gov.uk)

The letter explaining the decision not to give you support, or ending your support, should explain your right to appeal and include a form to enable you to do this. You have **three working days** to appeal against the decision. If you are in this situation, you will need advice on asylum support law (not immigration law).

For information about Asylum Support law and appeals at the Asylum Support Tribunal, see the **Asylum Support Appeal Project's** website at: [www.asaproject.org](http://www.asaproject.org) The Asylum Support Appeals Project can provide representation and assistance with appeals before the Asylum Support Tribunal. They can also provide telephone advice to advisors, or those who are supporting asylum-seekers. For information about their advice line, visit: [www.asaproject.org/web/index.php?option=com\\_content&view=article&id=50&Itemid=60](http://www.asaproject.org/web/index.php?option=com_content&view=article&id=50&Itemid=60)

## What happens when a decision is made on my case?

### A positive decision

If you receive a positive decision on your case and you are granted a type of leave to remain in the UK (such as Refugee Leave, Humanitarian Protection or Discretionary Leave), then your asylum support will stop **after 28 days**. If you are being accommodated by the UK Border Agency, you may have to leave that accommodation within 28 days.

When you receive your decision letter, you will be given information about claiming welfare benefits and housing support. You will also be allowed to work. For assistance with welfare benefits, housing and employment, you can contact your local Jobcentre Plus, One Stop Service or Citizen's Advice Bureau (details of these are given in Chapter 12). For further information about a positive decision, see Chapter 7.

### Support for refused asylum-seekers

If you have your initial claim refused but you appeal against it, you will continue to receive asylum support. Your asylum support will continue until **21 days** after you have exhausted (ended) your rights to appeal. Your cash support will then stop and, if you are accommodated by the UK Border Agency, you will have to leave your accommodation.

<sup>30</sup> Section 55 of the **Nationality, Immigration and Asylum Act 2002**

<sup>31</sup> Following the case of *Limbuela* [2005] UKHL 66

The only exception to this is if you have children who are **under 18** and who lived with you when your application and appeals were decided. Families in this position will continue to receive asylum support under **section 95** of the **Immigration and Asylum Act 1999**.

If you have been refused asylum and have exhausted your rights to appeal, you are expected to take steps to return to your country. If, however, you cannot return home, you may be entitled to support under section 4 of the Immigration and Asylum Act 1999. You may also be entitled to section 4 support if you make a fresh claim for protection in the UK. For further information about fresh claims, see Chapter 10.

## Am I entitled to section 4 support?

Support is available for some asylum-seekers who have had their application refused, under **Section 4** of the **Immigration and Asylum Act 1999**.

However, there are strict requirements that you must meet in order to qualify for support.

You must be destitute *and satisfy one* of the following:

- You are taking all **reasonable** steps to leave the United Kingdom or putting yourself in a position to do so. This means that you must apply for a travel document and sign up with the **International Organisation for Migration** for voluntary return to your country. If you cannot return home for a reason that is outside of your control, for example, because your country will not give you a travel document, you should qualify for support.
- You are unable to leave the UK because of a physical barrier to travel or for a medical reason. An example of this would be a woman in the late stages of pregnancy or with a baby under six weeks old. If you have another medical condition that prevents you from getting on a plane, you will need to provide medical or other evidence which proves or confirms this.
- You have applied for a **judicial review** of your application for asylum and been given permission from the court to proceed with it. Again, you will need evidence of this, so talk to your solicitor or immigration advisor.

- You need accommodation to prevent a breach of your rights under the **Human Rights Act 1998**. This normally only applies to people who have made a **fresh claim**. However, there are other exceptional reasons why a person may be able to get support, so seek advice if you think that your rights may be breached by not being given financial support.
- You are unable to leave the UK because the UK Border Agency believes there is no safe route available. There are currently no countries to which this applies.

## Changes to section 4 support for people who are taking all reasonable steps to leave the UK

From 8th June 2009, the UK Border Agency implemented a new policy for dealing with applications for section 4 support on the basis that the person applying is taking all reasonable steps to leave the UK. From this date, the UK Border Agency has said that it will only pay section 4 support to people who are taking reasonable steps to leave the UK for **three months**. Once this three month period has ended, the person's case will be reviewed, and they will only get further support in exceptional circumstances, such as if there was a legitimate reason which prevented them from leaving the UK during the three month period. This new policy may be unlawful and may be challenged. If you are receiving section 4 support on the grounds that you are taking all reasonable steps to leave the UK, and if your support is stopped after three months, you should seek advice on asylum support law as soon as you can.

## How will my support be paid?

Section 4 support is self-catering accommodation with £35 per week paid in supermarket vouchers or on a voucher card. You can find out where you can use your vouchers, and on what, by looking here:

[www.ukba.homeoffice.gov.uk/sitecontent/documents/asylum/vouchers.pdf](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/asylum/vouchers.pdf)

In some areas of the UK, section 4 support is paid using a payment card called **Azure**. The card will replace supermarket vouchers in these areas and should enable women who have it to buy things in a wider range of shops. The cards look like credit cards and do not say anywhere on them that they have been given to you by the UK Border Agency. They are automatically topped up

by £35 every week and you can carry over anything that you do not spend from one week to the next. This means that you can save for more expensive things that you need, such as clothes for winter. However, if a person saves a lot of money, the UK Border Agency may conclude that they are not destitute and so that may stop their asylum support.

You may be able to get additional payments in certain circumstances, including a one-off voucher to pregnant women and new mothers to pay for the cost of a birth certificate, and for certain correspondence (to your solicitor, for example), journeys (such as to get medical treatment) and telephone calls.

## How can I apply for section 4 support?

There are two different types of application forms for section 4 support: one for cases which were decided under the New Asylum Model and one for those decided by the Case Resolution Directorate. For more information about how cases are decided under the New Asylum Model, see Chapters 3 and 4. For information about the Case Resolution Directorate, see Chapter 6.

You can download the right application form and the notes for guidance from the UK Border Agency website at: [www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/](http://www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/)

## My section 4 support has been refused or taken away, what can I do?

If you have been refused section 4 support or you are having your support taken away, you can appeal against this decision to the *First-tier Tribunal Asylum Support*. In the letter refusing or withdrawing your support, the UK Border Agency will explain why they have made their decision. The decision should give you information about your right to appeal and include a form, so that you can do this. You have **three working days** to appeal the decision.

If you are refused section 4 support, you should seek legal advice. Asylum support law is different from immigration law, so the legal representative assisting you with your claim for protection in the UK may not be able to advise you on issues relating to your support. If your legal

representative is unable to assist you, contact a One Stop Shop or seek support from the **Asylum Support Appeals Project**.

## Is there any other help available?

If you are in need of care and attention because of health problems (for example, you are elderly, disabled or in the late stages of pregnancy), you may be entitled to support from your Local Authority. This support is available under section 21 of the **National Assistance Act 1948**, which allows Local Authorities to provide those in need of care and attention with accommodation and support. If you think that you may be entitled to this, you should contact your Local Authority and ask for an assessment of your needs. You can find their details in a telephone book or by looking online.

## Health care

Whatever stage your claim for protection in the UK is at, in an emergency dial 999 for help. For other health enquiries, ring *NHS Direct* on 0845 46 47 or visit: [www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk)

In each area of the country a local *NHS Primary Care Trust* organises the provision of health care. You can find out more about services in your area by looking here: [www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx?WT.srch=1](http://www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx?WT.srch=1)

Health care for refused asylum-seekers and their families is an area of law that is complex and has changed frequently. The most recent development was in March 2009, with the Court of Appeal decision in the case of **R(YA) v Secretary of State for Health [2009] EWCA Civ 225**.

The decision of **R(YA)** does *not* affect your ability to seek treatment from your local GP (General Practitioner). Everyone can get treatment from a GP, regardless of their immigration status (whether they are an asylum-seeker or refused asylum-seeker).

In **R(YA)** the Court of Appeal heard a case on the rights of refused asylum-seekers to receive health care and decided that refused asylum-seekers were *not* ordinarily resident in the UK. Under the **National Health Service Act 2006**, regulations have been made that allow those who are not ordinarily resident in the UK to be *charged* for some NHS services<sup>32</sup>.

There are, however, no charges for the following NHS services:

- treatment given in an **Accident and Emergency Department** (sometimes called "A and E");
- **family planning services** (for example advice or assistance with contraception);
- treatment for certain diseases. TB is a disease for which treatment will be provided free of charge, HIV is not.

In the case of **R(YA)** the Court of Appeal decided that NHS trusts have the *discretion* (an ability or power) to provide a refused asylum applicant with treatment free of charge.

The decision on whether to provide a refused asylum applicant treatment will depend on the following:

- Whether you can pay for the treatment (the Court of Appeal accepted that it was unlikely that refused asylum-seekers would be able to pay for treatment).
- How urgent it is for you to receive treatment.
- How long you are likely to be in the UK.
- Your situation, if you are not able to return to your country (because, for example, you cannot travel for a medical reason, or it is not possible to return you because you cannot get the documentation you need).

The Department of Health has written to NHS Trusts in England following the judgement in **R(YA)** stating:

- Immediately *necessary* treatment, including *all maternity* treatment, must *never* be withheld for any reason.

- **Urgent** treatment should not be cancelled or delayed. Urgent treatment is treatment that a clinician (for example a doctor or other medical professional) thinks cannot wait for you to return home to receive.
- A refused asylum-seeker who has been given treatment free of charge between 11th April 2008 and 30th March 2009 must *not* be charged for that treatment.
- A refused asylum-seeker who is undergoing a course of treatment should *not* have that treatment interrupted or be asked to pay for it. Their treatment should continue until it has finished, or they leave the country.
- The factors identified by the Court of Appeal and set out above should be considered before a decision is made to charge for treatment.
- Anyone who is identified by either the UK Human Trafficking Centre or the UK Border Agency as a victim or suspected victim of trafficking must not be charged for NHS treatment.

This decision may be appealed, so it is vital that you get up-to-date legal advice on your situation.

If you are receiving section 4 support, you can apply for an **HC2 certificate** by completing form **HC1**. An HC2 certificate is a document which allows you to get:

- free NHS prescriptions;
- free NHS dental treatment;
- free NHS wigs and fabric supports;
- free NHS eyesight tests;
- vouchers towards the cost of spectacles; and
- refunds of travel costs necessary in getting to and from hospital for NHS treatment under the care of a consultant (a consultant is a doctor with expertise in a particular area. Your GP can refer you to see a consultant).

The decision on whether or not you are entitled to an HC2 certificate depends on your income, not your immigration status. For further information on this see here:

[www.dh.gov.uk/en/Healthcare/Medicinespharmacyandindustry/Prescriptions/NHScosts/DH\\_4049391](http://www.dh.gov.uk/en/Healthcare/Medicinespharmacyandindustry/Prescriptions/NHScosts/DH_4049391)  
Your local One Stop Service can help you complete the form.

## Education

While you are in the UK, your children have the right to go to school. This does not change if your claim for asylum or asylum support is refused.

## Things to remember

- Asylum applicants are not allowed to claim welfare benefits while their application for protection is being decided, or do any paid work (unless they have been given permission to work by the Home Office). If you have made a claim for asylum you may be entitled to financial and housing support under **section 95 of the Immigration and Asylum Act 1999**.
- If your claim for asylum in the UK is not successful, you may be entitled to support under **Section 4 of the Immigration and Asylum Act 1999**. Section 4 support is made up of accommodation and vouchers.
- If you have children, a disability or other health problems, you may be entitled to additional support from your Local Authority. You can contact your Local Authority's Social Services department for an assessment of your needs.
- If you are refused asylum support, or have your asylum support stopped, you may be entitled to appeal against the decision to the Asylum Support Tribunal.

## Support organisations

For legal information and advice on immigration and asylum law, see:

- Anti-Trafficking Legal Project (ATLeP)
- Asylum Aid (includes the Refugee Women's Resource Project)
- Community Legal Advice
- Immigration Advisory Service
- Immigration Lawyers Practitioners Association
- Refugee and Migrant Justice (formerly the Refugee Legal Centre)
- Rights of Women

To discuss any other problem, contact your local One Stop Service:

- Refugee Action
- Refugee Council
- North of England Refugee Service
- Migrant Helpline
- Welsh Refugee Council

For information about asylum support law and appeals at the Asylum Support Tribunal, contact the **Asylum Support Appeal Project**.

For information and support in applying for **bail** and asylum support from detention, contact **Bail for Immigration Detainees**.

For information about accessing *health care*, contact your local One Stop Service and see:

- Project London
- Medact
- Maternity Action
- Positively Women

For information about working, getting housing support or welfare benefits, contact your local Citizen's Advice Bureau or Job Centre Plus.

For information about returning to your country, contact:

- Choices
- International Organisation for Migration

For information and advice in relation to domestic violence, contact:

- Rights of Women
- The National Domestic Violence helpline

See Chapter 12 for the contact details of these, and other useful organisations.

<sup>32</sup> The regulations are the **National Health Service (Charges to Overseas Visitors) Regulations 1989/306**.

# 12 Useful organisations and contact details

This Chapter gives the names and contact details of organisations that may be able to help you with particular problems. We have arranged it in alphabetical order.

## **Anti-Trafficking Legal Project (ATLeP)**

Provides information and resources about the law on trafficking and is a network of practitioners who advise, represent and support victims of trafficking and other vulnerable people.

ATLeP, care of 1 Pump Court  
Temple

London EC4Y 7AB

Email: [atlep1@gmail.com](mailto:atlep1@gmail.com)

[www.ein.org.uk/resources/printfriendly2.shtml?x=227892](http://www.ein.org.uk/resources/printfriendly2.shtml?x=227892)

## **Asylum Aid (includes the Refugee Women's Resource Project)**

Provides legal advice to women on asylum issues on a telephone advice line as well as representing women in their claims for protection in the UK. On their website there is also useful information about claiming asylum in the UK.

Club Union House  
253-254 Upper Street  
London N1 1RY

Advice line: 020 7354 9264

Tel: 020 7354 9631

Fax: 020 7354 5620

Email: [info@asylumaid.org.uk](mailto:info@asylumaid.org.uk)

[www.asylumaid.org.uk](http://www.asylumaid.org.uk)

## **Asylum and Immigration Tribunal**

Hears and decides appeals against the decisions of the UK Border Agency

Tel: 0845 6000 877

Minicom: 0845 606 0766

[www.ait.gov.uk](http://www.ait.gov.uk)

## **Asylum Screening Unit**

A place to make your application for asylum if you are already in the UK.

Croydon Centre  
Lunar House  
40 Wellesley Road  
Croydon CR9 2BY

Liverpool Centre  
1st Floor, Reliance House  
20 Water Street  
Liverpool L2 8XU  
Tel: 0151 237 0083

[www.ukba.homeoffice.gov.uk/contact/contactpage/asylumscreeningunit](http://www.ukba.homeoffice.gov.uk/contact/contactpage/asylumscreeningunit)

## **Asylum Support Appeals Project**

Aims to reduce destitution amongst asylum-seekers by protecting their legal rights to food and shelter.

18 Barclay Road  
Croydon  
CR0 1JN

Advice Line: 0845 603 3884

Tel: 020 8686 1888

Fax: 020 8686 1899

[www.asaproject.org](http://www.asaproject.org)

## **Bail for Immigration Detainees**

Challenges immigration detention in the UK. They work with asylum-seekers and migrants in removal centres and prisons, to secure their release from detention.

BID London office: for all general queries and detainees (except those held at the centres listed below).

Tel: 020 7247 3590

Fax: 020 7247 3550

BID South office: for detainees at Colnbrook, Dover and Haslar

Tel: 023 9281 6633

Fax: 023 9282 1529

BID Oxford office: for detainees at Campsfield House and Lindhome

Tel: 0845 3304 536

Fax: 0845 3304 537

Email: [enquires@biduk.org](mailto:enquires@biduk.org)

[www.biduk.org](http://www.biduk.org)

## **Bar Council**

Represents barristers in England and Wales.

289-293 High Holborn

London WC1V 7HZ

Tel: 020 7242 0082

Fax: 020 7831 9217

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

## **Bar Standards Board**

Regulates barristers in England and Wales.

289-293 High Holborn

London WC1V 7HZ

Tel: 020 7611 1444

Fax: 020 7831 9217

Email: [contactus@barstandardsboard.org.uk](mailto:contactus@barstandardsboard.org.uk)

[www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

## **British Red Cross**

Helps people in crisis situations in many ways, including tracking lost family members.

44 Moorfields

London EC2Y 9AL

Switchboard: 0844 871 1111

Fax: 020 7562 2000

Minicom: 020 7562 2050

Email: [information@redcross.org.uk](mailto:information@redcross.org.uk)

[www.redcross.org.uk](http://www.redcross.org.uk)

International Tracing (for tracing family members): 0845 053 2004

Email Tracing (for tracing family members): [itms2@redcross.org.uk](mailto:itms2@redcross.org.uk)

### Choices

Provides confidential, independent, information and advice to refugees and asylum-seekers who are considering returning to their country. Choices is run by Refugee Action (see below).

150 Waterloo Road  
London SE1 6ED  
Tel: 020 7654 7718  
Fax: 020 7401 3699  
Email: [choices@refugee-action.org.uk](mailto:choices@refugee-action.org.uk)  
[www.refugee-action.org.uk](http://www.refugee-action.org.uk)

### Community Legal Advice

For free and confidential legal advice and to find a solicitor.

Advice line: 0845 345 4345  
[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

### Citizen's Advice Bureau

Helps people resolve their legal, money and other problems by providing free information and advice. Visit their website for information about services in your area [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### Direct Gov

A website that has information about public services  
[www.direct.gov.uk](http://www.direct.gov.uk)

### First-tier Tribunal (Asylum Support)

Provides an independent appeal process for asylum-seekers whose applications for support have been refused or discontinued.

Anchorage House  
2nd Floor  
2 Clove Crescent  
East India Dock  
London E14 2BE  
Tel: 020 7538 6171  
Fax: 020 7538 6200  
Freephone: 0800 389 7913 (only for appellants who wish to discuss their appeal).  
[www.asylum-support-tribunal.gov.uk](http://www.asylum-support-tribunal.gov.uk)

### Immigration Enquiry Bureau of the UK Border Agency

Provides information about applications for permission to remain or settle in the United Kingdom.

UK Border Agency  
Lunar House  
40 Wellesley Road  
Croydon  
Surrey CR9 2BY  
Tel: 0870 606 7766  
Text: 0800 389 8289  
Email: [UKBApublicenquiries@ukba.gsi.gov.uk](mailto:UKBApublicenquiries@ukba.gsi.gov.uk)  
[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

### Immigration Advisory Service

Provides legal advice and representation to asylum-seekers and those with immigration law problems.

3rd Floor County House  
190 Great Dover Street  
London SE1 4YB  
Tel: 020 7967 1330  
Fax: 020 7403 5875  
[www.iasuk.org](http://www.iasuk.org)

### International Organisation for Migration

Works to help ensure the correct management of migration and to provide humanitarian assistance to migrants in need.

21 Westminster Palace Gardens  
Artillery Row  
London SW1P 1RR  
Tel: 020 7233 0001  
Fax: 020 7233 3001  
Free Phone number: 0800 783 2332  
Email: [iomuk@iom.int](mailto:iomuk@iom.int)  
[www.iomlondon.org](http://www.iomlondon.org)

### Job Centre Plus

Supports people who are trying to find work and access welfare benefits. Visit

[www.jobcentreplus.gov.uk](http://www.jobcentreplus.gov.uk) for information and to find your local Job Centre Plus.

### Office of the Immigration Services Commissioner

Responsible for regulating immigration advisers by ensuring they are fit and competent and act in the best interest of their clients.

5th Floor, Counting House  
53 Tooley Street  
London SE1 2QN  
Tel: 0845 000 0046  
Fax: 020 7211 1553  
Email: [info@oisc.gov.uk](mailto:info@oisc.gov.uk)  
[www.oisc.gov.uk](http://www.oisc.gov.uk)

### Maternity Action

Works to promote the health of pregnant women and new mothers.

Unit F9,  
89-93 Fonthill Road  
London N4 3JH  
Tel: 020 7281 7816  
[www.maternityaction.org.uk](http://www.maternityaction.org.uk)

### Medact

Network of health professionals working with refugees and asylum-seekers.

The Grayston Centre  
28 Charles Square  
London N1 6HT  
Tel: 020 7324 4739  
Fax: 020 7324 4734  
Email: [info@medact.org](mailto:info@medact.org)  
[www.medact.org](http://www.medact.org)

### National Coalition of Anti-Deportation Campaigns

Provides practical help and advice to people facing deportation on how to launch and run anti-deportation campaigns.

North of England, Wales, Scotland and Northern Ireland Office  
110 Hamstead Road  
Birmingham B20 2QS  
Tel: 012 1554 6947  
Email: [ncadc@ncadc.org.uk](mailto:ncadc@ncadc.org.uk)

London and South England Office  
86 Durham Road  
Finsbury Park  
London N7 7DT  
Tel: 078 1753 9746  
Email: [ncadc-south@ncadc.org.uk](mailto:ncadc-south@ncadc.org.uk)  
[www.ncadc.org.uk](http://www.ncadc.org.uk)

### **National Domestic Violence Helpline**

24 hour national domestic violence helpline: **080 8200 0147**

[www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)  
[www.womensaid.org.uk](http://www.womensaid.org.uk)  
[www.refugee.org.uk](http://www.refugee.org.uk)

### **National Health Service (NHS)**

[www.nhs.uk](http://www.nhs.uk)

### **Migrant Helpline**

Provides assistance and support for asylum-seekers and refugees entering and living in the UK.

Charlton House  
Dour Street  
Dover  
Kent CT16 1AT  
Tel: **013 0420 3977**  
Fax: **013 0420 3995**  
[mhl@migranthehelpline.org](mailto:mhl@migranthehelpline.org)  
[www.migranthehelpline.org.uk](http://www.migranthehelpline.org.uk)

### **North of England Refugee Service**

Providing support and information for asylum-seekers and refugees who have arrived or have settled in the North of England.

2 Jesmond Road West  
Newcastle Upon Tyne NE2 4PQ  
Tel: **019 1245 7311**  
Fax: **019 1245 7320**  
Email: [info@refugee.org.uk](mailto:info@refugee.org.uk)  
[www.refugee.org.uk](http://www.refugee.org.uk)

### **Positively Women**

Provides advice and support for women living with HIV from other women living with HIV.

347-349 City Road  
London EC1V 1LR  
Advice line: **020 7713 0222**  
Tel: **020 7713 0444**  
Email: [info@positivelywomen.org.uk](mailto:info@positivelywomen.org.uk)  
[www.positivelywomen.org.uk](http://www.positivelywomen.org.uk)

### **Project London**

Provides information, advice and practical assistance to vulnerable people to help them access NHS and other services.

Praxis  
Pott Street  
London E2 0EF  
Tel: **020 8123 6614** or **020 7613 4106**  
Mobile Tel: **079 7461 6852**  
[www.mdmuk.org.uk/projectlondon/default.Asp](http://www.mdmuk.org.uk/projectlondon/default.Asp)

### **Refugee Action**

Welcomes asylum-seekers on their arrival to the UK and provides advice and advocacy.

The Old Fire Station  
150 Waterloo Road  
London SE1 8SB  
Tel: **020 7654 7700**  
Fax: **020 7654 0696**  
Email: [info@refugee-action.org.uk](mailto:info@refugee-action.org.uk)  
[www.refugee-action.org.uk](http://www.refugee-action.org.uk)

### **Refugee and Migrant Justice (formerly the Refugee Legal Centre)**

Provides legal advice and representation to asylum-seekers and those with immigration law problems.

Head Office  
Nelson House  
153 - 157 Commercial Road  
London E1 2DA  
Tel: **020 7780 3200**  
Fax: **020 7780 3201**  
Email: [rlc@rmj.org.uk](mailto:rlc@rmj.org.uk)  
[www.refugee-migrant-justice.org.uk](http://www.refugee-migrant-justice.org.uk)

### **Refugee Council**

Provides support and help to refugees and asylum-seekers and to make information and advice available to them directly.

Head Office  
240-250 Ferndale Road  
Brixton  
London SW9 8BB  
Tel: **020 7346 6700**  
Fax: **020 7346 6701**  
London advice line: **020 7346 6777**

Yorkshire and Humberside advice line: **011 3386 2210**

East of England advice line: **014 7329 7900**

West Midlands advice line: **012 1234 1971**

Children's Panel advice line: **020 7346 1134**

[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

### **Refugee Integration and Employment Service**

Offers a 12-month service to people granted refugee status or humanitarian protection giving advice and support with housing, education and benefits, employment advice and a mentoring service.

In London, the East of England and the Midlands this service is run by the Refugee Council.

In the South East and West and the North West this service is run by Refugee Action.

In Wales this service is run by the Welsh Refugee Council.

[www.bia.homeoffice.gov.uk/about-us/workingwithus/workingwithasylum/integration/ries/](http://www.bia.homeoffice.gov.uk/about-us/workingwithus/workingwithasylum/integration/ries/)

### **Rights of Women**

Provides women with free, confidential legal advice by specialist women solicitors and barristers.

52-54 Featherstone Street  
London EC1Y 8RT

**Advice line: 020 7251 6577** (for advice on family law issues)

**Advice line: 020 7251 8887** (for advice on sexual violence, asylum and immigration issues)

**Tel: 020 7251 6575**

**Fax: 020 7490 5377**

**Email: [info@row.org.uk](mailto:info@row.org.uk)**

**[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

### **Solicitors Regulation Authority**

Regulates solicitors in England and Wales.

Ipsley Court  
Berrington Close  
Redditch B98 0TD

**Tel: 0870 606 2555**

**Email: [contactcentre@sra.org.uk](mailto:contactcentre@sra.org.uk)**

**[www.sra.org.uk](http://www.sra.org.uk)**

### **The Law Society**

Represents solicitors in England and Wales.

The Law Society's Hall  
113 Chancery Lane  
London WC2A 1PL

**Tel: 020 7242 1222**

**Fax: 020 7831 0344**

**Email: [contact@lawsociety.org.uk](mailto:contact@lawsociety.org.uk)**

**[www.lawsociety.org.uk](http://www.lawsociety.org.uk)**

### **The Immigration Lawyer's Practitioners Association**

Promotes and improves the advising and representation of migrants and campaigns to secure a just system for immigration.

Lindsey House  
40-42 Charterhouse Street  
London EC1M 6JN

**Tel: 020 7251 8383**

**Fax: 020 7251 8384**

**Email: [info@ilpa.org.uk](mailto:info@ilpa.org.uk)**

**[www.ilpa.org.uk](http://www.ilpa.org.uk)**

### **Welsh Refugee Council**

Provides advice, information and support for asylum-seekers and refugees to rebuild their lives in Wales.

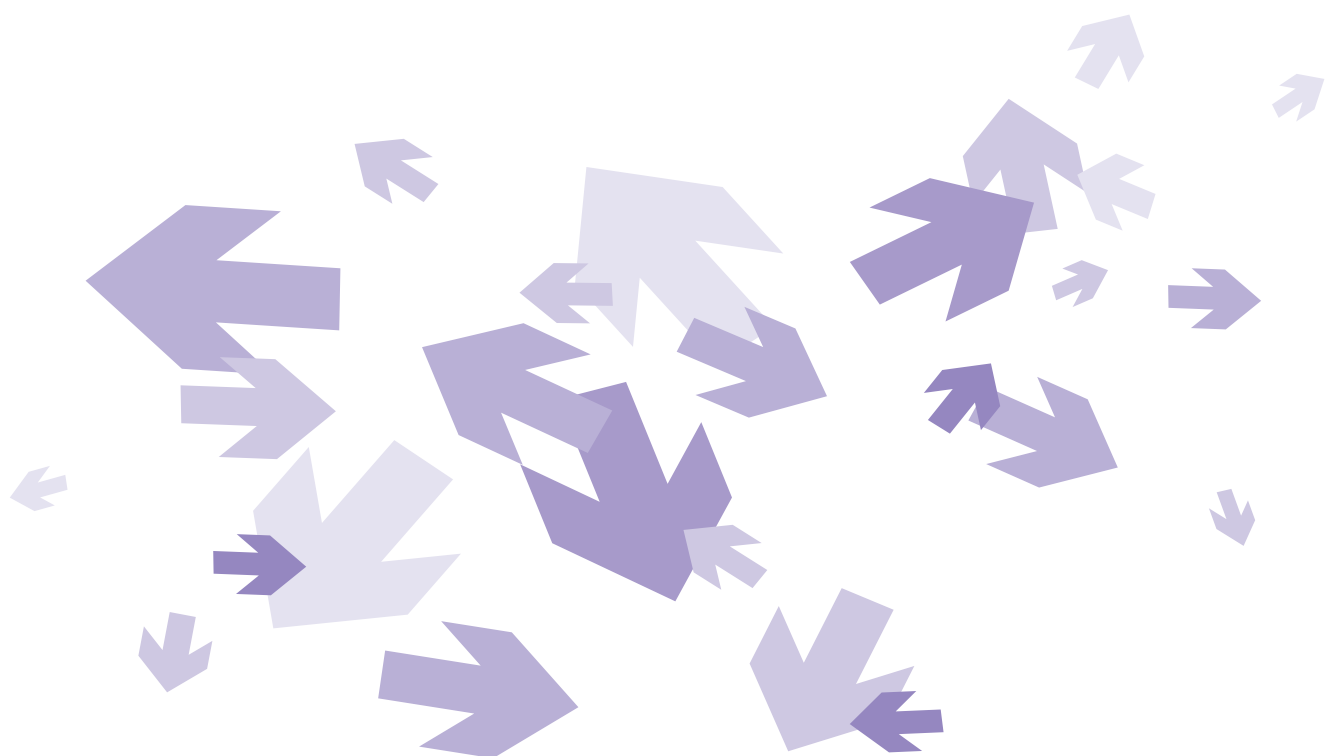
Phoenix House  
389 Newport Road  
Cardiff CF24 1TP

**Tel: 029 2048 9800**

**Fax: 029 2043 2980**

**Email: [info@welshrefugeecouncil.org](mailto:info@welshrefugeecouncil.org)**

**[www.welshrefugeecouncil.org](http://www.welshrefugeecouncil.org)**



## An original publication from Rights of Women

Every year millions of people across the world are forced to flee their homes to escape persecution. Some of those people will seek refuge by making a claim for asylum here in the UK. Many asylum-seeking women arrive in the UK having experienced sexual violence, such as rape, or torture or other forms of violence, such as domestic abuse or forced marriage. Some will have problems getting legal advice or accurate legal information about the asylum process and how cases are decided.

*Seeking Refuge?* is a vital resource for asylum-seeking women. It explains, in clear and accessible language, the law that determines who is entitled to protection in the UK and how the asylum system works. It is essential reading for asylum-seeking women and all those who support them in their struggle to live lives free from violence and abuse.

*Seeking Refuge?* is divided into ten chapters which explain different parts of the process of gaining protection in the UK:

- Chapter 2 explains the law that determines who is entitled to protection in the UK. It explains the key provisions of the Refugee Convention and the European Convention on Human Rights.
- Chapters 3, 4, 5 and 6 explain the ways that different types of cases are decided, under both the New Asylum Model and the Case Resolution Directorate.
- Chapters 7 and 8 explain the different decisions that you may receive on your case, including appealing against negative decisions and the different types of protection you may be given in the UK.
- Chapter 9 explains what will happen if you are finally refused and facing removal from the UK.
- Chapter 10 explains what a fresh claim is and how it can be made.
- Chapter 11 explains the financial support that asylum-seekers and failed asylum-seekers are entitled to, as well as access to education and health care.
- Chapter 12 gives information about other organisations that may be useful to you and gives their contact details.

Rights of Women aims to achieve equality, justice and respect for all women.

