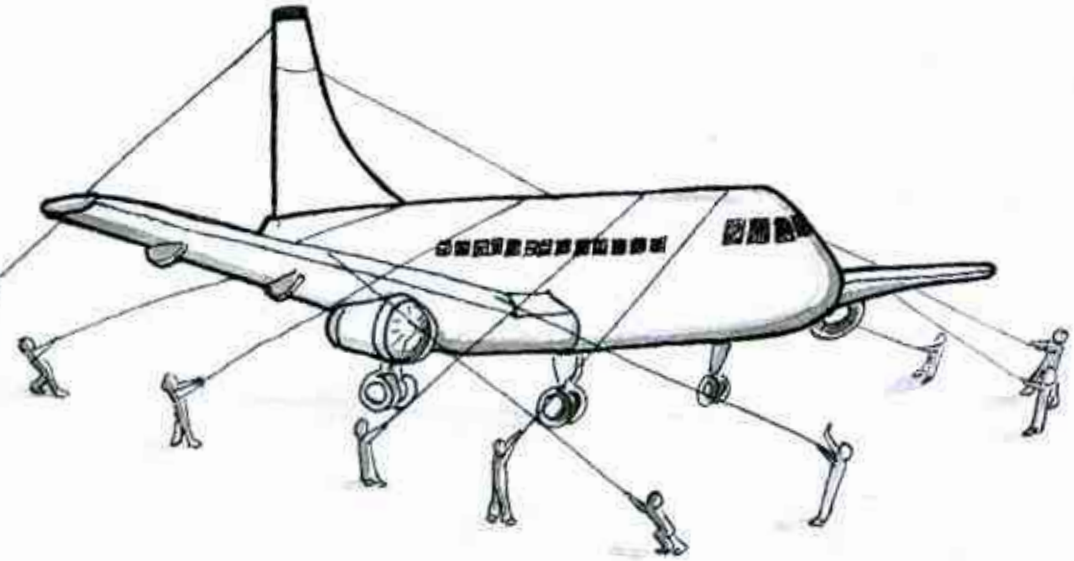
NCADC
National Coalition of Anti-Deportation Campaigns



Campaigning TOOLKIT

An aid to understanding the asylum and immigration systems in the UK, and to campaigning for the right to stay

National Coalition of Anti-Deportation Campaigns (NCADC)

supports community-led campaigns for justice in the asylum and immigration system, with a focus on supporting people facing deportation. We provide support and advice for people facing deportation (enforced removal), their families and their communities; and aim to develop the capacity of local campaign groups and refugee/migrant organisations to campaign effectively.

www.ncadc.org.uk

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Thank you to the artist of the great image used on the cover of this toolkit, who has given us permission to use her drawing. This image, and others free to use for grass-roots campaigning, can be found here: www.blackbirdtree.co.uk/Images%204%20activists.html

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Summary

Part One of the Toolkit sets out different ways of campaigning for the right to stay in the UK that may be useful in an individual campaign. The strategies could be used individually, or in combination. It is likely that different strategies will be appropriate at different times in your campaign, and a combination of strategies will be most effective. Each campaign is different.

Some of the actions are public, others can be taken up in non-public campaigning. The difference between these types of campaigning is explained at the start of Part One. Other campaigning information, such as campaigning that can be done when a deportation is imminent, can be found in the sections on the relevant part of the asylum/immigration process (Part Two).

Part Two gives an explanation of the procedures for applying for asylum or immigration status. It is a general overview, and it is very important to get legal advice on your individual case.

The sections roughly follow the order in which the procedures may come up in your own case.

The final part of the Toolkit is a Glossary of key terms used in the Toolkit.

PART TWO

Procedures and Legal Background

Entering the UK

Most visas (entry clearance) for the UK require an application before you travel to the UK. Some of the most common forms of visa are student visa, work visas (which are now governed by a points-based system), family visas and partner/spouse visas.

The requirements for these visas are becoming increasingly difficult to meet: most require a lot of documentary evidence, large amounts of money, and lengthy probation periods. The proposed changes to family migration immigration rules (announced by the government in June 2012) make it much harder to satisfy the criteria in the immigration rules, and remove the option of being granted discretionary leave outside of these rules. You can read a Migrants' Rights Network (MRN) briefing on the changes here: www.migrantsrights.org.uk/files/MRN_Family_migration-briefing-June_2012_0.pdf. For updates on the changes to immigration rules proposed by the government, see the Free Movement blog (www.freemovement.org.uk/), and the MRN (www.migrantsrights.org.uk/) and the Joint Council for the Welfare of Immigrants websites (www.jcwi.org.uk/).

You should always try and get legal advice before submitting an application. Even if your application is successful, entry clearance officers (the immigration officers who work at ports of entry) can still refuse to let you enter. The right to appeal refusals of visa applications is limited.

European Economic Area (EEA) nationals (broadly speaking, from countries that are in the European Union) can travel to, and stay in, the UK more easily than people from non-European countries.

All visas will be time-limited and so will need to be renewed if you wish to stay longer. It is possible to move between some immigration categories while in the UK, but this is becoming more difficult. If you do not renew your visa, you will be classified as an overstayer. Overstaying is an immigration offence, and UKBA frequently use 'poor immigration history' as one reason to refuse release from detention and applications for leave to remain.

Entering the UK and Claiming Asylum

Although it is in theory possible to claim asylum before coming to the UK (at the British embassy/High Commission) this is very rare.

Some people claim asylum immediately on arrival in the UK (at the airport/port). In such a case, you will have your screening interview at the port (see 'Screening Interview').

UKBA is of the view that everyone should be claiming asylum at the port of entry, and that if you do not, this means you are less likely to be telling the truth. They refer

to clear instructions to claim asylum at the airport. These instructions are a few small posters in English and do not take into account that many people do not have good English, do not know what the word 'asylum' means (they know they need safety or protection but may never have heard it called 'asylum' before). They also do not take into account how many people seeking asylum have to use a smuggler/agent to enter the UK, who gives them strict instructions not to say anything about asylum until they are through immigration control (and the agent has safely got away).

Some people who come to the UK to seek asylum use their own passports, but for many this is not possible. It would either put them at risk to apply for a passport in their country (imagine asking the Eritrean government for a passport and explaining you want it for a trip to the UK), or the use of a passport in their own name would make their presence known to the very authorities they are having to flee. The Refugee Convention acknowledges the danger for some people of using a real passport in their own name, and states that asylum seekers should not be punished for this if they have a good reason for using false documents:

Article 31 of the Refugee Convention states:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Unfortunately, many asylum seekers *are* prosecuted by the UK government for the use of a false passport. If they are represented by lawyers who specialise in criminal law, and do not know this Article 31 defence, the lawyer may wrongly advise their clients to plead guilty: the evidence of the crime is clearly there, and pleading guilty should lead to a shorter sentence. Asylum seekers should, however, be getting advice about the Article 31 defence (which allows you to plead not guilty).

The criminal conviction for using a false passport may be used as a reason to refuse some applications for status – including indefinite leave to remain – and can cause problems when applying for work. There are legal options, even after a criminal sentence has been given, that may help you if you are in this situation. One of these is the Criminal Cases Review Commission (CCRC).

Yewa Holiday, Case Review Manager at the CCRC, explains:

The CCRC, a statutory body set up in 1997 to deal with suspected miscarriages of justice, has reviewed a number of convictions relating to offences by asylum seekers/refugees connected to their entry to the UK. In most of these cases, the applicants have been advised to plead guilty and not advised that they may have a defence. The CCRC has the power to refer convictions (and sentences) to the appropriate appeal court if it determines there is a real possibility that the conviction will be quashed.

For more information on this process, contact the CCRC on 0121 233 1473 or get an application form on their website: www.justice.gov.uk/about/criminal-cases-review-commission/forms-and-how-to-apply

The CCRC can deal with cases in England, Wales and Northern Ireland. For cases in Scotland, contact the Scottish CCRC: www.sccrc.org.uk/home.aspx

Human Rights, Asylum, and Status

Human rights arguments for leave to remain should be made at the same time as applying for asylum, but is it common for human rights grounds to arise after an initial application for asylum. This is particularly so with asylum applications made before 2007 and applications that have not been processed quickly under NAM, as you may have lived in the UK for many years by the time your application is refused.

The UK is bound by the European Convention on Human Rights, and the protection of these rights is part of UK law through the Human Rights Act. The main rights that lead to a specific form of leave to remain are those under Articles 3 and 8 of the Convention.

Article 3 prohibits the use of torture, inhuman and degrading treatment. Article 8 protects the right to family and private life. In practice, if you can demonstrate your Article 3 rights are at risk, you are likely to fall under the Refugee Convention, but there are cases where Article 3 applies and the Refugee Convention does not. Article 3 is absolute, so there is no situation in which it can lawfully be breached.

Article 8 is not absolute. Human rights law recognises that people have the right to a family and private life, but also recognises that the state has the right to exercise immigration control. Article 8 arguments are therefore always about weighing up these opposing rights – if you can prove that the breach to your Article 8 rights would be so serious that it outweighs the state's right to deport people with no right to stay in the UK, you should be granted leave to remain. This is called a disproportionate breach. Factors that count against you in these arguments are things like immigration history and criminal convictions. Factors that could be in your favour are family in the UK (particularly British children), lack of connection to your country of origin, length of time in the UK and community connections, and some medical and mental health needs. It is worth remembering that a British partner or child is not enough to be granted leave to remain in the UK – UKBA frequently argue that there would be no breach to your family life if you were deported because the British family could come with you. This is now harder to argue with a British child because of the protection of Section 55 (the statutory duty to safeguard and promote children's welfare and to treat the best interest of the child as a primary consideration under section 55 of the Borders Citizenship and Immigration Act 2009), but having a British child is not enough in itself to obtain leave to remain.

For more on Section 55, see: www.freemovement.org.uk/2011/02/04/childrens-best-interests-after-zh-tanzania-2/

Status

If your asylum application is accepted, you will be granted five years' *refugee status* (with the right to work and claim benefits, mainstream housing, family reunion and a travel document). After five years, the normal process would be to apply for indefinite leave to remain and after a year of ILR you can apply for British citizenship.

If your case was handled under the 'legacy' process, by the Case Resolution Directorate, you are likely to be granted *indefinite leave to remain*. This is because the asylum claims were not looked at in terms of risk, and factors such as length of time in the UK were considered instead. This means you are not automatically entitled to family reunion and a refugee travel document, and you should seek legal advice if you wish to challenge this form of status being granted. Indefinite leave to remain does not have a time limit, but it can be revoked under some circumstances (such as serious a criminal conviction). You will also be able to apply for British citizenship. Citizenship is not automatic and there are requirements that must be met. As it is seen as a privilege granted by discretion, not a right, a refusal of citizenship is not easy to challenge. The later stages of some family and spouse/partner visas also result in indefinite leave to remain, but the requirements for these visas are being made even more strict by the current government (including high salary requirements, English language tests and longer probation periods). The pathway to indefinite leave to remain based on 14 years in the UK, where part of that 14 years was without valid leave to remain, will also be increased to 20 years.

A successful Article 8 application outside of the Immigration Rules in the past normally resulted in *discretionary leave.* This is temporary leave (often 3 years following an Article 8 application), which can be renewed until a point where you can apply for indefinite leave to remain. If someone is excluded from the Refugee Convention (for example, because of committing war crimes/crimes against humanity but their return would breach their Article 3 rights because they would be tortured if returned), they may be granted 6 months discretionary leave which can be renewed while the risk remains. Discretionary leave could also be granted for exceptional humanitarian or medical reasons; and is currently the leave granted to unaccompanied asylum-seeking children, whose asylum claims have been refused but who cannot be returned because of inadequate reception arrangements in their home country. At the time of writing, the government was proposing to make it much more difficult to get leave to remain from an Article 8 claim; and if these proposals are carried out, it will not be possible to obtain discretionary leave *outside* of the Immigration Rules, and the criteria for successful Article 8 claims within the Immigration Rules will be much more restrictive.

As will be seen below, the Refugee Convention provides protection for those facing a specific individual threat. It also allows for 'subsidiary protection' when there is a risk of serious harm, but not because of an individualised threat of persecution. This subsidiary protection may be discretionary leave (see above) or *humanitarian protection.*

This type of protection comes from the Qualification Directive, which is the interpretation of the Refugee Convention in European Law. The relationship between the Refugee Convention, the Qualification Direction, and the European Convention on Human Rights is complicated. Broadly speaking, humanitarian protection may be granted when there is a risk of unlawful killing, some uses of the death penalty, breaches of Article 3 and when there is a 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.' This last definition is article 15c of the Qualification Directive, and very few situations have been ruled to reach this high criterion.

Humanitarian protection (which, along with discretionary leave, replaced exceptional leave to remain) is normally granted for 5 years and brings the same rights as refugee status. It was initially ruled that family reunion was not a right attached to humanitarian protection, but a court judgment has since overturned this.

What to Do If You Want to Claim Asylum

The diagram below is a simplified overview of the asylum process. See relevant sections of the Toolkit and the Glossary for an explanation of terms used. For the process at the point of refusal, see Figure 11.

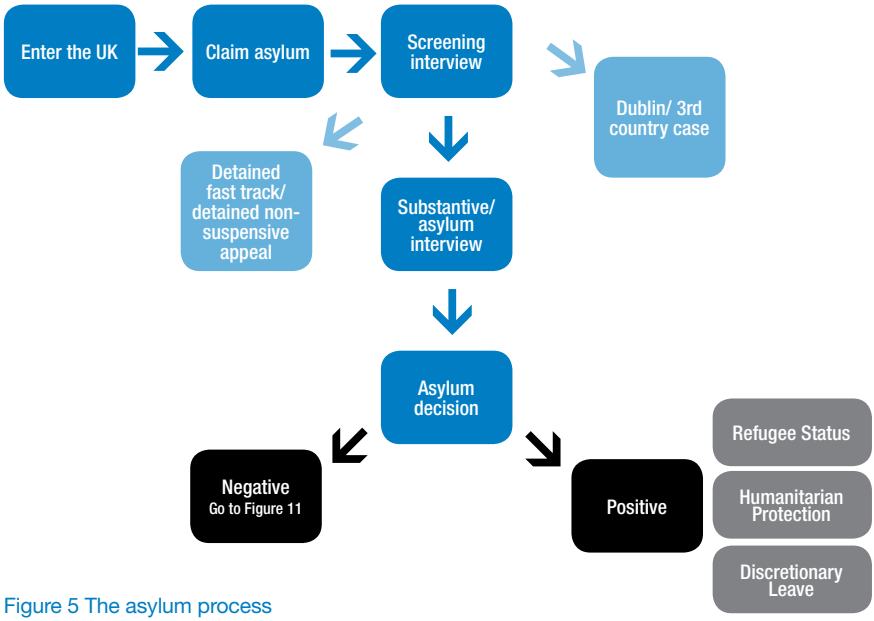


Figure 5 The asylum process

- *Start thinking about campaigning options while this process is ongoing and you are waiting for a decision*
- *Start thinking about a public campaign (go to 'Public Campaigning'; 'Political campaigning'; 'Community Campaigning')*
- *Continue building community links (go to 'Building Communities')*
- *Continue gathering evidence (go to 'Understanding Your Legal Case')*

The Refugee Convention

Asylum claims will be considered under the 1951 UN Refugee Convention (and its incorporation into European and UK immigration law).

To be granted refugee status, it's necessary to show that you have a *well-founded fear of persecution* for reasons of *race, religion, nationality, political opinion or membership of a particular social group*, you are outside your country of origin or normal residence, and you cannot get protection from your own country.

While the Refugee Convention does not define 'persecution', an explanation is given in the Qualification Regulations, which are the application of the Refugee Convention in UK law. This is therefore the definition UKBA should be using to assess whether a person has been persecuted. See the entry for 'persecution' in the Glossary for more details.

The Qualification Regulations state that persecution consists of an act that is 'sufficiently serious by its nature and repetition as to constitute a severe violation of a basic human right' or 'an accumulation of various measures'. Discrimination is not the same as persecution, but if it is repeated or is very serious, it may then be considered persecution.

The important things to remember about the meaning of persecution and applying for asylum are:

- Refugee status is granted if you have shown there will be a *real risk* of persecution if you were returned to your country of origin/country of residence. This means you do not need to show that the persecution would definitely happen, but that it is likely to happen.
- Having been persecuted in the past does not necessarily mean you will get refugee status. You need to show there is a *future risk*. Immigration Rule 353k does suggest that someone who has been persecuted in the past has a good basis for saying they will be persecuted in the future.
- Persecution means a *specific threat or actions* against you *because of who you are.* General risk because of war or unrest is not persecution, and may result in other forms of protection. To qualify for refugee status, you would need to show that you were or would be targeted as an individual.

- It may be helpful to think about explaining why you need refugee status in the following way: Is there a *well-founded fear* (will it happen?) of *persecution* (what will happen?) for a *Refugee Convention reason* (why will it happen?) and *no protection* available to you in your home country (what will stop it happening?).

To qualify for refugee status, you need to show that the reasons for which you have been persecuted or will be persecuted come under one of the Refugee Convention grounds. You do not need to specify or say in legal language which Refugee Convention grounds you are applying under. You tell the UK Border Agency (the department of the Home Office that decides on asylum/immigration applications) your reasons for fleeing, and they then consider which grounds this comes under. If you feel you have been refused because they applied the wrong grounds, this could be challenged.

It is rare to claim under 'nationality' (as most persecution along these lines fits under the category of 'race' and ethnicity). Race is a relatively straightforward ground (if often difficult to evidence), but imputed beliefs and particular social group require further explanation.

Imputed beliefs

This may be relevant if you are claiming asylum because of political persecution, or religious persecution.

'Imputed belief' means that it does not matter if you actually hold particular political opinions or religious beliefs. What matters is that persecution occurred or will occur because the persecutor *thinks you do*.

This may be because a family member or friend is politically active or a member of a religious minority, and it is assumed you also hold these beliefs (this often applies to women applicants). It could be because you have spent time abroad: for example, when RN was the country guidance case for Zimbabwe, it was understood that Zimbabweans who had been living in the UK would be assumed by the Mugabe regime to be supporters of the opposition party in Zimbabwe and could be at risk on that basis.

Imputed beliefs may be assumed because of where you live, the job you do, and many other things outside of your control.

Particular social group (PSG)

PSG is the most complicated area of the Refugee Convention grounds. This is because it is quite vague: it can be used to cover persecution defined since the Refugee Convention was drafted (that doesn't come clearly under other Convention grounds), but it is hard to prove because it is hard to define. This Refugee Convention ground is heavily reliant on case law to explain what it currently means. Case law is the body of available writings explaining the verdicts in a case, and is used to explain the meaning of laws and policy. By looking at the outcomes of previous cases that deal with particular aspects of the law or policy (the 'case law'), it can be decided what is lawful

in a particular situation. This is needed because overarching laws (like the Refugee Convention) can be very general: the need to protect 'particular social groups' under the Refugee Convention could have many meanings, so individual cases where these meanings were addressed build a picture of how this part of law should be interpreted.

Gender and **sexuality** are not distinct Refugee Convention grounds but sexuality comes under PSG. Gender *can* come under PSG but needs to be more narrowly defined than just 'being a woman' or 'being a man'. A certain category of women or men who face gender-specific persecution may fall under this category, such as 'women at risk of domestic violence in Pakistan'.

The category of PSG is particularly important when dealing with non-state actors of persecution (see below), because it is often argued that while a person may be at risk, it is not for a Refugee Convention reason; therefore the UK has no obligation to offer protection. This may include claims involving domestic violence, honour killings, and gang violence/blood feuds.

Non-state actor

You may fear persecution from the state (and its agents such as the army or the police) or a group that is functioning as the state (for example, Al-Shabaab may be considered to be 'the state' in areas of Somalia that it controls). Persecution might also come from 'non-state actors', such as a member of your family, a gang, religious or political opponents who are not part of the state but who will persecute you. To qualify for refugee status because you fear persecution from a non-state actor, you must show that you cannot be protected from this persecution by the state.

No state protection

The protection of another country (in the form of refugee status) will only be granted if you can show you can't get protection in your own country. If the state is the persecutor, this lack of protection is obvious. If you fear persecution from a non-state actor, you need to show you are *unable* or *unwilling* to get state protection. This may be because there is no protection available from your government (for example, no refuges or facilities to protect women fleeing domestic violence), or it may be that asking for protection would put you in danger (for example, if the person you are trying to get protection from has connections in the government).

Internal relocation

Another factor that will be considered when deciding if refugee status is needed is whether there is somewhere else in your country you could go and be safe. This is frequently argued by UKBA – they may accept that you would be at risk in Baghdad, for example, but argue that you would be safe if you relocated to the Kurdish Regional Government (KRG) area of northern Iraq. Or accept that you may be at risk of persecution because of your clan identity in Mogadishu (capital of Somalia), but argue that you would be safe in Somaliland because your clan has protection from a majority clan there.

To show that internal relocation is not going to protect you, you would either need to prove that the risk you face would follow you to where you were relocated (e.g. you would be tracked down by the person trying to harm you), or that you may be safe from persecution but other risks would present themselves. This may be because you have no family or social networks there and could not safely begin a new life there. Economic and social factors should be considered here – would you be able to make a living if you didn't know anyone and had no social, religious or ethnic connections? If you couldn't make a living, what would happen to you? The test that is applied is whether asking you to relocate within your country would be 'unduly harsh'.

Exclusion

In some cases, UKBA may take the view that a person should be excluded from protection under the Refugee Convention. This happens in cases where the person has committed a serious criminal offence, or where UKBA considers they may have been involved in human rights violations in their country of origin. This is a broad definition, and can extend to people who were employed in a wide range of roles in the government in their countries of origin if that government was involved in the oppression of other people.

One stage of the process where UKBA will try and find out if the exclusion clause applies to you is during the screening interview (explained below). They will ask you questions about criminal convictions, arrest warrants, involvement in terrorism, detention as an enemy combatant and encouragement of hatred between communities. UKBA will also seek this information from elsewhere if they suspect it to be the case.

If UKBA raise exclusion in your case, or if you feel it is a possibility, it is very important to seek legal advice. You can appeal against being excluded from refugee protection, much as you can appeal against a refusal of asylum. Even if an exclusion is upheld, a person may be allowed to stay if they would be at risk if removed (see 'Status', above).

The Screening Interview

This is the first interview that takes place after you have claimed asylum. If you have claimed asylum at the port where you entered the UK, you will be usually be interviewed there by an immigration officer. If you claim asylum after entering the UK, you will be usually be interviewed at the Screening Unit in Croydon (and, at the time of writing, need to make a telephone appointment before going there. For updates and contact details, check the UKBA website: www.ukba.homeoffice.gov.uk/aboutus/contact/asylumscreeningunit/). If you have evidence of why you would not be able to attend an appointment in Croydon (because of complicated medical issues or disabilities for example), you or your legal representative need to speak to UKBA to see if it's possible to be interviewed elsewhere.

In your screening interview, you will be asked some basic questions (often called 'bio-data') about your name, date of birth, where you are from, family, religion, and ethnicity. You will be asked to say briefly why you have come to the UK (why you

are claiming asylum). This should only be a *brief* couple of questions (see section of screening interview form below), as you will be asked about this in much more detail in your (later) substantive interview, and there is case law to show that information given in the screening interview about reasons for claiming asylum should not be overly relied upon.

PART FOUR: Basis of Claim Summary

4.1 What was your reason for coming to the UK?

4.2 Can you BRIEFLY explain why you cannot return to your home country?

Figure 6 Excerpt from screening interview record that asks about why you are claiming asylum

A major part of your screening interview will be about your *journey to the UK*. One of the reasons you are asked questions about this is to determine whether the UK is responsible for considering your asylum claim (see 'Dublin/Third Country Cases', below). There are also questions asking whether you have claimed asylum or been granted refugee status in any other country; and if you passed through other countries, why you did not apply for asylum there.

PART TWO: Travel History and Documentation

Travel History			
Departure	**Transit**		**Arrival**
2.1	How did you enter/travel to the United Kingdom? **Screening officer to explore the applicant's travel history and method of entry into the UK.** Suggested points to cover: – what countries did you travel through on your way to the UK? – Documentation used to travel? (This will be explored in greater detail in 2.5) – How long in transit? – Mode(s) of transport? – What date did you arrive in the UK? – Where did you arrive in the UK?		

Figure 7 Excerpt from screening interview record that asks about your journey to the UK

If the information you give in this interview is different from the information you give in later interviews, this will be used against you. If you are not sure of something or can't remember a date or detail say 'I'm not sure of the date' or 'I don't remember'.

You will be asked about your health in this interview. Although it is difficult to give personal details to someone you don't know, and when you may have just arrived after a long and difficult journey, if you don't feel well, you should say so. You may be feeling tired, distressed or ill, especially if you are doing your interview at the port. It is even harder to remember details of your journey when you are tired or stressed, and if this is causing you a problem you should ask that this is recorded on the interview record. If you later refer to a health problem that wasn't mentioned in your screening interview, this may be used against your case.

Below is the section of the form currently used in the screening interview to ask about health. Note: the reference to illnesses not affecting your application for asylum is important. Some people do not disclose illnesses such as HIV/AIDS or TB because they fear they will denied leave to remain on that basis. This is not allowed to happen under UK law.

PART THREE: Health

Please read to the applicant:
It is important you answer the following questions and disclose any relevant information relating to your health (including any contagious diseases) at the earliest stage so we can ensure you are able to access the correct medical treatment throughout the process of your application.

Furthermore, any information you disclose may help you with accessing health services.

No illnesses or treatment you may have will affect your application for asylum in the UK.

3.1 **Do you have any medical conditions?**
Investigate:
– How long have you suffered with this condition?
– Diagnosed by a recognised medical practitioner?
– Receiving specific treatment in the UK? (NHS?)
– Name/Address of GP?
– Any medication?
– Any specialist care?

Figure 8 Excerpt from screening interview record that asks about your health

You will not have a solicitor with you during this interview. There will be an interpreter provided. If there are any problems with the interpreter – you cannot understand them, they cannot understand you, they speak a different dialect, you don't think they are being professional or you can tell they aren't interpreting things correctly – it is

very important to tell UKBA this and ask them to write it down. You can also tell your solicitor at a later date, but it is far better to have it recorded at the time of interview. If there is a discrepancy in your testimony that is used to refuse your application, and this is because of poor interpretation at the screening interview, it will be much easier to prove if it was recorded that there were problems with the interpretation.

At the screening interview it will be decided which category your case falls into: general casework, detained fast track, detained non-suspensive appeal, children, or Dublin/Third country.

For more information on what happens in children's cases, see the Young People Seeking Safety website and resources blog: www.youngpeopleseekingsafety.co.uk/ and http://ypssresources.wordpress.com/

Detained fast-track, detained non-suspensive appeals and Dublin/Third country are explained below. If your case is identified as a Dublin case, you will not have an asylum/substantive interview. If your case is categorised as detained fast track, you will have an asylum interview but with much less time to prepare; and if your case is identified as a non-suspensive appeal case you will have an asylum interview but no right of appeal if you are refused after the interview. The asylum/substantive interview process is explained below.

Dublin/Third Country Cases

Not everyone has the right for their asylum claim to be heard in the UK. If you are an adult and you claim asylum in the UK, and UKBA determines that you have travelled through a safe country on your journey to the UK, they will say that you have to return to that safe country (the 'third country') to have your asylum claim heard.

In practice, this is only enforced for people who have travelled through countries that are member states of the European Union, as deportation is allowed under the Dublin II Regulations.

The Dublin II Regulations (part of the Dublin II convention, which the UK has signed) establish

the principle that only one [European Union] Member State is responsible for examining an asylum application. The objective is to avoid asylum seekers from being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person.

See: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm

If UKBA can prove (often using the Eurodac European-wide database of fingerprints) that you have travelled through another European Union country, they will not

consider your asylum claim, and will remove you to the country they can prove you travelled through and where you could have claimed asylum.

- All asylum seekers who do not arrive by plane will have travelled through another European country. UKBA will have to show you were in a country long enough, or were aware you were in that country, to have been able to claim asylum. UKBA will try and establish this during your screening interview, when they ask about your journey to the UK
- If you are under 18, UKBA can only deport you if you have *already claimed asylum* in another European Union country.
- At the time of writing, the courts have found that conditions in Greece for asylum seekers (including the way asylum claims are considered) are so bad that they breach Article 3 of the European Convention on Human Rights. This means that the UK cannot deport an asylum seeker to Greece under the Dublin regulations.
- Conditions for asylum seekers (such as no legal representation, no interpretation, detention and destitution) in some other European countries are also very bad and it may be that in future deportations are also prohibited to these countries. Lawyers are currently attempting to prove that conditions for asylum seekers in Italy breach Article 3 conditions.

Deportation and the Dublin Regulations

UKBA must give you five working days notice before the date of enforced removal (unless you are an unaccompanied minor).

You cannot be deported under the Dublin Regulations if you have not come directly from a safe third-country to the UK. For example, as an Iranian asylum seeker, you may have spent some time in Belgium then returned to Iran where you faced further persecution. If you then came to the UK, you cannot be deported to Belgium under the Dublin Regulations. The UK should not attempt to deport you under Dublin Regulations if more than six months have passed since you claimed asylum in the UK and the application of the Dublin Regulations to your case – by this time, your application is now the UK's responsibility.

There may be other circumstances where your deportation should not come under the Dublin Regulations. You should discuss these with a legal advisor and make sure that UKBA have correctly informed the third country/Dublin office (in the country to which they are trying to remove you) of these circumstances.

Detained Fast Track and Non-Suspensive Appeals

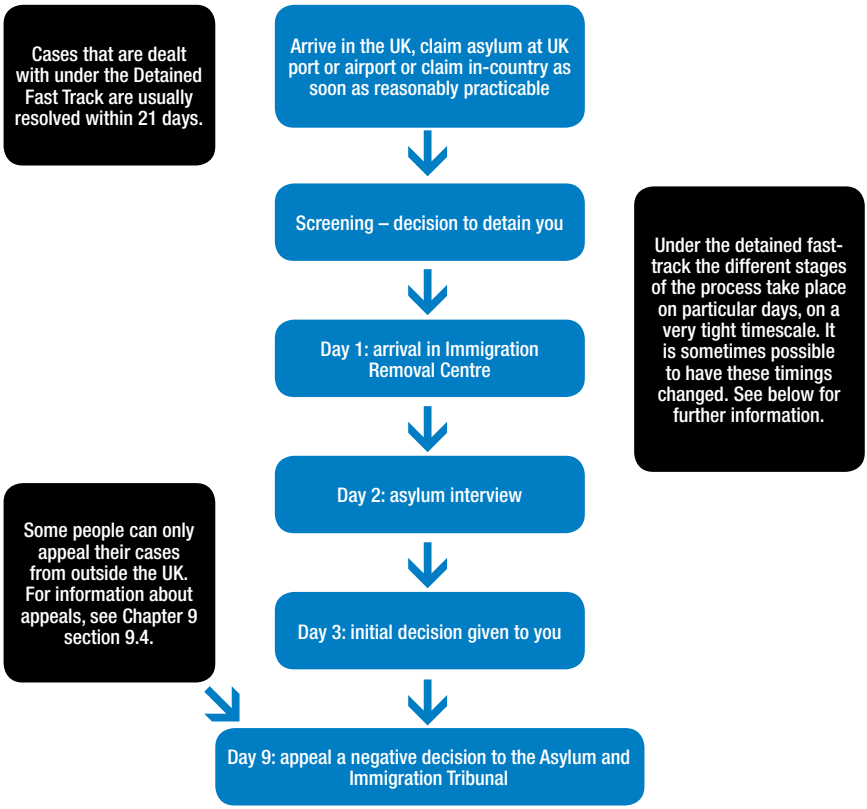


Figure 9 Detained Fast Track
(Source: ROW 2012 handbook, *Seeking Refuge?* p. 38, available at www.rightsofwomen.org.uk/legal.php)

What is the Detained Fast Track?

After claiming asylum, your case will be put into one of five categories after the screening interview.

The categories are:

1) children
2) Dublin (see Dublin/third country section above)
3) detained fast track
4) detained non-suspensive appeal
5) general casework

The Detained Fast Track is for cases which UKBA thinks can be decided quickly because the case is 'uncomplicated', and the person can easily be deported (if a claim is

refused). This means the person will be detained while their application is considered (for the asylum interview, for the decision, and for the appeal).

Any adult from any country can be detained if they are put in the DFT system, except for:

- women 24 weeks pregnant or over
- people with health conditions needing 24 hour medical care
- people with disabilities, except the 'most easily manageable' disabilities
- people with infectious and/or contagious diseases
- people with severe mental health problems
- people with evidence that they have been tortured
- children (under 18 years old) and families with dependent children
- victims or potential victims of trafficking as decided by a 'competent authority' (a 'first referrer agency' in the national referral mechanism).

If you are in any of these categories you should tell your legal advisor. You should tell your legal advisor if you have been tortured or if you have health issues. You should also ask to see the Detention Centre doctor, who you have the right to see within 48 hours of arrival at the detention centre (see also 'Medical cases, torture survivors and Rule 35' in 'Immigration Detention' section below).

Difference between DFT and detained non-suspensive appeals

These two categories can seem to overlap, and are a little confusing. It's possible for a case to be put in the detained non-suspensive appeals category and then moved into the DFT category.

Non-suspensive appeals means there is no right to appeal within the UK (the asylum claim is certified). This is clearly problematic as this decision is being made *before* the asylum interview when an applicant would give full reasons of why they fled. The decision is usually made on the grounds of country of origin (where it is thought you are unlikely to need the protection of international law. These countries are often called the 'White List'. The most recent list is here: www.childrenslegalcentre.com/index.php?page=faq_glossary_Whitelistcountries. The timing of an application is also taken into account (so, if UKBA feels that an asylum application is merely 'opportunistic', meaning made just to get leave to remain because other options have now closed). A decision to certify an asylum application can be judicially reviewed.

If your application is put in the non-suspensive appeals category, you could be detained at the point of the screening interview but not subject to the DFT time-frame. Your case can also be placed in the non-suspensive appeals section without you being detained.

What are the problems with DFT?

As the diagram above shows, time is very short if your case is put in the DFT category. This makes it very difficult for you to get good legal advice and gather the evidence you need.

As the Independent Chief Inspector of the UKBA's 2012 report showed (http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf), it is common for people who are not meant to be in the DFT category (in the list above) to be nonetheless detained in the fast-track system. This is partly because screening interviews are not being conducted with enough privacy or care, and so people claiming asylum do not feel able to share information which shows they are in the exempt categories.

The detained fast track system accounts for a high proportion of the people deported from the UK. UKBA may claim that this shows the system is working, but to NCADC this is a matter of grave concern as so many people in need of protection are not getting the chance to explain and try to prove their story because of the time pressures the DFT system brings.

Read Detention Action's excellent report on the problems in the Detained Fast Track system here: http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/FastTracktoDespair-printed-version.pdf

The Asylum (or Substantive) Interview

This is the interview where you will be asked in detail about your reasons for claiming asylum. The interview may last several hours and you will be asked lots of questions. You may be asked questions several times in different ways.

Prepare yourself

This interview is very important. Because asylum claims are so hard to prove with documentary evidence, either because that evidence doesn't exist or it was impossible to bring with you when you were fleeing your country, your testimony is often the only evidence you can provide.

You are going to be asked questions about things that may be very difficult to talk about. Try and think about ways you can try and remain calm and protect yourself when talking about emotional issues (see also 'Emotional Support', above).

You may find it helpful to go through the important parts of your story in your head before the interview. If you want to talk to someone else, tell your story to someone you trust and see if there are bits that don't make sense to them, and think about why they don't make sense (are there bits you've forgotten to say? Things that don't seem that important to you but are crucial to explaining the story to someone who wasn't there?). Some people find it useful to write down the important points of the story, or draw symbols and pictures, to get it straightened out in their head before they are asked questions in the interview (often in a confrontational way).

You will not be able to take a written record in with you to the interview – some asylum claim refusal letters from UKBA have criticised people for having written notes at their screening interview, and for looking at a written statement during their asylum/substantive interview. It is very important that, while you have thought about what

you want to say and have prepared yourself, you don't repeat a script from memory or sound rehearsed, as this may sound like you are not telling the truth.

Make sure you know where your interview is and that you get there in time. Being late or being lost will distract you from focusing on what you are going to say. If you cannot attend the interview, it is essential you provide very good reasons for this, preferably through a legal advisor (if you are ill, get a note from the doctor; if there are transport problems, get evidence of this from the transport company). Without good reasons and evidence of these good reasons, UKBA may refuse to re-arrange your interview and will assess your application on paper (which almost always leads to a refusal).

You may be asked to fit your story into a timeline of what happened when, in a way you are not used to (e.g. this event happened in 2009, then this event happened in May 2010, after that something happened in June 2010). Alternatively, during the interview, the interviewer may jump around from event to event which can be very confusing. *Take your time answering questions and think about what you want to say before speaking.* You might find it easier to draw a timeline of events – ask the interviewer if this possible.

If you cannot remember a date, say you cannot remember. You may not be able to remember an event by a day or month but by the weather, the season or a family occurrence. You can say these instead if you are sure of them. If there are ways of marking time that make more sense to you than an official calendar, such as an important church service or jobs you do as a farmer at a similar time every year, use these.

If you guess a date, and then say a different date at a different point in the interview or a later stage of your application, this will be used to doubt your story. Be clear about which calendar you are using (always do this, whether speaking to your legal advisor, an interpreter or the UKBA or a judge). It is better not to switch between calendars as this can lead to mistakes, so if, for example, you are used to using the Persian calendar or the Ethiopian calendar, use that throughout your testimony and it will be converted to the Gregorian (UK) calendar by UKBA or your legal advisor. You can ask your legal advisor to check that the dates have been converted properly by UKBA, an interpreter or by themselves.

Be prepared for not being believed: this is the standard position of the UKBA. It can be very upsetting when you are telling someone very difficult experiences from your past for them to suggest or say outright that they don't believe you. Be ready for this as it is very likely to happen, and have faith in yourself. Try to have people to talk to that you trust, and who do believe you and will support you. Try to remain calm in the interview – if you get angry, the interviewer may stop the interview and this could harm your case.

Documentary evidence

While this is often hard to get because of the circumstances in which you had to leave your country, UKBA tend to disbelieve what you say and so it is very helpful if there is genuine documentary evidence to support your story.

If you are going to submit any documentary evidence (such as a political party membership card, or an arrest warrant), make sure you have shown this to your legal advisor beforehand and they have agreed it should be submitted. You can either give this evidence to UKBA at the interview, or you have five days after the interview within which to submit any documentary evidence or any statements.

Rights of Women (ROW) has this advice on documentary evidence (ROW 2012 handbook *Seeking Refuge?,* available at www.rightsofwomen.org.uk/legal.php, pages 29–30):

You should...make sure you know exactly where [original] documents came from (who sent them to you, how did those people get hold of such a document) and what they mean. If you do not yet have a legal adviser, you must photocopy any documents, and the envelopes they arrived in, before you give them to the UKBA. You or your legal adviser will need to get a formal translation, and may have to show the document to an expert, to prove whether it is a real document or not. It is important never to provide documents unless you are sure that they are genuine. Fake documents will do more damage to your claim than not having any documents at all.

For example:
Ms A had been refused asylum and lost her appeal. Her uncle sent her some documents from her country. They looked real. She said they showed the police were looking for her. She sent them to the UKBA. Then she found a legal aid solicitor, who paid for translations. It was then noticed that the documents were dated with a date that was in the future, and were obviously fake. Unfortunately, they had already been sent to the UKBA.

Ms B showed a newspaper sent from her country. It looked like a real newspaper. There was an article with her picture, saying that the government were looking for her. But that article was in a different print. Someone had carefully lifted off the print of the real article and printed something different in its place. Fortunately this was noticed before anyone sent it to the UKBA.

In addition to documentary evidence specific to your case, or if you are not able to get this evidence, general information about the situation in your country from reliable sources may be useful. This is sometimes called objective evidence. For more on where to find objective evidence, see the 'Fresh Claims' section of the Toolkit.

The ROW handbook gives this example:

'You say that you were raped in prison. This is regrettable of course, and the UK does not condone that kind of abuse. But it was probably the act of a rogue policeman disobeying his own orders…'

The UKBA could not so easily make a decision like this if you can provide evidence from a public report that women in prison in your country are often raped and abused by their guards.

Legal issues

In nearly all substantive interviews (if you are an adult), you will not be able to have a legal advisor with you. It is your legal right to have the interview tape recorded and you should insist this is done. The interviewer may not mention it, or may try and convince you not to have it done, or say the machine is broken, but *it is very important to have your interview recorded.*

If you do have a legal advisor, they should be able to write a letter to take with you asking for the interview to be tape recorded. Make sure that you are given a copy of the tapes, as well as a written copy of what is said during the interview. These should be given to you immediately after the interview. Your legal advisor will need a copy of these. These records are important, as it may become clear later on that you have been refused because of something you didn't say, that was written down wrong, or that has been misinterpreted. If your case goes to appeal, your legal advisor can listen to the tapes and compare this to what has been written down (with the help of an interpreter if necessary).

UKBA will provide an interpreter for the interview. As with the interpreter issues discussed in the 'Screening Interview' section, if there is a problem with the interpretation, say so immediately. Big problems with interpretation will be impossible to ignore – for example, you do not understand the interpreter at all, or they do not understand you. But it is important to watch out for small problems too. Little things misinterpreted can have a big impact on your case. This might be something like the wrong date being used. It may be that there isn't a direct equivalent in your language for a word in English and therefore the wrong word is used (for example, in some languages there is no separate word for 'wrist' and 'elbow' and 'shoulder', the word 'arm' is used for all these. This can cause problems, especially when talking about injuries, and torture). The wrong grammar may cause a problem – is 'he' and 'she' being used correctly? Are you talking about one person (the singular) but it is being interpreted into English as two people (plural). You may speak enough English to notice these errors, in which case you should correct them during the interview. Or it may not be until a legal advisor looks at the transcript and in light of what you have told them that the errors become clear.

If you have a legal advisor, they may ask you to tell them your story before the interview with UKBA and submit a statement before the interview. If you are going to be explaining very upsetting events, this might be a useful thing to do, so that you do not have to be asked so many detailed questions about events (for example, with incidents of sexual violence). A statement may be written and submitted after the interview, particularly if there are things you weren't given chance to explain or you think there were problems with the interview.

The ROW 2012 handbook *Seeking Refuge?* (available at www.rightsofwomen.org.uk/legal. php, pages 34-35) has this advice on confusing questions in your asylum interview:

Example 1: The interviewer may ask you a question which is difficult to answer properly:

Q: 'when the police came to your house at night, was that when they took your daughter away...?'

This is actually four or five questions in one. You may want to say that it wasn't the police who came, it was the army. And they didn't come to the house, but to your uncle's farm. But it was at night, and they did take your daughter. Many asylum-seekers answer a question like that by just saying 'No'. Then the UKBA says 'when we asked you if your daughter was taken away, you said "no".....' and this counts as a discrepancy. The UKBA may well then say that you have poor credibility, which means that they don't believe your story.

If a complicated question like this is asked of you, give yourself the chance to answer each part of the question properly:
A: 'It didn't happen like that. Let me tell you in my own words...'
Or
A: 'I don't understand the question. Please ask it in a more simple way'

Example 2: a question may be asked where the answer would be long and difficult to get all the details right:

Q: 'when you were in prison last year were you tortured or ill-treated at all?'

Some asylum-seekers say something like: 'One night the guards came and tortured me....' Then the UKBA say later on 'You said the guards came on only one night...' and they call this a discrepancy and say you have poor credibility.

If they ask a question like this, give yourself a chance to answer fully:

A: 'The guards came and tortured me on many occasions. It would take a long time to tell you the details of every single time. Some of it I can't remember clearly. Can I tell you about one or two examples of what they did?'

Always answer the question

If the UKBA ask a simple question, make sure you answer it. Try to listen to each question and concentrate on what you are being asked.

Q: 'When were you detained?'

Many asylum seekers will say 'They came during the night – a lot of police with guns rushed into the house and grabbed me, and took me to the local prison....' You may have said all this already in your written statement. The UKBA don't need you to repeat that detail, but they may need you to clarify when this happened. Make sure you answer the question 'when?'.

A: 'I was detained twice. Once was two years ago, after my husband was put in prison. That time I was detained for 2 weeks. The second time was in March – the second week in March 2011...'

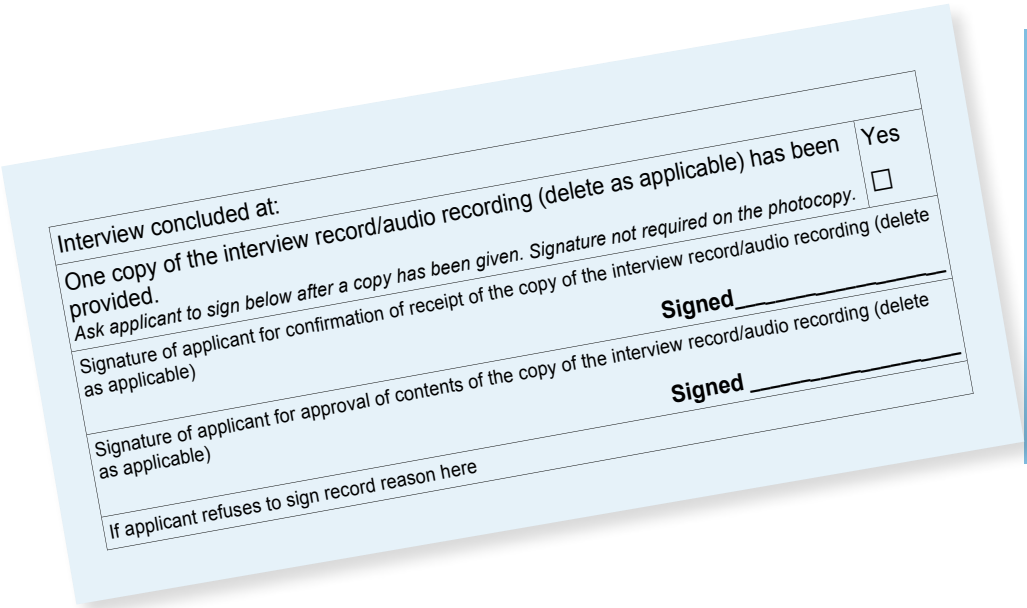
Things the UKBA may find it difficult to believe – if this kind of thing happened to you, be careful to give full details.

You may have escaped from a prison in your country, or travelled a very long distance by walking. You may have managed to escape even when you were very ill, or you were experiencing the effects of torture or ill-treatment. You may have hidden money or identity papers in a small corner of your house which the police did not search. These are things which do not happen very often in the UK, and people working at the UKBA may find it difficult to believe these things. So it is helpful if you give details, for example:

- 'Prisons in my country are not like prisons in Europe – there were some lorry containers in the desert which we slept in, and the guards sometimes left the doors open because it was too hot....' [in Eritrea there are prisons like this].
- 'I managed to get away even though my leg was broken. I was in great pain. Sometimes I fainted. I had to drag my leg and I could only go a few metres at a time...' [an elderly Somali man with a broken leg took 7 children from Mogadishu over the border into Kenya – it took him several weeks].
- 'In my country we often travel long distances by walking, getting food from people we meet in small villages on the way, because there is no public transport like there is in Britain' [this is common all over Africa].
- 'The police did not find my money because they are not like the police in Britain. I had hidden it carefully in a hole in the wall, covered with mud... we don't use banks in our country because they are corrupt' [a wealthy woman from Democratic Republic of Congo kept a lot of her money hidden like this].

Know your rights

- You may be asked to sign a form at the end of the interview to say that you agree that the interview transcript (written record of what was said) is an accurate record. As you haven't read the record, you are allowed to refuse to sign it. You could say something like 'I do not know what you've written' or 'my representative has advised me not to' (if this is what they said).
- make sure you are given a written copy of the screening interview and a copy of the substantive interview transcript. You will be asked to sign to say you received this. It can be confusing knowing which part to sign, and which to refuse (if you want to)!



Interview concluded at:	
One copy of the interview record/audio recording (delete as applicable) has been provided. *Ask applicant to sign below after a copy has been given. Signature not required on the photocopy.*	Yes ☐
Signature of applicant for confirmation of receipt of the copy of the interview record/audio recording (delete as applicable)	**Signed** _____
Signature of applicant for approval of contents of the copy of the interview record/audio recording (delete as applicable)	**Signed** _____
If applicant refuses to sign record reason here	

Figure 10 Excerpt from the end of the interview record of the asylum/substantive interview

The picture above is a copy of the bottom of the last page of the interview record. This is also called a Statement of Evidence form. It is the form on which the interviewer handwrites the questions and your answers.

The *first* signature box is to say you have received a copy of the interview record (the form) and an audio recording (the tape of the interview). If you have received these, you can sign this box.

The *second* signature box is saying you approve the contents of the form and the tape. Without having read the form, which will be many pages long, and without having listened to the tape, you cannot know if you approve of the contents as answers may have been wrongly recorded. You should ask your legal representative for advice before the interview, and they may recommend that you refuse to sign the second box. It is your right to refuse the sign the box: if you later challenge what is written on the form, but have signed the box to say you approve of the contents, UKBA may question this.

Things to do at your substantive interview

- *Get the substantive interview tape recorded and make sure you are given a copy of the tapes*
- *If you need a break during the interview, ask for one – this is your right, do not be afraid to ask*
- *If you are not feeling well, are tired, or upset because of having to think about what has happened to you, tell the interviewer this*
- *If there were things you forgot to say, said wrong, felt you were not given time to explain or if there were any other problems during the interview, make sure this is recorded when you are asked 'Is there anything else you want to add?'*
- *If there is a problem with interpretation, say so as soon as possible*
- *You have the right to request a male or female interviewer, and a male or female interpreter.*
- *If you are more comfortable speaking in front of an interpreter not from your country or community, you can request this but this cannot be guaranteed.*
- *If you do want a particular gender of interviewer and interpreter, you should request this a few days before your interview*

'Evidence' and 'Credibility'

To be granted refugee status, you must show your fear of persecution is 'well-founded', meaning there is real basis for your fear.

It is rare to be able to get documentary evidence to support your case. This can be either because there isn't a 'paper trail' to show your activity or the persecution you experienced, *or* because evidence exists but you haven't had time to get it sent to you yet (and it is very difficult to bring evidence with you when you are fleeing your country). Because of this, your 'evidence' will often end up being your testimony. This means that UKBA will look at the information you gave in your screening interview and then in your substantive interview. They will check if there are any differences, or things they don't think make sense, or that they don't think are true.

ROW 2012 handbook *Seeking Refuge?* (available at www.rightsofwomen.org.uk/legal.php, page 28, advises:

If you were raped, sexually assaulted and/or physically assaulted (for example, beaten), explaining this may be difficult, and you may not want to remember these things. But it is important to give details, especially of torture and abuse, to assist your claim.

For example, you could include:

- *how many people did this to you; what uniforms they were wearing;*
- *whether they were police, army or secret police, and their rank if known;*
- *how they tortured you;*
- *how often this was, e.g. what time of day or night;*
- *who was in the room; and*
- *how you managed to survive.*

Challenging country guidance and operational guidance notes

UKBA will compare what you have said in your asylum claim to the 'country guidance' they have. If what you said happened is supported by general evidence about persecution in your country, this could help your case.

The *country guidance* UKBA uses will be both country guidance cases and operational guidance notes. Country guidance cases are asylum appeals chosen by the immigration tribunal to give legal guidance for a particular country, or a particular group of people in a particular country. The decisions in these cases are assumed to be based on the best possible evidence about that country at that time. Until there are significant changes in that country, a country guidance decision sets out the law for other asylum-seekers from that country.

Operational guidance notes are produced by UKBA and provide a brief summary of the general, political and human rights situation in the country and describe common types of claim. They give guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave.

Case law can be quite old and may not reflect a current or changing situation. The operational guidance for your home country may also be flawed – it may be out of date, or not reflect the concerns of human rights organisations.

The Still Human Still Here campaign (with the Asylum Research Consultancy) produces reports challenging the accuracy of the information UKBA uses about different countries. These commentaries (http://stillhumanstillhere.wordpress.com/resources/) may be useful for a legal advisor, or for you and/or a supporter if you are unrepresented, if your application is refused based on information in operational guidance notes that you don't think is correct. The other problem with case law and country guidance is that it reflects a *general* situation, and your individual case might not fit that pattern.

Credibility

If you wish to challenge the country guidance UKBA are using, or to try and show that your story is true even if it doesn't fit the general pattern of persecution, it will be useful to get *objective evidence.* This can be important because almost all refusals

of asylum applications are refused on the basis of *credibility*: UKBA (or the courts) do not think you are telling the truth. Once it has been decided you are *'incredible'*, it will be suggested that anything further you say cannot be trusted. This happens so often because the asylum system and interviewing techniques do not take into account human behaviour (and memory), the effect of trauma and other psychological challenges, cultural differences and language barriers. These problems resurface when cases go to appeal, because the court system is *adversarial* (the two sides are opposed to each other, each trying to prove the other wrong). Throughout your application, any discrepancies between your accounts will be used against you, even if there are good reasons for these discrepancies. Discrepancies are when there is a small difference in a story which you have been asked to tell on different occasions, such as saying in your screening interview you escaped from prison on a Monday evening, and later on saying in your asylum interview that you escaped on a Tuesday morning.

You can try to prevent discrepancies with the interview preparation above, and by supporting your story with expert and objective evidence.

CASE HISTORY

The following is a real excerpt from an asylum refusal letter. It seems ridiculous, but it demonstrates how UKBA will use any detail possible to refuse a claim:

'You were asked what materials the carpets were made from. You stated they were made from a material called xxx in 3 different colours. You were then asked what plant or animal this material came from; you replied you did not know. It is not accepted that someone who claims to have been weaving carpets since the age of 10 would not know whether the materials used to weave the carpets were of plant or animal origin.'

Expert evidence

This will often be obtained by a legal advisor if your case goes to appeal, but it is something you or a supporter can think about as well. Evidence could come from an academic, university researcher, or experienced professional who is an expert on your country of origin, or a particular aspect of your case (women's rights in a certain region, an ethnicity, a religious minority, etc.). They can be asked to look at your testimony and comment on whether it fits with what they know about the subject. They could also be asked to comment on why your case might not fit the general pattern.

Remember you are not asking them to say whether or not you are telling the truth, just to use their knowledge to comment on how your story fits into known information on that topic. Usually, a legal advisor will instruct an expert, and pay them a fee. If you are unrepresented, you could try contacting experts yourself. If a supporter or local group has connections to an NGO or a university, they may be able to find an expert who is willing to do this for free.

An expert may be useful in other aspects of a case too. If there are reasons why you can't give testimony easily, because of memory or psychological problems, they can comment on this. If there have been problems understanding things, an expert could comment on language problems or learning difficulties. If your case includes a claim to a family or private life in the UK (see 'Human Rights, Asylum and Status'), a teacher, psychologist, psychiatrist or social worker may be able to comment on the impact the deportation of you or them might have on their development.

Objective evidence

Objective evidence may be general information about the situation in your country, from reliable sources such as human rights organisations or trusted media sources; or an expert statement on your country or situation. For more information on objective evidence, where you can find it, and what things you need to remember when including evidence, see the 'Fresh Claims' section of the Toolkit.

Particular Issues

Memory

When you claim asylum, you have to tell UKBA what happened to you to prove that you need protection. UKBA will use differences in your account as reasons to refuse your claim, therefore if you have problems remembering the details of what happened to you this can have a big effect on your case.

Everyone finds it hard to remember exactly how things happened in the past, but UKBA and the courts rarely recognise this. It can be particularly difficult to remember upsetting events, or you may have memory problems because of illness, an injury, or learning difficulties.

If you have problems remembering what happened accurately, you will need to explain why.

The Centre for the Study of Emotion and Law has compiled a list of resources about asylum and memory: www.csel.org.uk/other_relevant_research.html

A lot of the reports referred to on this website are in academic journals, which means they have been peer-reviewed (so are seen as reliable evidence by the courts), but someone with access to academic journals will need to download them or access them from a University library. The British Library in London may be able to give access to this material to members of the public.

You may also be able to get a medical or psychiatric report explaining the memory problems you have.

Women

Women claiming asylum face a unique set of obstacles to getting the protection they need, including:

- Complex claims based on persecution that targets just women, or in a way that particularly impacts on women.
- Women's activities that may put them at risk are often harder to prove (for example, support or auxiliary political activities that aren't performed in public but are still known and therefore put them at risk).
- Most women asylum seekers are dependants on someone else's claim and so their specific persecution risk may not be looked at until too late.
- Difficulty in explaining what happened to male interviewers, interpreters and judges.

Because of these unique considerations, UKBA has specific policy guidance which they should use when considering women's asylum claims, or any claims where gender or sexuality is a relevant factor: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/gender-issue-in-the-asylum.pdf?view=Binary It is important to check that UKBA is applying its own guidance when considering asylum applications.

Asylum Aid's women's project has a lot of useful resources (www.asylumaid.org.uk/pages/the_projects_purpose.html), including their Charter of Rights of Women Seeking Asylum (www.asylumaid.org.uk/pages/charterbackground.html), which highlights the particular needs of women asylum seekers. Their joint report with UNHCR, issued in January 2012, shows how far there is to go in making sure women have access to justice in the asylum system: www.asylumaid.org.uk/publications.php?id=178

A great resource for women going through the asylum system (and also for men claiming asylum, and any supporters) is the Rights of Women handbook *Seeking Refuge?* available at www.rightsofwomen.org.uk/legal.php

There are also some specialist legal services for women asylum seekers, such as the Rochdale Law Centre's Female Asylum Programme (which has Comic Relief funding until March 2015): www.rochdalelawcentre.co.uk/immigration.htm

Sexual violence

Male and female survivors of sexual violence can find it very difficult to talk about what happened to them, which can lead to late disclosure – when someone tells of their suffering a long time after it has happened – particularly to figures of authority, whose counterparts may have been the perpetrators of the violence in their home country. There are very complicated issues around shame, blame and silence.

It is common for asylum claims that involve late disclosure of sexual violence (not telling UKBA immediately), or that only have partial information, to be refused on this basis.

Marian Tankink's article (link below) explains why silence is used as a coping mechanism: www.freedomfromtorture.org/document/publication/6008

This is a shorter version of the piece: www.nwo.nl/nwohome.nsf/pages/NWOA_7V9DN8_Eng

Groups who support survivors of sexual violence may be able to provide evidence of this for asylum cases and campaigns.

Applying for asylum because of religious conversion

If you are claiming asylum because of a conversion to Christianity (or you are supporting someone who is) you may find this Evangelical Alliance briefing helpful: www.eauk.org/current-affairs/publications/alltogether-for-aslyum-justice.cfm

The country information in this briefing dates from before 2007 and so you may need to collect more recent evidence for your case.

The information on 'faith-testing questions' in the asylum interview is very useful, as UKBA has been known to ask ridiculous questions in order to assess whether someone has converted to Christianity ('How do you cook a turkey for a Christmas meal?' being one such question).

Other useful sections in the briefing are the advice for church members wishing to provide evidence for someone's asylum claim, and the list of contacts. he briefing looks just at conversion to Christianity, but it is intended that an updated version will cover other faiths too.

What can you do while this process is ongoing and you are waiting for a decision?

- *Start thinking about a PUBLIC CAMPAIGN (go to sections on 'Public Campaigning', 'Political Campaigning', 'Community Campaigning')*
- *Continue building community links (go to: 'Building Communities')*
- *Continue gathering evidence (see above and 'Understanding Your Legal Case')*

What to Do If Your Asylum/Human Rights Claim Is Refused

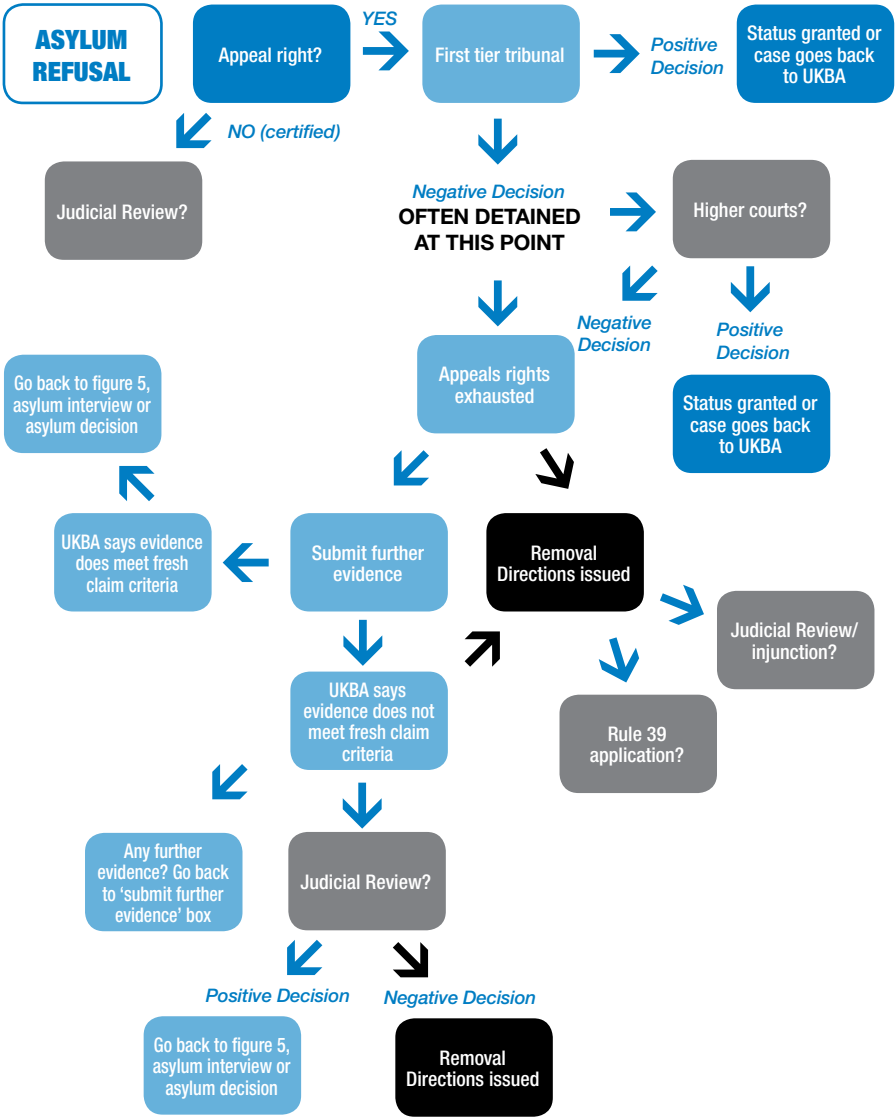


Figure 11 The asylum process after first refusal of claim

Campaigning Strategies

- *If you haven't done so already, think about whether you want a public campaign. Go to 'Public Campaigning'.*
- *This is a good time to be doing political campaigning. Go to 'Political Campaigning'.*
- *It's important you know what's going on in your case and what your rights are. Go to 'Understanding Your Legal Case'.*

ROW 2012 handbook *Seeking Refuge?* (available at www.rightsofwomen.org.uk/legal.php, page 53, has the following advice on what to do if your asylum claim is refused:

- A UKBA decision to refuse asylum may be sent to you by post, or handed to you by an immigration officer. The package should contain a form for appealing to the First-tier Tribunal (Immigration and Asylum Chamber). If you receive it by post, make sure that you do not throw away the envelope. You may need to prove when it was posted, and the actual day you received it. Write the date you received it next to the postmark.

The decision letter (Reasons for Refusal Letter, or RFRL)

As soon as you receive a decision to refuse your asylum claim, you, or your legal representative with you, should go through every paragraph of the decision letter, and write down your own comments about what the letter says. Sometimes the refusal letter paragraphs are numbered. If not, it is useful to number them, and use the same numbers to make your comments. The decision letter will start by stating the law on asylum and confirming the date on which you applied for asylum. The first important section contains a summary of your claim. The letter will list all the facts (parts of your story) and say how you told them each fact, whether in your Screening Interview (SCI), Asylum Interview Record (AIR) or a statement (WS, for witness statement).

You should check and note anything which is not correct. Make sure that you look back at your screening interview, Asylum Interview Record and any statements you have given to the UKBA. You should also make a note of any part of your claim that is not mentioned.

You are strongly advised to make a new statement, setting out each of your comments on the Reasons for Refusal Letter, to use in your appeal. If you have a legal representative she should help you do this. If you do not have a legal representative, it is very important that you write your comments on everything that is wrong in the UKBA decision letter, and send it to the Tribunal, so that, when you appeal, the Immigration Judge will see all your comments even if you cannot remember them at the appeal hearing.

Negative credibility (not believing your claim)

One of the main reasons the UKBA gives for refusing people is poor or negative credibility. It is important to take time to write down what is wrong with each part of

what the UKBA has said about your claim. Here are some examples of reasons for refusal:

'You claim that you were imprisoned because you were discovered attending a meeting of an illegal political group. But you have not been able to name the meeting place.'

'The US State Department Report on Religious Persecution for your country does not include that church as one of the forbidden churches.'

'It is not believed that women your age would be imprisoned …'

'… if you had a genuine asylum claim you would have left at the earliest opportunity…'

If the decision letter refuses your claim because the UKBA states that they do not believe all or some of the facts in your case (called 'negative credibility') it is important that you try to get further evidence, and witnesses, to support the details of your claim.

For more information on further evidence, see the 'Fresh Claims' section of this Toolkit.

Appeals

This section of the Toolkit focuses on appealing asylum and human rights applications in the First-tier Tribunal (Immigration and Asylum Chamber). The tribunal is the court where the appeal hearing takes place. Not all immigration applications have a right of appeal – speak to a legal advisor if your non-asylum/human rights application is refused to find out what your options are.

With all applications, your options will depend on the individual case and it is very important to seek legal advice. This is a general guide to the structure of the legal system after a refusal, and advice on how to prepare if your case reaches this stage.

Know your rights

Do you have a right of appeal?

If your asylum applications is 'certified', this means you do not have the right to appeal within the UK. If this happens, you should seek legal advice on whether you can seek a judicial review of the certification. If your asylum application is not certified, you have the right to appeal. You should receive information on how to do this with the reasons for refusal letter (see below).

Do you know the time limits?

From the ROW handbook, page 57:

For people who are not detained, the appeal form must reach the Tribunal within 10 working days of service of the decision on you. In law this means that you count 2 days from the date the decision was posted to you, and 10 days from then, counting Monday–Fridays only.

Example: If the UKBA posted the decision on Monday 12 March 2012, the law allows the Tribunal to assume you received it 2 days later, on Wednesday 14 March. Ten working days from that date is Wednesday 28 March. If you did not receive the decision 2 days after the date it was posted, you can make a legal argument that your 10 working days should be counted from the day you actually received it. You would have to send a copy of the envelope the decision arrived in, and your note of the date you received it. If your legal representative received it at the proper time, you cannot make this legal argument.

- For detained cases, see page 59 of the ROW handbook. You should not be issued with removal directions/a deportation order until appeal rights are exhausted.
- Get legal advice, and legal support (see 'Understanding Your Legal Case').
- Think about who could come with you to the hearing, as a witness or as moral support (see 'Community Campaigning').

Prepare yourself for an appeal

The ROW handbook has a useful chapter on asylum appeals (pages 56-69) and advises:

The envelope from the UKBA containing the Reasons for Refusal Letter (RFRL) should also include:

- *A formal Notice of Decision. This states which law or rule the UKBA are using to refuse you. This is because, in law, 'a refusal of asylum' does not give a right of appeal. The right of appeal is against the refusal of leave to remain in the UK.*
- *Information about how you can appeal against the decision.*
- *An appeal form (IAFT-1)81.*

If you already have a legal representative the decision will be sent to them as well as to you. If you do not have a legal representative, you are strongly advised to get legal advice on what it means and how to appeal as soon as you receive the decision. The Tribunal will not, unless it is an exceptional case, accept an appeal submitted late, or adjourn (put back) the hearing, just because you have not found legal representation in time.

If you cannot get legal representation, for example if you are not entitled to legal aid, you can submit (send in) your own appeal and represent yourself.

If you are submitting an appeal application yourself, see pages 56–63 of the ROW handbook and the Tribunal website (www.justice.gov.uk/guidance/courts- and-tribunals/tribunals/immigration-and- asylum/first-tier/appeals.htm)

The appeal hearing

For information on the Case Management Review Hearing (not all cases have these, they may be conducted over the telephone, and if you have a legal representative you do not have to attend), see pages 62–63 of the ROW handbook.

From the ROW handbook:

If you do not attend your appeal hearing it may go ahead without you. If you are seriously ill, you must contact your legal representative and the Tribunal as soon as possible. The telephone number is on the Notice of Hearing. If you are too ill to go, you must go to a doctor and get a medical note. The Tribunal will insist on written evidence that you were too ill to attend, before they agree to fix your appeal for another day.

Your appeal hearing will take place at a Tribunal or Court Centre with many hearing rooms. You should arrive at least 30 minutes early, and make sure your witnesses arrive 30 minutes early to give yourselves time to go through security and reception, find the room where your appeal will be heard, and meet each other and your legal representative. You may be there all day. Usually the Tribunal arranges several appeals at the same time in the same hearing room, and outside each room there will be a Tribunal officer called an usher who will have a list of appellants whose cases will be heard in that room. The usher will check your name on the list, and will check if you, your legal representative and any witnesses have all arrived. The Immigration Judge for your hearing room will first of all hear any cases of people who are in detention, and then start hearing other cases. If you have children, or if you or any of your witnesses are sick or disabled, your case may be heard earlier in the list.

What to expect

For many people, attending an appeal hearing can be a difficult and anxious experience. Your legal representative, if you have one, will be able to tell you how to prepare for the hearing. You should ask advice about anything that you are not sure about, or do not understand, before or during the hearing, from your legal representative.

See pages 64–69 of the ROW handbook for information on the seating arrangements in court, the order of speaking, and important things to remember.

Tribunal hearings are public – anyone can come in and listen to your case. However, if you would find it upsetting and difficult to reveal details of your case in public, if you think a public hearing could put you at danger because of security concerns, or you think your case may raise controversial issues which you do not want to be discussed in public, you can ask the Immigration Judge to hear your evidence in private, under rule 54(3)(b) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

You may be able to obtain some assistance from organisations such as law clinics, which help people without a lawyer to prepare their cases for court. What assistance

they are able to provide varies, but can include helping you prepare a witness statement and put together evidence for your case. Law clinics may also be able to send someone (usually a volunteer) to assist you at court. A person supporting you at court in this way is known as a 'McKenzie friend'. They are not legally representing you. Instead, the volunteer performs the role of giving you quiet assistance in presenting your case. They cannot answer questions for you but can assist you in making notes of what happens at the hearing, and in some cases can make submissions to the court.

A McKenzie friend in Leeds suggests:

One thing people find really helpful is to ask for a break before they make submissions [their arguments and evidence in support of their case]. This is so the McKenzie friend and the appellant can read back through the notes of the Home Office submissions and anything that came up in cross examination. You can use that break to plan what the appellant will say in submissions too. Most judges are happy to grant a few minutes break before appellant submissions.

Higher Courts

This section refers to the higher courts in England, Wales and Northern Ireland . See the following section for the higher courts in Scotland.

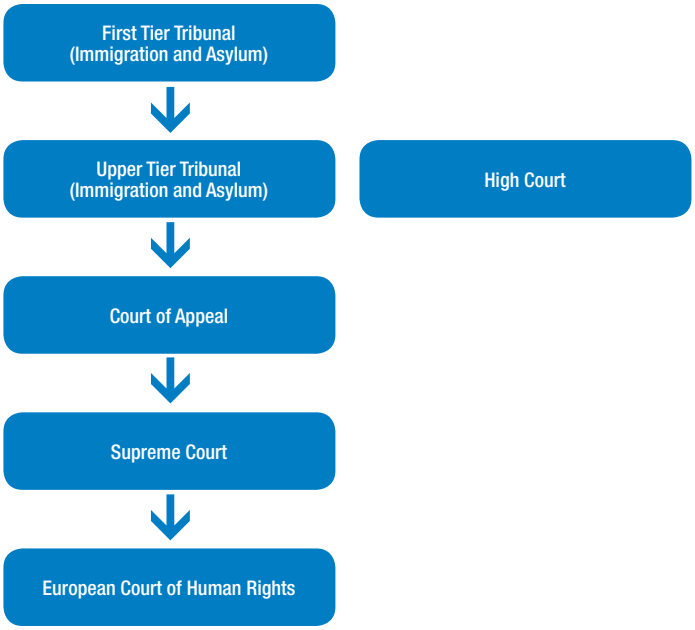


Figure 12 The courts

Upper-tier Tribunal

This is part of the Immigration and Asylum Chamber. If your appeal is refused at the First-tier Tribunal, you can apply for permission to appeal at the Upper-tier tribunal if you think the First-tier tribunal made an error in the way they applied the law in deciding your case. For information on how to apply for permission, see the tribunal website: www.justice.gov.uk/tribunals/immigration-asylum-upper/appeals#3

Court of Appeal

If you have applied for permission to appeal at the Upper-tier Tribunal and been refused permission at an oral hearing where it was said there was no error of law, you may be able to appeal to the Court of Appeal. If you were granted permission to appeal at the Upper-tier Tribunal and your case then was then refused in the Upper-tier Tribunal, you may also be able to appeal to the Court of Appeal.

Supreme Court

If your case is refused in the Court of Appeal, the highest court in the UK to which you can appeal is the Supreme Court (the highest court used to be the House of Lords).

High Court

This is placed at the side of Figure 12 because it may come into different stages of an asylum claim or other immigration application. If you are seeking a judicial review because you believe there has been an error of law in your case, this is normally heard at the Administrative Court of the Queen's Bench Division, which is part of the High Court (the Upper-tier Tribunal can also, and will increasingly, hear judicial reviews of immigration/asylum cases).

A judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body (in asylum and immigration, usually UKBA). A judicial review can challenge the way a decision has been made, if you believe it was illegal, irrational, or unfair. It is not really about whether the decision was 'right', but whether the law has been correctly applied and the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision. If you are successful in your judicial review, the case will normally go back to UKBA. They may be able to make the same decision again, but this time make the decision following the proper process.

A judicial review may be sought if your asylum claim has been certified; if you have submitted further evidence and UKBA say it is not a fresh claim and there is no appeal; if you have been detained unlawfully; or if you have been refused permission to appeal at the Upper-tier Tribunal on the papers (if the permission to appeal occurred at an oral hearing where it was decided there was no error of law in the determination, you may be able to appeal this at the Court of Appeal).

You may also seek a judicial review of the issuing of removal directions/a deportation order, and when seeking an injunction to stop deportation (see 'Imminent Deportation').

Scottish Courts

Court of Session

The Court of Session, Scotland's supreme civil court, sits in Parliament House in Edinburgh as a court of first instance and a court of appeal. Cases decided by the Court of Session can be appealed at the UK Supreme Court.

The court is divided into the Outer House and the Inner House. The Outer House can hear judicial reviews, like the High Court in England, Wales and Northern Ireland. The Inner House is an appeal court, like the Court of Appeal in England ,Wales and Northern Ireland. If you have applied for permission to appeal at the Upper-Tier (Immigration) Tribunal and been refused permission, you may be able to apply to the Court of Session. If you were granted permission to appeal at the Upper-tier Tribunal and your case then was then refused in the Upper-tier Tribunal, you may also be able to apply to the Court of Session.

Note: Ministry of Justice regulations put in place in 2011 mean that English and Welsh barristers and solicitors cannot appear in the immigration tribunals in Scotland and Northern Ireland, but solicitors and barristers from Scotland and Northern Ireland *can* appear in English and Welsh immigration tribunals. For more on this confusing development, read the Free Movement blog post: www.freemovement.org.uk/2011/08/08/english-barrister-refused-right-of-audience-in-immigration-tribunal-in-scotland/

The European Courts

The European Court of Human Rights

The European Court of Human Rights (ECtHR) is responsible for making sure that member states of the Council of Europe respect the rights protected in the European Convention on Human Rights. The UK is a member state of the Council of Europe, and the European Convention on Human Rights became part of UK law in 2000 (when the Human Rights Act of 1998 came into force).

This means that decisions made under UK law (including the decisions of UKBA and the immigration courts) should respect the human rights in the European Convention. If it can be argued that the UK has failed to protect one of these rights in its decision making, the case could be taken to the ECtHR.

The court would judge whether an individual or family's human rights (as defined in the European Convention) have been violated. If they have, it would weigh up whether that violation was allowed within the normal operation of the government. Some rights such as Article 3 of the Convention (the prohibition of torture, inhuman and degrading treatment) are absolute, which means a government cannot violate them under any circumstances.

Taking a case to the ECtHR

The court may consider legislation or policy that the UK government has introduced, and it also considers individual cases.

If an asylum or human rights case in the UK is particularly strong or involves key legal arguments which may be important for other cases, lawyers would normally try and take the case to the higher UK courts including the Court of Appeal and the Supreme Court. If the case is lost in the Supreme Court, the lawyer may then apply for the case to be heard at the ECtHR.

Individuals trying to get their asylum/human rights cases heard at the ECtHR usually do so after being refused permission to apply for judicial review at the High Court. If you are considering applying to the European Court of Human Rights, you should read the guidance on their website: www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Frequently+asked+questions/

This process can take time. If you need an emergency measure to stop deportation, you should apply for Rule 39 to be applied (see 'Rule 39 Applications to the European Court of Human Rights', below).

If the ECtHR finds in your favour, UKBA will normally reverse their decision.

The European Court of Justice

The European Court of Justice is formally known as the Court of Justice of the European Union (CJEU). The court is responsible for providing advice to national courts about the proper implementation of European law, and ensuring that European law is applied equally across member states.

It is very unusual for the European Court of Justice to be involved in individual asylum and human rights cases. A UK court may ask the Court of Justice for clarification on how a particular aspect of European law is to be used. This happened in the case of NS (Saeedi), when the UK Court of Appeal asked the European Court of Justice to comment on whether the UK removing asylum seekers to a third country (in this case, Greece) to have their claims considered fell under European Law.

Rule 39 Applications to the European Court of Human Rights

What is a Rule 39 application?

A Rule 39 application is an attempt to get the European Court of Human Rights (ECtHR) to make a binding interim measure on your case under Rule 39 of the EctHR rules of court. A rule 39 measure is a temporary measure before a long-term decision is made. One of the interim measures the Court can put in place is the suspension of removal directions.

A successful application (stopping deportation from the UK) would have to show

that you a real risk of serious, irreversible harm if the measure is not applied. For more information on this, see the EctHR's practice directions: www.echr.coe.int/NR/rdonlyres/5F40172B-450F-4107-9514-69D6CBDECF5C/0/INSTRUCTION_PRATIQUE_Demandes_de_mesures_provisoires_juillet_2011_EN.pdf .

If you have been issued with removal directions or a deportation order, and you can argue that UKBA and the courts have not properly applied the European Convention of Human Rights (which the UK is obliged to do under international law), you can apply for Rule 39 to be applied.

The difference between a Rule 39 application and a general application to the ECtHR

The rule is designed to give emergency protection to allow your case to be reconsidered.

If a Rule 39 measure is in place and your case is to be reconsidered by UKBA or the UK courts, you must inform the ECtHR of this and what the outcome is.

If a Rule 39 measure is in place and your case is not being reconsidered in the UK, or it is unsuccessful, you can make a full application to the European Court of Human Rights (also called an Article 34 application).

Rule 39 applications are not expected to provide the same level of proof that a full/general application to the ECtHR must, because of the emergency nature of the applications. A Rule 39 application being successful does not mean your full case will be successful if heard at the Court. It is not pre-judging the full decision, it is a protective measure.

Human Rights Convention grounds

Rule 39 applications are normally granted under Articles 2 and 3 of the European Convention on Human Rights. Article 2 concerns the right to life, and Article 3 prohibits torture, inhuman and degrading treatment. A successful Rule 39 application will show that your deportation from the UK would put you at risk of death, torture, inhuman or degrading treatment. There have been successful Rule 39 applications on the basis of Article 8 of the Convention – that a deportation would breach a person's family or private life in the UK – but these are rare. See: www.gardencourtchambers.co.uk/news/news_detail.cfm?iNewsID=543

Other articles of the Convention might be relevant to your case (such as freedom of expression, the right to liberty, the right to marriage), but you would have to show that there would be a breach of these rights that would lead to serious and irreversible harm.

Who makes the application?

Rule 39 applications can be made by the person at risk of deportation, and are designed so that that person does not necessarily need a solicitor. It is not easy to make an application correctly, however, and most applications are refused (because the application has not been done correctly or because the Court does not agree with your

argument). It is therefore best if you can get a legal advisor to submit the application. A non-legal representative can also make the rule 39 application for you. This might be a family member, a friend, or a support group. If someone else is making the application, they should include written consent from you to do so.

If your whole family faces a risk of harm, your family members can apply together as a family, or individually. The Court then decides whether to decide on the applications together or individually.

You might make a Rule 39 application if:

- you are facing deportation from the UK (having exhausted your right to appeal in the UK courts)
- if you were removed/deported from the UK, you would face serious, irreversible harm
- this harm might be torture, inhuman or degrading torture
- this harm might be a disproportionate breach of your right to a family/private life in the UK.

Getting the application right

EctHR figures show that 84% of Rule 39 applications to the Court in 2010 were rejected because they were incorrect or ill-founded.

The Court has an online checklist to help applicants follow the process correctly: www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/

It is a useful resource, but not written very clearly, particularly if English is not your first language. The first questions ask if your case comes under the jurisdiction of the ECtHR. As the UK has signed the Convention, and it is the UK government taking the action against you, your case does come under EctHR's responsibility.

Another of the questions is 'Does your application concern an act, decision or omission by a public official?' Although this sounds complicated, the answer is Yes, because you are applying because of a decision made by a public official (UKBA), which concerns you directly (the next question). You are then asked if your application concerns the rights of the Convention (it lists these if you are not sure. See Human Rights Convention grounds above).

The most common reason for refusals of Rule 39 applications is that they are 'ill-founded': it is decided at first instance that it's not appropriate for the Court to make a decision on the application. A large number were also rejected because there were still legal options available in the country from which the person applied. *You must have tried all of the appeal routes in the UK that are open to you before making a Rule 39 application. You can apply for Rule 39 if you are unable to find a solicitor to take your case to the higher UK courts, but you would have to show very good evidence that you have tried everything you can within the UK court system.*

Applications were also rejected because they asked the European Court to overturn a decision by a domestic court. A Rule 39 application should *just* be asking for *interim relief* – for example, the suspension of removal directions – rather than for your whole case to be reheard. If your Rule 39 application is successful, UKBA, the UK Courts or the ECtHR will then reconsider your full case.

Although no specific form is needed to make a Rule 39 application, you can use the general application form which helps make sure you are meeting the court's requirements. The form is available on the ECtHR's website: www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/

When to apply

You should make a Rule 39 application as soon as you can – so ideally this will be straight after your final UK court refusal (normally the First-tier or Upper-tier Immigration Tribunal if you are not making an application to a higher court, or if applications to the higher courts have been unsuccessful). Always try to discuss this application with your legal advisor – they may agree to do the application for you.

The application cannot be made more than 6 months after the last decision of the UK court. If you are refused permission to judicially review your case or go to the Upper-tier Tribunal, you must make the Rule 39 application within 6 months.

As mentioned above, an application will be rejected if there are still legal options available in the UK. However, if deportation is set to happen very soon and the final UK court decision is due, you can still make a Rule 39 application. The ECtHR acknowledges that, because it takes time to consider Rule 39 applications (especially when there are a lot of documents), applications can be made without waiting for the final UK decision but you need to mark the date of that decision clearly, and write that the application is being made on the basis the final decision is negative. This could be needed, for example, if you have been refused permission for a judicial review but have applied for renewal. If it is likely that you would be deported before a decision on this is made, you can make a Rule 39 application.

What you should include

- reasons why your deportation breaches the European Convention on Human Rights
- documents showing decisions made by the UK courts (any immigration tribunal judgments on *your case* and judgments on your case at any higher courts such as the High Court, Court of Appeal or Supreme Court)
- any other evidence that is relevant (this may be objective evidence showing the risk you would face if deported – particularly if this hasn't been considered by the UK courts or you feel hasn't been considered correctly)
- details of removal/deportation (date and time)
- place of detention (if detained)
- Home Office Reference number

How to apply

- You can only apply by post or fax, *not by email*
- *Address:* The Registrar, European Court of Human Rights**,** Council of Europe**,** 67075 Strasbourg Cedex**,** France
- *Fax number* +33 (0)3 88 41 39 00
- You do not need to use a particular form for Rule 39 applications, just make sure you include the information mentioned in this section, and the section above
- In bold type: on the cover page/first page of the application, put '*Rule 39 -Urgent*' then name and contact details of either the person facing deportation, or their designated contact person. When posting an application, it's a good idea to also write '*Rule 39 -Urgent*' on the envelope.
- In bold type, also on front page/cover page, put the date, time and destination of removal/deportation (e.g. '*23 March 2012, 19:00 hr, Harare Zimbabwe via Nairobi*').

The ECtHR will respond to an initial request asking for further details and signed consent from the applicant for the Court to hear their request. They will set a deadline for the consent form to be sent back to them. If you haven't done so already, try to enclose any previous court decisions and any evidence you have supporting your case.

The ECtHR will also give your case a reference, typically '[Family name] v UK'. Make sure you include this on all correspondence.

Rule 39 and stopping a deportation

Once someone is detained for deportation, they may not have access to their documents or a fax machine. It would be a good idea to give formal written consent for someone you trust to negotiate with the Court on your behalf and to ensure they have copies of all your papers. This is because the deportation process works quickly, and the deadline the ECtHR will set for you to respond is often very short indeed.

There is no appeal against a refusal of a Rule 39 application. You can submit a new application if you have new evidence or there are new circumstances.

Submitting a Rule 39 application is not enough to prevent a deportation. But if you are granted a Rule 39 suspension of your deportation, any attempt to deport you while this is in place would be unlawful.

Fresh Claims

The Difference between Further Submissions and Fresh Claims

- Further submissions can be given to UKBA at any point after an asylum claim

or human rights application is refused, but a fresh claim can only be made when appeal rights are exhausted. You may hear further submissions referred to as 'further representations' or 'further evidence'. In this Toolkit, the phrase 'further submissions' will be used, as this is the language UKBA will use in any letters to you.

- Further submissions might include emphasising a point already made, but to be considered as a fresh claim they must include new information.
- A helpful way to think about a fresh claim is that it will either need to provide evidence of a new fact, or provide a new source of evidence for a fact that has previously been disputed.
- You or your lawyer give UKBA the further submissions (new evidence/ documentation), UKBA decides if it's a fresh claim.

The Legal Test

From the Immigration Rules: (www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/):

353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

The key points are: 1) *significantly different* from the material that has previously been considered. If it's material that hasn't been considered before, why hasn't it been considered? If you've had access to the evidence all along and haven't submitted it without a good reason, UKBA will use that a reason to reject it. It's not just arguing your case in a better way – there has to be material that is new to back up your arguments.

And 2) *a realistic prospect of success:* You may have new evidence, but is it relevant to your situation? Is it material (central) to your case? There may have been a big political change in your home country, but if your claim is based on sexuality for example, and the political change can't be seen to impact on that, it won't be considered a fresh claim.

Fresh claims and credibility

UKBA will consider whether the evidence that has been submitted can be trusted. If they or the courts have in the past made 'negative credibility findings' – saying they do not believe your story or think you have submitted false documents for example – they may use this to discount new evidence you have submitted. In these situations, objective evidence becomes even more important.

Here is what a letter rejecting your further submissions might say about credibility:

'It is considered that the documents you have submitted do not address these issues and do not explain away the inconsistencies and implausibilities in your evidence.'

Credibility has other implications. If, for example, you have new evidence about the persecution of Elai subclan in Somalia, this will not be considered to have a realistic prospect of success, no matter how good the evidence, if it is not believed that you a member of that subclan. You would need to also provide evidence showing that UKBA and the courts were wrong to doubt your clan identity. A common example is political persecution in countries such as Iran and Zimbabwe. Political oppression in these countries is well known and is accepted to occur by UKBA, and you may find many news reports and human rights reports confirming this is occurring and so submit this as a fresh claim. But, unless you can show that you are from these countries, a political activist, and high profile (at least at the level of the activists mentioned in the reports), it is likely that UKBA will reject the fresh claim. *Further submissions may include good evidence from reputable sources about human rights abuses and persecution, and UKBA/the courts may not dispute that this evidence is true. The problem can be that UKBA do not believe these problems or events are relevant to you.*

Preparing a Fresh Claim

The following advice is from the Rights Of Women 2012 handbook, *Seeking Refuge?* pages 79-81, available at www.rightsofwomen.org.uk/legal.php.

Step 1

Gather together all the important legal documents in your case. You will need:

- your screening interview;
- your asylum interview;
- any witness statements;
- any evidence or documents you have given the UKBA;
- the Reasons for Refusal Letter;
- the first Determination in your asylum appeal; and
- any other appeals or court decisions in your case.

If you find a new legal adviser, you must give full and complete information about all your previous immigration applications, and UKBA decisions, and especially all Determinations by the Immigration Tribunal. No properly accredited legal adviser or solicitor could advise you properly without seeing your complete immigration history. It would be dangerous for you to give new information to the UKBA without carefully explaining any differences with what you may have said before, and explaining carefully how you came to receive the new information.

If you do not have all of these documents (and even if you do), you or your legal representative can obtain a copy of your Home Office file, by writing to the Home Office Data Protection Unit, Lunar House, Wellesley Rd, Croydon CR9 2BY, with a cheque for £10 payable (at the time of publication) to the Accounting Officer, Home Office, giving your full name, date of birth, nationality and your signature. By law they must provide, within 40 days, a complete copy of your file, which will include not just all the above documents, but also all the notes written by UKBA and immigration officials about your case. You should be able to see when your case has been looked at, and what they did with it. When your file arrives you should keep the pages carefully in their envelope, in the order in which they are given to you. If you want to use any information from this file in your fresh claim, then carefully photocopy the page you want, and keep the original in its place in the envelope.

If you have not had any contact with the UKBA for a long time, you are unlikely to know what they have been doing in your case, even if you think they have not been doing anything. Some people may be at risk of being detained as soon as the UKBA know where to find them. Therefore, if you have not been reporting to the Immigration Service for a long time, or if you have never reported, you are strongly advised to get legal advice before contacting the UKBA, even to obtain a copy of your file.

Step 2

Look at the Determination in your first appeal and write down the Judge's findings of fact and look at the evidence you already provided for each fact. Then look at your new evidence and new information and think how that evidence would challenge the Judge's findings, and whether it is strong enough.

Step 3

If possible, get independent expert reports to back up your new evidence. If you have legal representation helping you under legal aid, the cost of getting an expert report can be paid out of legal aid. Without legal aid this will be very expensive.

Step 4

You need to write a letter (called further submissions or representations) beginning 'I wish to make a fresh claim for asylum' and explaining what the new evidence is, how you obtained it, why it should be believed, and how your claim now amounts to a fresh claim. If you have a legal representative, she will write this letter for you. There is a Further Submissions form at www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/further submissions/ but you do not have to use it.

Two examples:

'…In my appeal, the Judge did not believe I was raped in that prison. But I now have a witness statement from a woman who was in that prison at the same time as me, to whom the same thing happened, and who saw what happened to me. I could not provide this information before, because I have only just found out that this woman was in the UK. Her name is xxxx, her Home Office Reference Number is yyyy. She has been granted asylum. I believe my case

amounts to a fresh claim under Immigration Rules paragraph 353.'

'…In my appeal, the Judge believed that I am a lesbian. But he said that there would be no problems for me if I went back to Jamaica. But now the case of SW (Lesbians) Jamaica CG [2011] UKUT 251 says that lesbians are persecuted in Jamaica. I believe my case should be looked at again and counted as a fresh claim under Immigration Rules paragraph 353.'

It will be difficult to present a strong fresh claim without legal advice. Therefore, if you have new evidence or further information, or if you hear about a legal case which might affect your asylum claim, you should seek legal advice.

What Might Be Included in a Fresh Claim?

Here are some suggestions of what might be included in further submissions. It is not an exhaustive list, and it is not advice about what *you* should include in *your* submissions – each case is different.

- ***Evidence supporting your original asylum claim that you have only just received.*** For example, documents proving political activity that have only just arrived from your country of origin. Always keep the envelopes these arrived in and any proof of delivery/receipt.

- ***Personal news from back home.*** Have you recently received information that the people who persecuted you are still looking for you? People may have come round to your house, or maybe a family member or friend has recently been targeted. It may be possible to get a witness statement from people back home to support this claim.

- ***Change of circumstances back home.*** For example, political developments. These developments must be relevant to your case. How would a change of government or a new law put you at risk if you were returned there? A change of circumstances might be reflected in new country guidance case law. Case law can be slow to catch up with political developments, however, so you may need to rely on other evidence.

- ***Case law/legal developments.*** This may be a change in country guidance case law (for example, the historic case of RN and Zimbabwe, referred to above). This could also be a reported judgment (in someone else's case) that UKBA was wrongly applying a policy, or that the procedure for determining asylum should be done in a certain way. If you can show that your case was refused because UKBA was using a certain policy, or certain procedures were used that have now been found to be unlawful, your fresh claim may ask for your case to be reconsidered on this basis.

- ***Human rights (Article 8) arguments.*** Article 8 grounds (family or private life in the UK) are meant to be included when you first apply for asylum. It may be

that there have been changes in your life since then (new relationship/child, etc.), or that you have new evidence to prove the existence of this family and private life. Letters of support from friends, family, community, church/mosque/temple, school/college might be considered as evidence to submit. Documentary evidence such as birth or marriage certificates might fall into this category. You might be able to get a professional or an expert to comment on the impact on you/your family if you were deported from the UK – this is best done through a legal advisor.

Where Can You Find Objective Evidence?

Objective evidence in this section refers to sources that aren't connected to you. Generally, good places to find this evidence are through human rights organisations or reputable media sources.

NCADC has a country of origin blog (http://ncadc.org.uk/coi/) where we collect reports that may be useful if you are researching a fresh claim. We also post reports and news stories through our Facebook page (www.facebook.com/NCADC) and our Twitter account (https://twitter.com/#!/NCADC)

Good places to look for information on human rights in a country of origin are:

- Amnesty International
- Human Rights Watch
- International Crisis Group
- IRIN News
- UNHCR RefWorld
- Irish Refugee Documentation Centre
- US State Department Human Rights Reports
- Voice of America news
- The *Guardian* newspaper
- The *New York Times*
- BBC news
- Asylum Research Consultancy (especially commentaries on operational guidance notes, OGNs)
- European Country of Origin Information Network.

For more suggestions of where to look for evidence, see this list on the NCADC Country of Origin blog, where sources are also listed thematically: http://ncadc.org.uk/coi/sources-of-information/

These are all considered to be reliable sources of information, which have a good reputation for being accurate, and the media sources listed are ones that have good world news sections and are interested in human rights. If you are getting evidence from other sources, think about who has written the report or article. If it's a group

that is in opposition to a government, UKBA and the courts might not consider it to be objective/good evidence.

How Do You Submit Further Evidence?

In most cases, you now have to submit a fresh claim in person in Liverpool. If you cannot attend in person, for example because you are in detention or if you are seriously ill or have a serious disability, you can fax your further submissions to 0151 213 2008 with written evidence of why you cannot travel. You should speak to UKBA first to tell them this is what you are going to do.

If your first claim for asylum was made *after 5 March 2007* you should be able to hand in further evidence at a local reporting centre. For example, if your original asylum application was made *after 5 March 2007* and you live in *Scotland*, you submit your fresh claim in person at the UKBA office in Brand Street, *Glasgow*.

From ROW 2012 handbook *Seeking Refuge?* (available at www.rightsofwomen.org.uk/legal.php) page 80:

Further Submission Appointment in Liverpool

You should make a bundle of the important papers and your letter and photocopy all of it. One copy is to hand to the UKBA and the other is for you to keep.

The telephone number is 0151 213 2411. The address of the Further Submissions Unit is The Capital Building, 6 Union Street, Liverpool, L3 9AF. When you have made your appointment the UKBA will write to you with information about how to find that office, and what documents you need to bring with you.

At your appointment the UKBA will check that they have your fingerprints, photographs and up-to-date address, and ask you for your further submissions. This is your letter setting out your fresh claim, plus the documents from your previous asylum claim. They should provide you with a receipt showing the date you have made your fresh claim. Keep this very safe, with your own copy of all your documents. At that appointment, the UKBA are unlikely to interview you, or tell you anything about how they will decide your case.

You are unlikely to be detained, but if you have a very weak fresh claim, if you have failed to report to the Immigration Service over a long period, and if you are from a country to which the UKBA can remove you easily, then you may be detained. You are strongly advised to seek legal advice before making a fresh claim.

What Happens Next?

a) If UKBA accept that your new evidence passes the fresh claim legal test (see above) your fresh claim has been accepted. In some cases, UKBA will write to tell you that your evidence meets the fresh claim criteria and they have decided to grant you status; or

b) UKBA may accept that your new evidence passes the fresh claim legal test, but refuse your case in the same letter. In this situation, you would have the right to appeal; or

c) UKBA may accept that your evidence meets the fresh claim criteria but they have not yet made a decision on the merits of the case. They will then look at your entire case again, taking into account your new evidence. You may be interviewed again at this point. You could then either be granted status, or refused status. If you are refused, you will have the right to appeal; or

d) the most common outcome is that your further submissions are said to not pass the fresh claim legal test. The refusal letter might say something like this:

'The question therefore is whether these submissions taken together with the previously considered material would create a realistic prospect of success not withstanding its rejection. The question is not whether the Secretary of State herself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of another Immigration Judge, applying the rule of anxious scrutiny, thinking that your client will be exposed to a real risk of persecution on return to his home country.'

This is UKBA saying that your further submissions do not meet the fresh claims test, and they believe that an immigration judge would agree with them. Crucially, you do not get the chance to ask an immigration judge if they agree.

If your further submissions are *not accepted as being a fresh claim* (remember, this is before they can even look at whether they think your new claim is true), *you do not get the right to appeal.*

Your legal options may be a judicial review of this decision, or a new, stronger fresh claim.

Fresh Claims and Deportations

The Immigration Rules say:

353A. Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise.

But submitting further evidence does not mean you are safe. UKBA frequently issue the letter saying your further submissions are not considered to be a fresh claim at the same

time as issuing removal directions. They may also attempt deportation if you cannot prove you have submitted a fresh claim – so make sure someone has evidence you have submitted it, and evidence of receipt by UKBA.

If you have already been issued with removal directions and then you submit further evidence, typically UKBA will consider and refuse the further evidence very quickly (as not being a fresh claim) and say that the removal directions still stand.

Immigration Detention

What Is Immigration Detention?

People detained under immigration powers may be detained in an immigration removal centre (IRC) or short-term holding facility, or if they are a foreign national prisoner who has completed their custodial sentence they may continue to be detained in prison. Immigration Removal Centre, the official term UKBA uses, does not reflect how many people are held in detention for long periods of time with no prospect of deportation. The term that is more reflective of reality – detention centre – is used in this Toolkit.

Some detention centres are run by private security companies, others by the Prison Service. People in detention cannot leave and have very limited freedom of movement within the centres. Security levels are similar to prisons. The number of detention centres and the number of people detained has expanded massively over the last few years.

NCADC website has information on detention centres, visitors groups, and links to UKBA detention centre webpages here: www.ncadc.org.uk/detentioncentres.html

Who Can Be Detained?

There are points in the asylum and immigration process when someone is more likely to be detained, but the simple answer is that almost anyone subject to immigration control can potentially be detained. This means that anyone without British citizenship *could* be detained under immigration powers, and there have even been cases of British citizens detained in error by UKBA, but it is very unusual for this to happen.

When Can You Be Detained?

The times you are most at risk of being detained are:

- when you enter the UK
- when you apply for asylum or another kind of leave having already entered the UK. This will happen after your screening interview if it is decided your case can be decided quickly or is 'clearly unfounded' (see 'Detained Fast Track and Non-Suspensive Appeals')

- after an application for leave (including asylum) is refused and you have no further appeals available to you (you may have received a letter from UKBA saying you are 'appeals rights exhausted').

It is common for someone at risk of detention to be picked up when they go for their regular reporting/signing in, but people are also picked up from their homes (sometimes in dawn raids), from the community, even at their children's schools.

Being Prepared in Case of Detention

Community sign-in at reporting

Most people who have applied for leave to remain and have not had a positive decision have to regularly report at their local UKBA reporting centre or a police station. At every reporting visit, the person is at risk of detention, particularly if their application has been refused, which they may not know until they go and report.

Some people phone a friend when they are entering the reporting centre, with instructions for what to do and who to contact if they are detained. If the friend does not get a call within an hour or two to say they are safe, the friend can call their solicitor and campaign or support group.

In some areas, local support groups (such as the Unity Centre in Glasgow and WAST in Manchester) have set up systems to help with this. They will check-in with the group first, who keep a record of everyone's contact details and emergency instructions of what to do if they do not come out.

This means that people who are signing at UKBA will know that people are looking out for them. This can save valuable time: supporters can then start finding out exactly where that person is, what has happened, and what can be done to help straight away.

- If you are at risk of being detained: Do you have a list of emergency contacts that you have shared with someone? These might include your solicitor's number (and your reference number), any close friends or family, people you have spoken to about caring for any children in case of detention, doctors or hospitals if you have a medical condition.
- If you are a campaign or support group: Find out about the local detention system. Do you know where people are often picked up, and where they will be taken? This will save valuable time when you are supporting someone who has been detained.
- If you are a campaign or support group: Have you got a system in place for raising support as quickly as possible (with the consent of the person who has been detained)? This might take the form of a plan for an emergency meeting or a telephone tree (a system where you have one or two people who are responsible for contacting perhaps 2–4 different people each, each of whom are then responsible for contacting another small group of people, like the branches of a tree):

First points of contact:

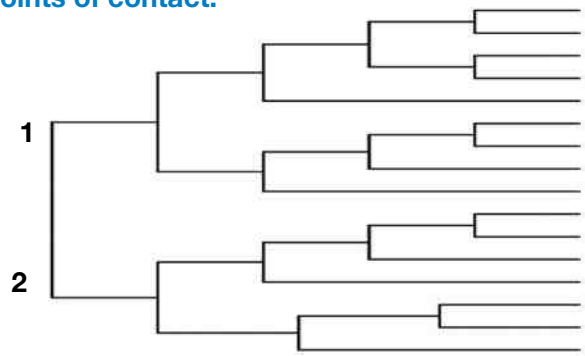


Figure 13 Telephone tree

Copy of documents

If someone is detained, it may become impossible for them to access their documents. This means that vital evidence that a solicitor or a campaign group needs can't be reached. It's a good idea to have copies of all your important documents (and not just with a solicitor, as these will not always be accessible and can be lost if the solicitor firm closes down, for example). Give a copy of these documents *to someone you trust.* This may be a friend, or a supporter.

House key

If possible, give a friend a copy of your house/flat/room key. This may not be possible, for example if you are living in asylum support or Section 4 accommodation. But some ex-detainees suggest giving a friend/supporter a copy of your house key so that, if you are detained, they can go and get essential things for you from your house. *Only give a key to someone you trust, and make sure you are allowed to do this under your accommodation rules.*

Have a non-smart phone/save your numbers to the sim card

It used to be the case that any mobile phones with internet access or a camera would be taken off you at the point of detention. It would therefore be a good idea to have a very basic phone that you could keep with you. However, there are now schemes in place (for example, at Yarl's Wood detention centre) where everyone's phone is taken off them and they are issued with a Yarl's Wood phone. If it's possible to still use your own sim card, it's a good idea to have saved important numbers to the sim card beforehand (rather than to your phone handset) so the numbers will be still available in the replacement phone.

Practical Information in Detention

The procedure in each detention centre is different. You may not be able to rely on the staff there to give you helpful information about procedure and your rights, so it could be a good idea to contact a local visitor group (see below).

If you feel your rights are not being respected, let someone know. You may want to tell a visitor group, your solicitor, a friend or supporter, or make a complaint to the detention centre or UKBA.

To find out more about your rights in detention, you could speak to your legal advisor or contact a group who work on legal issues and detention, such as Bail for Immigration Detainees (see below).

Support in Detention

Visits

Friends and family can visit you in detention. They will need to find out the visiting times, notify the centre in advance (they may need to give 24 hours' notice) and bring ID with them. They can ring the detention centre to find out what form of ID they will need. They will have their photograph taken at the centre, and their fingerprints may be scanned as well. See the Home Office website for details of visiting each detention centre: www.ukba.homeoffice.gov.uk/aboutus/organisation/immigrationremovalcentres/

There are also befriending and visitor groups (co-ordinated groups of people, usually volunteers, who regularly visit immigration detainees to provide company and emotional support) set up for most detention centres and prisons. The Association of Visitors to Immigration Detainees (AVID) has a list of their members on its website: www.aviddetention.org.uk/index.php?option=com_content&view=category&id=5&Itemid=5.

AVID has also published a useful handbook for people wanting to visit someone in immigration detainees, which explains how visitsing someone works and what to expect. You can contact AVID for a copy of this handbook.

TESTIMONY

A young Afghan man has kept a blog – 'Life After Deportation' – about his experiences in detention and facing deportation from the UK. He and his supporter wrote this great blog post about visiting a detainee:

Visiting a detainee in Harmondsworth

You know I am out of detention at the moment, but I will tell you about having visitors when I was there because I want people to know about this.

Of course having visitor is good and helpful mentally for us. We are here for a long time and even sometimes I think I forget how it is speaking with people or my friends and when I visit my friends I can feel that I change when they are with me.

Normally when a visitor arrives, the officers call us, but when we don't pick up our phone they would call our room. Sometimes they come to my room to pick me up.

Sometimes they search us to try to find any stuff with us, but normally they take our phone and sometime they don't let you take any documents to your visitor. Some people don't have any visitors and they always spend time with other detainees in the detention centre. Some people were moved here from other parts of the country, like Birmingham, so they are far from their family and friends. When I have a visitor I feel so happy because we talk about something new, but here we just always talk with each other about our problems in the detention centre, so that's why it's good to have a visitor.

Laura: The first time you come to Harmondsworth, you have to bring 2 forms of ID. Then they put you on the system and log your fingerprint. You get a wristband and visitor pass and they frisk you to make sure you're not bringing anything in. There are a lot of things you can't bring in, but even if you can bring it in, you have to check it in, rather than give it straight to your friend. You can't bring food or drink, and I couldn't even take T his class photo because it had him in the picture.

You have to go through 3 secure doors to get to the visitors' room. Then they log your visit and go and find the detainee. I have waited up to 40 minutes sometimes for them to find and bring him! There is a vending machine in the room, but detainees don't have cash, so if you visit someone, make sure you bring £1 coins. There's also a TV and a play area for kids.

The first time I went, I was really upset afterwards, because the place is so much like a prison. But at least you can sit with your friend and stay as long as you like (between 2pm – 9pm.) The officers leave you alone, but they do watch you on the CCTV cameras. Sometimes it gets really busy. This Sunday I went, and at 6pm when I left, there were about 20 people queueing to be checked in.

–

http://lifeafterdeportation.wordpress.com/2012/06/15/visiting-a-detainee-in-harmondsworth/ posted on 15 June 2012

Communication

It can be difficult to keep in touch with people in detention. At some centres, such as Morton Hall, the mobile phone signal is very poor. Most detention centres will have landlines that detainees can use. For the centres where detention centre mobile phone and sim cards are being given in replacement for a detainee's own phone, the cost of calling out can be very expensive. If you are supporting someone in detention, remember that many phone networks charge to pick up voicemail messages. If you don't get through to the person in detention, it's better to send a text message which

they can read for free. Internet access can also be limited in detention – certain sites such as Facebook are blocked.

Chaplains/religious support

At every detention centre there will be one or more chaplains (religious ministers) who can provide support in many different ways. There are usually several chaplains from different faiths who work in rotation. Chaplains can provide religious support, emotional support, or help in practical ways too. The place of worship where the chaplain is based may provide a quiet place for reflection or prayer.

There are usually prayer groups in detention centres (often organised by detainees), which some detainees find very comforting.

Emotional support and campaigning

Emotional support is very important for people who are detained, as it is a very isolating and distressing experience. See section on 'Emotional Support'.

If you are in detention, you may want to think about a public campaign calling for your release. This may involve community campaigning, using the media, internet campaigning, or political campaigning. For more information on these areas, go to the Toolkit sections under these headings. Think about whether you want a public campaign, or a smaller private campaign.

There will also be legal routes available to you, which are explained below.

Legal Options

Legal aid contracted firms

At the time of writing, free legal advice funded by the state is provided only by two or three contracted legal firms at each centre. Although it is not completely up-to-date, a list of these firms can be found at the Legal Services Commission (LSC)website: www.legalservices.gov.uk/civil/immigration/5527.asp

These firms have legal surgeries which you can sign up for if you are in detention. The rotas for these surgeries get booked up very far in advance, and the quality of legal advice is variable. If you experience problems signing up with the rota, or with the legal advice you receive, you can make a complaint to the solicitor firm and to the Office of the Immigration Services Commissioner (http://oisc.homeoffice.gov.uk/complaints_about_immigration_advice/). You could also contact the LSC, who are responsible for the contracts. The LSC, working with Bail Immigration for Detainees (BID), AVID, and Detention Action and the Immigration Legal Practitioners Association (ILPA) are attempting to monitor the provision of legal advice in detention.

Claims made in Scotland or Wales, person at risk of deportation detained in England

As nearly all deportations take place from English airports, if someone who claimed in asylum Scotland is detained, they are often moved to a detention centre in England.

This makes it very difficult for their Scottish and Welsh legal representatives to continue to advise them. This is also a problem if someone in England is moved to a detention centre a long way from where their English legal representatives' office is located. In theory, if a lawyer has already starting working on an aspect of a case (for example, further submissions), they can continue to work on it even if their client is moved. If they cannot visit their client, however, working effectively on the case is very difficult. This disruption in legal representation is a big problem, particularly in time-pressured areas of a case, such as applying for an injunction to stop deportation.

Similarly, while only certain firms have contracts to take on new cases in detention (see above), if you are already being represented by a firm and they are in the middle of working on an aspect of your case, they can continue. This, again, may be difficult because of not being able to meet with you.

Alternatives to legal aid solicitors

If you are unable to get legal advice from one of the contracted firms in immigration detention, you could think about these alternatives:

- *pro bono legal advice.* Some legal advisors can provide legal advice on a voluntary basis. They will not be charging the LSC for this work, so they do not need to work for one of the LSC contracted firms. Cuts to legal aid and the closure of firms means legal advisors are increasingly overstretched, so while the need for pro bono advice is going to increase, the capacity of legal advisors to provide it may decrease.

- *Support that does not involve giving legal advice*. A supporter may be able to help explain your legal documents (for example, explaining what certain words mean), or help you look for evidence, without giving legal advice. This could be done over the telephone, but is better done in person.

- *Fundraise for a private solicitor* (see 'Understanding Your Legal Case')

- You may be able to get assistance from a *project that aims to help people who cannot find a lawyer.* People who work for such projects are often called 'McKenzie friends' and are usually volunteers supervised by immigration specialists. They are not usually able to represent you but can assist you in gathering evidence to support your case, preparing witness statements and/or written legal arguments.

Getting Out of Detention

There is no set time limit on immigration detention. International law, European law, British law and UKBA policy all enshrine the presumption of release and liberty but this is often not reflected in practice. See Detention Action's report on Indefinite Detention: http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/No-Release_Report_WEB1.pdf

Case law on length of detention has established that people can only be detained for a 'reasonable' period of time, and the power to detain only exists when there is a 'realistic prospect of removal'.

UKBA must undertake regular detention reviews to justify a continued detention. To request release from detention, a request can be made for temporary admission or bail.

Bail is more formal – temporary admission is easier to request, but is not granted very often. It's best to have the help of a solicitor in applying for bail, as most applications will involve a bail hearing. Applications for CIO bail do not involve a hearing as they can be granted by the Chief Immigration Officer (CIO) at the detention centre. CIO bail is unlikely to be granted if temporary admission has already been refused.

If you cannot find a solicitor, you can apply for bail yourself. BID (see below) have a handbook which can help with this: www.biduk.org/download.php?id=75

The main conditions of release will be a specified address and sureties and a requirement to report regularly at a police station or reporting centre. Sometimes detainees are released on condition of being fitted with an electronic tagging device.

If a period of your detention has been found to be unlawful by the High Court (if UKBA has not followed its policy on reasonable length of detention, for example) you may be able to seek financial compensation (damages).

Addresses

Successful temporary admission and bail applications will include a particular address to live at on release. This is often difficult for migrants to provide.

If you are applying for bail, you can apply for Section 4 accommodation as a bail address. Section 4 accommodation is usually provided to asylum seekers who have no leave to remain in the UK and no ongoing legal case, but for whom there is a particular reason why they cannot leave the UK. This accommodation is used as emergency bail accommodation and does not necessarily mean you are entitled to Section 4 support itself. At the time of writing, there are long delays with processing Section 4 bail accommodation applications. BID has produced a leaflet with information about post-detention accommodation: www.biduk.org/download.php?id=185

Another obstacle can be the location of the address: if someone is acting as a surety (see below), and does not live near the accommodation address, bail may be refused on the basis the surety cannot easily check you are living at the address where you have said you will.

Sureties

A surety is someone who puts up a sum of money guaranteeing the person applying for bail will keep to the bail conditions. If the detainee doesn't keep to the conditions, the

surety is liable to lose the money they have put up. Usually no money is handed over when someone agrees to be a surety, but if bail conditions are broken the money will be taken from their bank account. In Scotland, you normally deposit the money if bail is granted and will be reimbursed if bail conditions are kept. The amount for surety may be a significant amount – is it often in the thousands of pounds (and if the surety has a high income, it may be even higher as it is meant to be an amount which would be difficult to lose).

The bail application form has space for two sureties, though this isn't a requirement. The surety will need to attend the bail hearing and provide ID, proof of address, occupation, financial status and immigration status. N.B. *A criminal record check and immigration record check can be undertaken of all people who act as sureties.* You do not need to be a British citizen to act as surety, but if you have problems with your immigration status, it may not be a good idea to act as a surety for someone.

The best sureties are close friends or colleagues, rather than family members, or supporters who do not know the detainee well, but this is not always possible. If you do not know anyone to act as a surety, you could speak to your local visiting group or BID.

Bail hearings

Your application for bail will be heard in an immigration court. You will either be taken there from the detention centre or appear by video link. Video links are now being used more often: you stay in the centre, and the court proceeds in your absence except by a video link.

The bail hearing will consider things such as the release accommodation, sureties, the likelihood that the applicant will abscond (run away or not keep to reporting conditions), immigration history, family or community ties and factors such as health conditions.

It's important to check the bail summary provided by UKBA (their case for continued detention) as there are often mistakes in this that could be challenged. The bail summary should be made available to you and your legal representative the day before the hearing.

There are often problems with bail hearings such as procedural irregularities, lack of legal representation and interpretation problems. The Bail Observation Project was set up to monitor these, and their *Immigration Bail Hearings: A Travesty of Justice?* report details the problems and calls for improvements (http://ncadc.org.uk/resources/ccc-bop-report.pdf). This report contains a section on what ought to happen in a bail hearing, which will help you follow what goes on in court.

It's best to have a legal advisor to represent you in a bail hearing. You may want a friend or supporter to attend the bail hearing with you as an observer, not necessarily as a surety.

If you have a public campaign, the campaign group may wish to hold a solidarity protest outside the hearing. (See 'Community Campaigning').

It can be a good idea for several supporters to attend the hearing so that is clear it is being witnessed.

Who Shouldn't Be Detained, According to UKBA's Own Policy?

UKBA policy on detention states that the following groups of people should only be detained in very exceptional circumstances:

- Unaccompanied minors (though there have been cases of age disputed minors detained by UKBA as adults, who have in fact been children: www.guardian.co.uk/uk/2012/feb/17/home-office-payout-child-asylum-seekers)
- pregnant women
- survivors of torture (including rape)
- people with serious medical conditions or mental health conditions that cannot be appropriately managed in detention.

This last category is a 2010 rewording of the policy, and it is not clear what 'appropriately managed' means. Although the rewording tightens the definition of people with mental health conditions not suitable to be detained, there has also been case law showing that in very extreme cases, the continued detention of people with severe mental health issues has breached Article 3 of the European Convention on Human Rights – the right not to be tortured, or subjected to inhuman or degrading treatment.

Medical cases, torture survivors and Rule 35

Detention Centre Rule 35 requires detention centre doctors to report to UKBA 'any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.'

More information on rule 35 is available from Medical Justice: www.medicaljustice.org.uk/content/view/398/54/

Many detainees struggle to access proper healthcare in detention, and rule 35 reports are commonly either not done, or not done properly. If you think this is the case for you, you should speak to your solicitor and contact Medical Justice.

To be released from detention as a survivor of torture, independent evidence will be needed. Medical Justice may be able to assist with preparing this.

Resources

Association of Visitors to Immigration Detainees

A membership network for visitor groups. They produce an informative monthly newsletter (*In Touch*), and have useful information about immigration detention on

their website. They are a good organisation to contact if you are in detention and want to be visited; or if you are thinking about becoming a visitor/befriender to someone in immigration detention. They can provide information about groups that visit detention centres and people kept under immigration powers in prison. www.aviddetention.org.uk/

Note that these visitors are independent and quite distinct from the Independent Monitoring Board (sometimes called official visitors) for each detention centre, whose members are appointed by the government.

Detention Action

Formerly the London Detainee Support Group, Detention Action support detainees in Harmondworth and Colnbrook IRCs and campaign on immigration detention issues, particularly the detained fast track system and indefinite detention. www.detentionaction.org.uk

Medical Justice

Medical Justice is a network of asylum detainees, doctors, experts and other supporters exposing and challenging inadequate healthcare provision to immigration detainees. They provide casework for immigration detainees with serious medical conditions and survivors of torture. www.medicaljustice.org.uk

The Detention Forum

The Detention Forum is a loose network of over 30 NGOs who are working on immigration detention issues. They work together to build a momentum to question the legitimacy of immigration detention which has become such a normal part of the British immigration system. http://detentionforum.wordpress.com/

Bail Immigration for Detainees (BID)

Bail for Immigration Detainees is an independent charity that exists to challenge immigration detention in the UK. They work with asylum seekers and migrants, in detention centres and prisons, to secure their release from detention. See above for an explanation of why bail is important. www.biduk.org/

BID have a London office, an Oxford office and a South office. See here for details www.biduk.org/131/about-bid/about-bid.html

Campaign to Close Campsfield

The Campaign to Close Campsfield is a campaign group working to close Campsfield Immigration Removal Centre near Oxford. It has been active since 1993, holds monthly demonstrations outside Campsfield, monthly campaign meetings in Oxford, and works together with other groups to stop immigration detention, racist deportations and immigration laws enforcing racism. http://closecampsfield.wordpress.com/home/

Barbed Wire Britain

Barbed Wire Britain is a campaign network against immigration detention. It aims to help organise at a local and national level to end the practice of immigration detention in the UK, to help local groups to get established, to raise the national profile of debate on the issue, to help give voice to detainees and former detainees, and to establish links with like-minded organisations and individuals in other countries.
http://barbedwirebritain.wordpress.com/aims-of-the-bwb-network/

Imminent Deportation

This section looks at the system used to deport people, and the legal and campaigning options you have if deportation is imminent (going to happen soon, usually when removal directions or a deportation order have been issued).

Deportations are carried out either on a commercial airline (one person) or by private charter flight (lots of people, mass deportation).

The legal difference between an enforced '*removal*' and '*deportation*' is explained below, but in this Toolkit the term deportation is used to describe all enforced removals, unless specifically stated. In this section, as in the section on Rule 39, removal/deportation is sometimes used for clarity, as is the term 'removal' when referring to UKBA terminology (e.g. notice periods) or processes such as the issuing of removal directions.

People can be deported if they fall into one of these categories used by the state:

- *Administrative removal.* This is when you don't have any leave to remain; if your application for leave to remain – including claiming asylum – has been refused; or you did have some form of leave to remain/visa but it has now expired

- *Automatic deportation.* This is used when you have been sentenced to a criminal sentence of over 12 months imprisonment. In automatic deportation cases, there is no need for a court to recommend deportation in order for it to take place. Deportation will be attempted after completion of the custodial sentence.

- *Non-automatic deportation.* This is usually when you have been sentenced to a criminal sentence of less than 12 months imprisonment, but it decided to be 'conducive to public good' to deport you. Deportation will be attempted after completion of the custodial sentence.

Although there is a legal difference between the terms 'removal' and 'deportation', the words are often used interchangeably. 'Administrative removal' is a term only

understood within the legal system of the UK. Globally, and commonly in the UK outside the legal context, deportation is used to mean any forced removal.

If UKBA decide to remove someone, they issue removal directions. This document will have the date and time of the flight, and the flight number. If the decision is made to deport somebody, a 'Decision to Deport' notice will be issued, and then a deportation order.

The procedure for challenging removals and deportations is generally the same. In practice, deportation orders are harder to challenge (unless there are asylum/protection arguments, in which case they are similar to removal directions) because you need very strong Article 8 grounds – see 'Human Rights, Asylum and Status'.

If you are deported from the UK following a deportation order (not simply forcibly removed with removal directions), you cannot apply for leave to enter the UK again until your deportation order has been revoked (and there is a time period that must elapse, which depends on the criminal conviction you received). Ask your legal advisor for advice on this before you are deported.

When Should People Not Be Deported According to the UKBA's Own Rules?

If you have protection needs, a human rights case, or EU treaty rights

- if your deportation or removal would breach the UK's obligations under the European Convention on Human Rights (generally Article 3 or 8 – see 'Human Rights, Asylum and Status')

- if your deportation or removal would be against the Refugee Convention. If your asylum claim has been fully refused, UKBA will say your deportation does not breach the Refugee Convention.

- if you have an asylum claim pending (unless it has been decided the UK is not responsible for your asylum claim under the Dublin Regulations – see the section on this).

- while an in-country appeal to the asylum and immigration tribunal is pending. If you did not appeal at the time your asylum claim or immigration application was refused and there was an appeal right, it could be appealed outside of the official time period if there are good reasons (that you can prove) for the delay. Remember that not all asylum claims can be appealed in the UK – if your asylum claim has been certified, it cannot be appealed in the UK. You would need to see if a judicial review of the certification is possible.

- if you have submitted further evidence to be considered as a fresh claim and a decision has not been made on this yet. UKBA would have to show they have

considered these and rejected them before they can remove someone. You should keep your proof of submitting further evidence. It is common for the rejection of the further submissions as being a fresh claim to be issued at the same time that removal directions are given

Note: If you have already been issued with removal directions but want to submit further evidence, UKBA will maintain the removal directions and then consider the further evidence prior to deportation. This consideration (which is almost always followed by a refusal) can take them a few hours. UKBA typically write back to say: 'Thank you for your further evidence but we are maintaining the Removal Directions'.

- if your EU treaty rights would be breached (EEA citizens have considerable freedom of movement within the EU). You do not have to be a EEA citizen yourself to enjoy EU treaty rights – there are cases when your partner's, child's or other family member's rights might prevent your deportation. You should seek legal advice on this: European law can be complicated, and there are important cases that have won particular rights in this area.

- for very exceptional mental health grounds (this will generally be argued under human rights grounds).

Age

- if you are being deported on the basis of a criminal conviction, but you were under 18 at the time of conviction (although UKBA may have grounds to use administrative removal if you do not have any leave to remain)

- if you are an unaccompanied asylum-seeking child, UKBA accept you are under 18, and there are not adequate reception arrangements in your country of origin (e.g. no social services)

Other legal proceedings

- if extradition proceedings are in place (if another country is demanding you are taken there to face criminal charges)

- If you are involved in certain other legal proceedings – for example, if you are bringing a civil case against the Secretary of State for compensation (e.g. for unlawful detention); you are a victim of another crime; certain family law proceedings. This may also apply if you have an ongoing legal challenge to an age dispute (when UKBA do not believe you are under 18 years old).

When the proper procedure hasn't been followed

- This is very important, as the deportation may be unlawful and therefore could be stopped – it's important to know what the proper procedure is in order to do this.
- A notice of intention to remove must be served.

- UKBA should not issue a decision letter of refusal of asylum/human rights claim (ISI51B) and removal directions (ISI51D) at the same time. *Note*: this refers to a refusal letter after a substantive consideration of your case. This will either be your initial asylum/human rights claim, or if further submissions were accepted to meet the fresh claim test, and your case was re-opened for consideration.
- There should be 10 working days (5 working days if in detention) between issuing the refusal letter and issuing removal directions.
- There is no such time period needed between issuing the refusal letter saying your further evidence does not meet the fresh claims criteria and issuing removal directions.
- Removal directions should always be sent also to the solicitor that is notified as working on the case. If any of these policies are not followed, or the notice periods below are not respected, deportation could be challenged.

Notice periods

- General removal and deportation cases – at least *72 hours* between notice of removal and removal itself. The 72 hours must include at least 2 working days
- Third-country cases or certified claims – *minimum five working days*
- Family return limited notice removals – *between 72 hours and 21 days*
- Charter flights – (because a judicial review is not enough to cancel removal directions) – *minimum of five working days*
- Exceptions: port cases where leave to enter is refused and removal/deportation will take place within 7 days (in non-asylum applications, where a visa may have been applied for but entry is refused); failed removal/deportation cases when removal directions are re-set within 10 days (for example, if someone is taken off a flight after resisting removal/deportation)
- For other exceptions, see www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/removal-directions-detainees?view=Binary.

Note: The 2010 exceptions that were brought in after disturbances in a detention centre (the exception that 72 hours notice was not needed if the 'safety of individuals' etc. was at risk) were found to be unlawful. Read about Medical Justice's victory in this case here: www.medicaljustice.org.uk/news/mj-news/1918-ukba-loose-their-appeal-in-court-of-appeal-against-the-medical-justice-win-on-zero-notice-removals-221111.html

See also UKBA handbook on Judicial Review and Injunctions (EIG Chapter 60): www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60_11012010.pdf?view=Binary

Legal Actions

Request that removal directions/deportation order is cancelled

You, or a lawyer, can request that UKBA cancel the removal directions or deportation

order. If you think you are in one of the situations described above when deportation should not take place, this is your first legal option.

Cancellation of removal directions or a deportation order may be requested on compassionate grounds, because you do not think the correct procedure has been followed, or because you have submitted further evidence. This is unlikely to be successful unless UKBA realise they have made a mistake that will clearly be challenged in court and want to retract the decision. As has been described, if you submit further evidence *after* removal directions have been issued, UKBA generally refuse the further evidence (as not meeting the fresh claim test) within a matter of hours and say the removal directions still stand.

Judicial review

If you are issued with removal directions or a deportation order, you may be able to apply for a *judicial review* of this. Judicial review is not an automatic right in England, Wales and Northern Ireland – you need to apply for permission to have your case heard. In Scotland there is no permission to apply stage: a petition is made to the Court of Session.

If you have permission for your case to be heard at the High Court, or have a date for a permission hearing for a judicial review, you should not be deported unless you are due to be deported on a charter flight, or the High Court directions state that High Court proceedings are not a bar to being deported.

If you are applying for a judicial review of, for example, the refusal and certification of your further evidence (UKBA say it is not a fresh claim), you may wait months for a hearing. If you are applying for a judicial review of removal directions, this will be dealt with urgently and you generally need to apply for an injunction at the same time to stop the flight.

An injunction

An *injunction* is an emergency legal measure to stop the flight (cancel the ticket). This needs to be applied for at the High Court, and generally it would be argued that someone should not be deported on a certain flight and no new removal directions should be issued until a legal process has been completed. For example, it may be argued that the refusal of a fresh claim by UKBA was unreasonable and an error of law, and that the flight should be cancelled while a judicial review decides if UKBA must reconsider the fresh claim).

If deportation is scheduled to be on a *charter flight*, a pending judicial review on its own will not be enough to delay the deportation, and an *injunction* will be needed.

Legal representation and the High Court

This area of law is very complicated and you should always seek legal advice on applying for a judicial review or injunction. Caseworkers and most solicitors cannot

appear on your behalf at the High Court, and so they will need to instruct a barrister to take on the case.

You need to have a strong case for a legal advisor to be able to get legal aid for your judicial review. If you are unrepresented or are being represented pro bono (for free, not under the legal aid system) and you lose your judicial review or application for permission for judicial review, you may be responsible for the costs.

If you are representing yourself, there is a Public Law Project leaflet that has important information on the process and costs: www.publiclawproject.org.uk/downloads/GuideToJRProc.pdf

Last-minute Campaigning Actions

With a few days left before a scheduled deportation date, it is still possible to take political action (such as speaking to your MP or contacting the Home Secretary) and do community campaigning. See 'Political Campaigning' and 'Community Campaigning'.

Airline action

It is very difficult to take effective action for an individual campaign when someone is booked on a charter flight, although there are ongoing direct actions against charter flights: http://stopdeportations.wordpress.com/

There is more scope for last-minute campaigning if someone is booked on a commercial flight. This is because the commercial airlines are more likely to respond if they think their business reputation is being damaged by being connected to deportations, and because of the pilot's legal power to refuse to carry a passenger if they think it would in any way put the flight at risk.

Broader campaigning

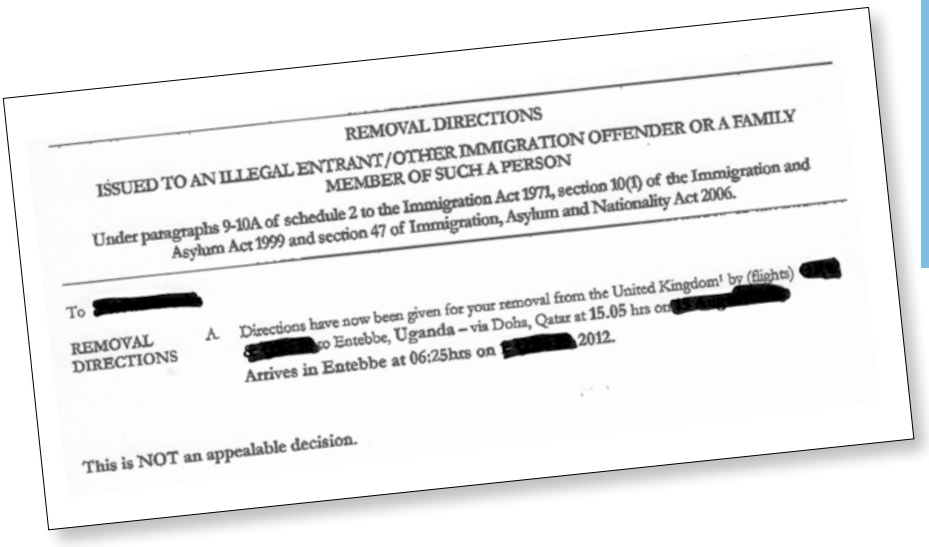
Some airlines have recognised that being involved in deportations makes them look bad. A broader campaigning aim is to get airlines to refuse to take part in these deportations all together – some airlines cite that they are legally required to accept the deportee if UKBA issue removal directions/a deportation order under immigration law, and it is UKBA not the airline carrying out the deportation.

*Consumer pressure***,** however, may still have an impact. Almost all the big airlines have Facebook pages and Twitter accounts. Individual campaign information can be posted on these sites (with Facebook pages, you generally have to 'like' the page before you can post comments, and not all the pages allow comments), so that all of their customers and potential customers can see the kind of activities (deportations, complicity in the violation of human rights) the companies are engaged in.

Individual campaigning

There have been clear examples of supporter action leading to an airline refusing to carry a person being deported This has often been in combination with the person facing

deportation speaking to staff as well (see below), and raising awareness of the campaign meant that staff were probably aware the individual may speak to them, and possibly made them more receptive to their explanation. If someone is issued with removal directions with one airline, the ticket is cancelled and the next removal directions are with another airline, this may mean that airline campaigning stopped the first deportation.



REMOVAL DIRECTIONS

ISSUED TO AN ILLEGAL ENTRANT/OTHER IMMIGRATION OFFENDER OR A FAMILY MEMBER OF SUCH A PERSON

Under paragraphs 9-10A of schedule 2 to the Immigration Act 1971, section 10(1) of the Immigration and Asylum Act 1999 and section 47 of Immigration, Asylum and Nationality Act 2006.

To [redacted]

REMOVAL DIRECTIONS

A Directions have now been given for your removal from the United Kingdom[1] by (flights) [redacted] to Entebbe, Uganda – via Doha, Qatar at 15.05 hrs on [redacted]

Arrives in Entebbe at 06:25hrs on [redacted] 2012.

This is NOT an appealable decision.

Figure 14 Removal directions

Step by Step Guide to Last-minute Airline Campaigning

1. Find out which airline is carrying out the removal. The flight number on the removal directions (see Figure 14) or notice of deportation arrangements will tell you this (e.g. flight KQ101 is Kenya Airways, flights beginning with ET are Ethiopia Airlines). You can put the flight number into an internet search engine to find out the airline. If the flight begins PVT, this is a private charter flight and you will not be able to contact the airline as UKBA will not reveal who the company is.

2. Find the contact details of the airline. You can find the main airlines used for deportations on the NCADC website here: www.ncadc.org.uk/airlines.html

3. Encourage friends, family and supporters to contact that airline by fax, email and phone calls or by post if there is time. If you think that emails are being blocked by an airline – perhaps after lots of supporters contact them with the subject header as the name of the person facing deportation – you can try changing the subject header.

Dear xxxx
(usually chief executive of the company)

Re: Flight KQ101 on 11 June 2012 20:00
Forced removal of Mohammed Ahmed

Mohammed Ahmed is due to be forcibly removed by the UK Border Agency from London to Zimbabwe on the above Kenya Airways flight on 11 June.

Mohammed is being flown to Zimbabwe against his will. As a well-known political activist, Mohammed is very likely to be imprisoned on return and his life will be in danger. Recent Human Rights Watch and Amnesty International reports have demonstrated that the government in Zimbabwe is stepping up its persecution of political opponents in the run-up to presidential elections. It is a very dangerous time to force people in need of protection back to Zimbabwe.

I respectfully request that Kenya Airways does not take this man onboard this flight.

If he is taken onboard, I would request that you make the captain and flight crew aware that a man is being taken against his will, and that force may be used by security guards. I would also request that you inform the appropriate medical officer, as many such forced removals result in injuries such as broken bones and bleeding. In some cases, people have required hospital treatment. In at least one recent case, a man being deported died onboard a British Airways plane as it prepared for take-off, as he was being restrained by security guards.

I ask Kenya Airways to look to your conscience, and refuse to take part in this injustice. Mohammed must be allowed to put his case to the UK immigration courts, to claim his legal right to sanctuary. You can play a part in righting a wrong, and granting sanctuary to this man.

Yours faithfully,

[Name]
[Address]
[Date]

Figure 15 Example text for a letter, fax or email to an airline company

4. It is better for lots of different people to contact the airline once or twice to show the widespread support for the campaign, and so that one person is not accused of harassing the airline.

5. You can begin contacting the airline as soon as removal directions/deportation order are issued, but you should step up the level of campaigning in the days leading up to the flight.

6. Politely explain to the airline that UKBA are trying to remove xxx against their will. Explain why they would be at risk if they are removed, or why it is a breach of their human rights to be removed, and why they need to stay in the UK. Keep it simple, clear and calm. Concern is better than anger, as the person you speak to will be more likely to respond sympathetically.

7. Remember you are not accusing the airline of deporting the person (UKBA are doing this), but are saying they should not be a part of this because of the reasons above, and because it is bad for their reputation. One way of saying it could be 'You are very worried for X's safety on the flight and after landing, and you are worried for the safety and comfort of other passengers, and for the reputation of xxx Airways'.

8. Ask that your concerns are recorded, and are passed on to the pilot/flight staff.

9. Feed back any response you get to the person facing deportation and their campaign group. It can be useful to set up a campaign email address so supporters can forward email replies or news directly to the campaign, and can copy the campaign group into the emails they send so you can get a sense of how many people have taken action.

10. Some supporters hold solidarity demonstrations near the check-in desk around the time other passengers would be checking in. They may wear campaign T-shirts or hand out leaflets, explaining what is happening and why other passengers should express their objections. This isn't illegal but security in airports is unsurprisingly tight and airports are private property, so think carefully about who should take part in these actions (people with insecure status/no British citizenship should be especially careful about getting involved in actions like this).

11. If the person facing deportation is taken to the airport, they can communicate their concerns directly to airline staff, the pilot and other passengers. This has been successful with both Kenya Airways and Air France. The pilot can take the view that they will not carry someone who does not want to travel, or that someone being taken against their will could put the flight in danger. Remember that the person facing deportation will be surrounded by security/escort staff.

Is airline campaigning always part of a public campaign?

While actions such as number 10 above – an action at the airport – are clearly part of a public campaign, contacting the airline doesn't have to be. A small but committed group of people can have a big impact when contacting airlines. If you don't want a public campaign but want some action taken, friends, family and community members who already know about your situation can be encouraged to contact the airline.

Does last-minute campaigning work?

Airline campaigning can work – there are frequently campaigns in which the airline refuses to carry someone. This cancellation of a flight can buy vital time for legal action to be taken.

Some airline staff tell campaigners that the person being deported simply needs to tell the airline that they are being carried against their will. Although this is clearly not always the case, it's likely that pressure from campaigners will alert the airline to the presence of someone being removed against their will, making them more receptive to the person's request not to be put on the flight.

It's very important to remember that stopping a flight is not the end of the fight. If legal action isn't taken, it's very likely that UKBA will just issue a new set of removal directions as soon as they can. Sustainable campaigning cannot just involve last-minute campaigning – it's essential that you start preparing a campaign at the earliest stage possible.

After Deportation

Mentally Preparing for Deportation

It is hard to allow yourself the space and the time to think about what will happen if you are deported. It is hard for both the person facing deportation and supporters/campaigners, because it can feel like admitting defeat before the fight is over. But some people may find it helpful to think through what might happen, and what they can do to prepare themselves.

The first step is to acknowledge that the campaign may not work and you may be deported. This can be a very scary thought, but having thought it through beforehand may mean you are better able to cope with the difficulties you may face after being deported.

One of the most difficult aspects of fear is not feeling in control. Some people find it helpful to think through exactly what is scaring them (so for example, taking the thought 'I am scared of being deported' and identifying exactly what you think will happen and what scares you about that). It can be useful to make clear in your head the things you can do something about, and plan for, and the things you have no influence over and so need to try and let go of. Some people feel better after telling someone else, or writing down, upsetting or fearful thoughts, as keeping these thoughts inside can be very stressful.

Think about coping mechanisms – you've already been through a lot, and have survived, so you have good emotional resources to draw on. What techniques did you

use before to cope? Who can you turn to? What can you do to relieve the emotional pressure of this time, and allow your mind – at least for a short period – to think of other things?

Some people find some of the following activities helpful:

- relaxation techniques
- exercise
- listening to music
- reading/watching television to take your mind off things
- prayer
- reading the Bible/Qur'an or other religious text
- talking to friends and family
- cooking
- writing, drawing or making something

If you are supporting someone facing deportation or are part of a campaign group, have you thought about what you would do if your friend is deported? It is common to experience an emotional low after the highly pressured campaigning period – how will you get through this? It is useful to have support networks in place (maybe you are an individual supporter or campaigner, but you have a group meeting to talk through the campaign, what you learned, and how you felt). It is likely that you will become involved in another campaign – what support mechanisms can you create to look after yourself emotionally, and the person you are supporting, through what may be a long campaign?

After an unsuccessful campaign, it may be helpful to allow yourself a little time to think through what has happened and feel sad or angry about it. Some people find getting straight into a new campaign more helpful – but make sure you have the stamina to do this, and are not going to burn out. Not looking after yourself will not help you, or the person you are fighting for: anti-deportation campaigning is a long fight. It can be beneficial to share what you've learned and how you felt by writing about it – other individuals, and campaign groups might like to hear your experiences – and it may be useful to raise public awareness about the injustices of the asylum and immigration systems.

Practical Preparations

It may be helpful to think through some basic questions:

- What will happen to you at the airport in your home country? It is common for deportees to have to pay bribes to immigration staff. Is there a way of preparing for the return, such as speaking to other people who have been deported to your home country? Maybe an NGO in your country has more information.

- There is a directory of groups working on human rights across the world here, and you or a supporter might like to contact them for advice: http://frlan.org/node/270

- Can someone meet you at the airport? This may be a family member or someone from your community. If you don't think this is safe, there may be an NGO who could send someone to meet you (make sure you feel you can trust this organisation). You could look at the directory above for ideas.

- If you don't think it's safe for a family member or friend to meet you at the airport, you could arrange to meet them somewhere safe. You may want to use a supporter as a go-between to increase security.

Keeping in Touch

It's very common to lose touch with someone after they have been deported. But if you can keep in touch, do! As well as the obvious importance of finding out how a friend is, knowing what happens after someone is removed is crucial for fighting future campaigns.

- Set up an email account if you don't already have one. If you think it's safe, get in touch with a supporter back in the UK (remember that no email account is entirely secure).

- Supporters may want to give friends pre-paid phone cards to help them get in touch after they've been deported.

- If you hear from a friend who has been deported, you may want to share this news with people who supported the campaign (check with the person first that they are happy for their news to be passed on).

TESTIMONY

Catherine Gladwell of the Refugee Support Network (www.refugeesupportnetwork.org), which supports young asylum seekers and refugees in London and abroad, says this about keeping in touch after someone has been deported:

Doing all you can to keep in touch with someone who has been removed is really important! We have found that email is generally the best way to do this, but occasionally it is also possible to speak by telephone or Skype. Being in touch with someone from the UK can provide significant emotional support – young people removed to Afghanistan have told us that it helped to have someone from the UK to talk to. Sometimes it is also possible to provide practical support, such as useful addresses and contacts. Finally, simply documenting the story of what happens to the person you have been supporting once they are removed helps to create a much needed evidence base of life post-removal.

At RSN we are currently collecting these stories, so please do get in touch if you have a story that can be shared.

Continuing the Fight

If you are in touch with a friend who has been deported, keep a record of contact. UKBA will always claim they only deport people who are not in need of protection. It's really important that we challenge this, as we know this is not always the case. Justice First has collated this evidence in a report about what happens to people returned to DR Congo: http://justicefirst.org.uk/?p=448 . Evidence and reports like this can be used to counter country guidance that says it's safe to return refused asylum seekers to certain countries.

Fahamu Refugee Legal Aid network is trying to build a global coalition of groups working against deportation that can share information about what happens when someone is deported to or from their country, and that can provide support to each other. The website (in the process of being built) is here: http://frlan.org/content/deportation-failed-asylum-seekers-0

There may be legal options once you're deported. If your asylum claim was certified, you have the right to appeal out of the UK. Your legal advisor in the UK may be able to continue to fight your case. You should speak to your legal advisor *before* you are deported to see if they are able to do anything after deportation.

GLOSSARY

Administrative removal
An enforced removal when you don't have any leave to remain; if your application for leave to remain – including claiming asylum – has been refused; or you did have some form of leave to remain/visa but it has now expired. It differs from a deportation in legal terminology, as a deportation will normally be following a criminal conviction.

Appeal
An appeal, in the context of an asylum and immigration case, is a challenge to a decision, such as a refusal of an asylum application. In an appeal you (or your legal representative) explain why you think the decision is wrong. This may be by providing evidence, using legal arguments, or explaining how procedure has been wrongly followed or how what you said or wrote has been misunderstood. UKBA may also appeal a decision, for example if you are successful in an appeal.

Appeal rights exhausted
If you are 'appeal rights exhausted', you have few or no legal options left in your case. UKBA usually send you a letter to inform you that you are 'appeal rights exhausted' after your application has been refused and you have unsuccessfully tried to appeal this decision in the First-tier Tribunal. There may still be legal options for pursing your application, however (aside from submitting new evidence to be considered as a fresh claim): the Upper-tier Tribunal; a judicial review; or other higher courts. Most cases do not succeed in reaching these higher courts, however, so 'appeal rights exhausted' is taken to mean the common legal routes have been tried and have been refused. UKBA will view you as having no right to stay in the UK at this point, will encourage you to leave the country, and are likely to detain you and issue removal directions.

Article 3
Article 3 of the European Convention on Human Rights (which is part of UK law under the Human Rights Act) says that 'No one shall be subjected to torture or inhuman or degrading treatment or punishment'. You can make a claim for protection based directly on Article 3 as states are prohibited from returning a person to a country where you may suffer a violation of your rights under Article 3. It is an absolute right, meaning that it should not be violated under any circumstances.

Article 8
Article 8 of the European Convention on Human Rights (which is part of UK law under the Human Rights Act) states that 'Everyone has the right to respect for his private and family life, his home and his correspondence.' This right is qualified, which means there are certain situations when the state (the UK government) can interfere with this right if it is 'necessary' and 'proportionate' to do so 'in the interests of the permissible aims of the state'. Immigration control has been determined a permissible aim of the state, and if UKBA decide and the courts agree that your right (and your family's right) to private and family life in the UK does not outweigh the 'interests of national security, public safety or the economic well-being of the country … the prevention of disorder or crime … the protection of health or morals, or for the protection of the rights and freedoms of others', they can lawfully deport you without breaching your Article 8 rights.

Article 31 defence
The Refugee Convention of 1951 acknowledges the danger for some people of using a real passport in their name, and states that asylum seekers should not be punished for this if they have a good reason for using false documents:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. (Article 31)

Unfortunately, many asylum seekers are prosecuted by the UK government for the use of a false passport. They may be represented by lawyers who specialise in criminal law and do not know this Article 31 defence, so may wrongly advise their clients to plead guilty: the evidence of the crime is clearly there, and pleading guilty should lead to a shorter sentence. Asylum seekers should, however, be getting advice about the Article 31 defence (which allows you to plead not guilty).

Asylum interview
See Substantive interview.

Asylum seeker
If you have claimed asylum in the UK, but have not yet had a decision on your case, you are an asylum-seeker. In legal terms, you are only a 'refugee' once your asylum claim has received a positive decision.

Asylum support
If you are a destitute asylum seeker, you may be able to receive accommodation and/or subsistence (financial) support from the UK Border Agency. It is sometimes referred to as 'NASS support' because it used to run by the National Asylum Support Service. If your asylum claim has been refused and you have no ongoing appeal, you may be able to apply for Section 4 support (see below). If you have additional care needs (due to serious illness or disability), you may also be able to get support from the local government authority (social services/housing services).

Asylum seekers in general do not have the right to work. If you have been waiting for more than a year for a decision on your claim, you may be entitled to a work permit, but the government has made the categories of permitted work very restrictive. Asylum seekers are not entitled to mainstream benefits, unless they have additional care needs or are a young person looked after by social services.

Automatic deportation
This is the enforced removal of someone after a criminal sentence of at least 12 months or a period of imprisonment for a particularly serious offence, under the UK Borders Act 2007. UKBA do not need a court recommendation (at the time of sentencing) for this type of deportation. There are human rights grounds that can prevent automatic deportation.

Bail
Immigration bail is a legal procedure available to any person who has been detained by UKBA in a detention centre for seven days or more. It is an application to a court for release, usually under certain conditions.

Barrister
Barristers are specialist legal advisers and court room advocates. In England and Wales, you may be represented by a barrister at the immigration tribunal, and if your case goes to the higher courts, it will usually be a barrister speaking in court in support of your case.

Case law
Case law is the body of available writings explaining the verdicts in a case, and is used to explain the meaning of laws and policy. By looking at the outcomes of previous cases that deal with a particular aspect of the law or policy (the 'case law'), it can be decided what is lawful in a particular situation.

Case owner
The UKBA uses 'case owner' to refer to an official within its New Asylum Model who is responsible for an asylum case throughout the process, from application to the granting of status or removal. Their roles include deciding whether status should be granted, handling any appeal, dealing with asylum support, integration or removal. After your asylum interview, you should know who your case owner is and how to contact them.

Case Resolution Directorate
The case resolution process was set up to deal with unresolved cases for people who had claimed asylum before April 2007 (often referred to as 'legac' cases'). Many people whose cases were being dealt with under legacy waited many years for a decision. Although the directorate ceased operations in 2011, there are still people who claimed asylum before 2007 who have not yet had a decision on their case. In general, a positive decision in a case dealt with under legacy resulted in Indefinite Leave to Remain, based on length of time in the UK. Asylum risk has not been considered in these cases. Not all cases handled by the Case Resolution Directorate were decided positively, and there is no right of appeal against a negative decision. You will need to speak to a legal advisor about options such as judicial review if you receive a negative decision without good reasons. Most cases where the applicant has a criminal conviction are refused.

Caseworker
Your legal representative may be a caseworker. They will not necessarily have qualified as a solicitor, but will have qualified as an immigration caseworker under the OISC/LSC regulations (who regulate immigration legal advice) and so are permitted to give legal advice on asylum, immigration and relevant areas of human rights law.

Certified
If your asylum or human rights application is certified under Section 94 of the Nationality, Immigration and Asylum Act 2002, you do not have the right to appeal in the UK. The power can only be used in cases where the claim is considered to be 'clearly unfounded', either on a case-by-case basis, or because your country of origin is seen as generally safe with effective mechanisms of protection.

If your further submissions (which you wish to be considered as a fresh claim) are certified under Section 96 of the Nationality, Immigration and Asylum Act 2002, you also do not have the right of appeal. This use of this power effectively says that UKBA do not consider the evidence you have submitted to be new (and relevant to your case), therefore any decisions on this material could have been appealed if you had submitted it while your initial claim was considered. With both of these certifications, the decision to certify can be challenged by judicial review.

Charter flight
Private flights used to deport people in large numbers. There will only be deportees and security staff on the flight. UKBA refuse to release the names of companies used for these flights, and do not tell you which airport you will be flown from. If you are going to be deported on a charter flight, the flight number on your removal directions or deportation order will begin 'PVT', meaning private.

Constituency
A constituency is an electoral district. Residents of a constituency with the right to vote elect a member of parliament or assembly to represent that district. You can find out which constituency you live in, and who represents you, at this website: http://findyourmp.parliament.uk/

Councillor
Local councils are run by elected councillors who are voted for by local people. Councillors are responsible for making decisions on behalf of the community about local services, for example rubbish collection and leisure facilities, and agreeing budgets and Council Tax charges.

Counsel
This word may be used to describe a barrister in England and Wales, or an advocate in the Scottish legal system.

Country guidance case
These are asylum appeals chosen by the immigration tribunal to give legal guidance for a particular country, or a particular group of people in a particular country. The decisions in these cases are assumed to be based on the best possible evidence about that country at that time. Until there are significant changes in that country, a country guidance decision sets out the law for other asylum-seekers from that country.

Court of Appeal
The Court of Appeal is the highest court within the higher courts (known as the Senior Courts, which also includes the High Court and Crown Court). If an asylum or human rights case has been refused by the Upper Tribunal, in some circumstances it may be possible to challenge the decision by appealing to the Court of Appeal. See 'Higher Courts' section of the Toolkit.

Court of Session
The Court of Session, Scotland's supreme civil court, sits in Parliament House in Edinburgh as a court of first instance and a court of appeal. Cases decided by the Court of Session can be appealed at the UK Supreme Court. The court is divided into the Outer House and the Inner House. The Outer House can hear judicial reviews, like the High Court in England, Wales and Northern Ireland. The Inner House is an appeal court, like the Court of Appeal in England, Wales and Northern Ireland.

Deportation
Globally, 'deportation' refers to any enforced immigration removal. In the UK, the term now has a specific legal meaning, and usually refers to the enforced removal of someone who is not British and has served a criminal sentence in the UK. In most non-legal contexts in the UK, and in this Toolkit, the term deportation is used to refer to any enforced removal unless specifically stated.

Deportation Order
The legal document issued by UKBA that requires someone to leave the United Kingdom. Someone issued with a deportation order (usually after completing a criminal sentence in the UK) is prohibited from re-entering the country for as long as it is in force. Once a decision to deport is made, a Deportation Order is issued and then Notice of Deportation Arrangements will be issued as well.

Destitute
Destitute migrants are those without an income (not allowed to work or no access to financial support), and are often homeless. Access to services like medical care and education can be very difficult if you are destitute. Still Human Still Here, which campaigns against the destitution of refused asylum seekers, describes the situation like this:

In the UK, many rejected asylum seekers are living from hand to mouth, with all avenues to a normal life blocked. Most live in abject poverty relying on others to survive, sometimes going hungry and sleeping in the streets. Many appear to have given up hope of ever being able to live a normal life and some have lost the will to live.

Detention centre
UKBA changed the name of detention centres – where people subject to immigration control can be held – to 'immigration removal centres'. As many detainees are held for long periods of time without a prospect of removal, it is not an accurate term, and NCADC continues to use the term detention centre. Short-term holding facilities are also detention centres. You can find a directory of detention centres here: www.ncadc.org.uk/detentioncentres.html

Direct action
Physical action to attain an objective through physical means, as opposed to only taking matters through procedural, court or parliamentary means. In the anti-deportation context, it may range from public demonstrations and lobbies to actions designed to obstruct an individual or charter deportation.

Discrepancies
UKBA often refuse asylum applications because of discrepancies. This is when there is a small difference in a story which you have been asked to tell on different occasions, such as saying in your screening interview you escaped from prison on a Monday evening, and later on saying in your asylum interview that you escaped on a Tuesday morning.

Discretionary leave
A form of leave to remain in the UK that is granted outside of the immigration rules. At the time of writing, it may be granted to unaccompanied asylum seeking children who cannot be returned; people excluded from refugee status or humanitarian protection but whose Article 3 rights would be violated if they were returned; and people who succeed in making a human rights claim based on Article 8. The government has, however, proposed wide-ranging changes and there may in future be few circumstances where this leave is granted.

Discretionary power
The power the secretary of state (the Home Secretary) has to stop a removal/deportation or grant someone leave to remain outside of the immigration rules.

Discrimination (compared to persecution)
According to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, discrimination may not normally amount to persecution, but a pattern of discrimination or less favourable treatment could, on cumulative grounds, amount to persecution and mean that refugee status is needed. Serious restrictions on the right to earn a living, the right to practise your religion, or access to available educational facilities might fall under this category.

Escort staff
The private security guards that carry out enforcement operations (detention and removal) for UKBA. There are many concerns about UKBA subcontracting out these operations to private companies. For more information on this, see NCADC blog-post and report: http://ncadc.org.uk/blog/2012/01/enforced-removal-contracts-the-abusive-end-point-of-a-broken-immigration-system/

European Convention on Human Rights
An international treaty to protect human rights and fundamental freedoms in Europe. It is incorporated into UK law and so the UK government is obliged to protect the rights covered in the convention.

European Court of Human Rights
The European Court of Human Rights in Strasbourg was established by the European Convention on Human Rights and hears complaints that a state (if it has signed the convention) has violated the human rights protected in the Convention and its protocols. Complaints can be brought by individuals or other states who have signed the Convention, and the Court can also issue advisory opinions.

European Court of Justice
This court in Luxembourg is officially called the Court of Justice of the European Union and is the highest court in the European Union in matters of European Union law. It is tasked with interpreting EU law and ensuring its equal application across all EU member states.

Failed asylum seeker
This term is used to describe a person whose asylum claim has been refused. Because of its negative connotations – and the fact it is so often the system that has failed not the asylum seeker – many people prefer to use the term refused asylum seeker instead.

False instrument
The legal term used for a false passport or identity papers.

First-tier Tribunal
This is the first level of the immigration tribunal (court) at which you can appeal a negative asylum or immigration decision.

Foreign national prisoners
Any non-British citizen under the authority of the criminal justice system (remanded, convicted or sentenced). The term (which is not a legal one, but has been adopted by politicians and the media) also refers to foreign nationals detained under immigration powers after they have served their sentences, either in prison or detention centres; and foreign nationals released into the community by court service on bail or by UKBA while their deportation is considered.

Fresh claim
A fresh claim is when further evidence submitted after an asylum or human rights claim has been refused and any appeals lost is decided to meet rule 353 of the Immigration Rules. The rule states that

The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content: (i) had not already been considered; and (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

Further submissions
Further submissions can be given to UKBA at any point after an asylum claim or human rights application is refused, but a fresh claim is only when appeal rights are exhausted. You may hear further submissions referred to as 'further representations' or 'further evidence'.

High Court
The High Court of Justice (usually known simply as the High Court) is also known as the High Court of England and Wales and abbreviated by EWHC. The High Court deals at first instance with all high value and high importance cases, and can judicially review (assess the reasonableness and legality of) the decisions of lower courts.

Home Office
The government department for policies on immigration, passports, counter-terrorism, policing, drugs and crime. UKBA is a department of the Home Office. The Home Office is headed by the Home Secretary.

Humanitarian protection
This type of protection comes from the Qualification Directive, which is the interpretation of the Refugee Convention in European Law. The relationship between the Refugee Convention, the Qualification Direction, and the European Convention on Human Rights is complicated. Broadly speaking, Humanitarian protection may be granted when there is a risk of unlawful killing, some uses of the death penalty, breaches of Article 3 and when there is a 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

Immigration removal centre
The official name for a detention centre (distinct from short-term holding facilities).

Immigration Rules
These are published by the Home Office and set out the rules which immigration applications will have to follow to be successful. They are frequently amended and at the time of writing, the government has proposed changes that will have a huge impact on families and partners. See the Migrants' Rights Network (MRN) briefing on the changes: www.migrantsrights.org.uk/files/MRN_Family_migration-briefing-June_2012_0.pdf and for the latest updates on family migration and the immigration rules, speak to your legal advisor, or contact MRN (www.migrantsrights.org.uk/) and the Joint Council for the Welfare of Immigrants (www.jcwi.org.uk/).

Indefinite leave to remain (ILR)
ILR is leave to remain without any time limit, and is a form of settled status. It can be granted at the later stages of various immigration applications (such as spouse visas) and after the necessary renewing of discretionary leave (which is usually granted for 6 months or 3 years). ILR used to be granted if an asylum claim was recognised, but this has now been replaced by 5-year refugee status (after which you can apply for ILR). ILR was also generally the leave to remain in the UK granted to successful cases in the legacy/Case Resolution Directorate programme. There is a route to British citizenship after the granting of ILR.

Injunction
An injunction prevents an illegal act or enforces the performance of a duty. It is sometimes granted at the permission stage of the proceedings as a temporary order made before the court considers the case fully at the final hearing – for example, an injunction may be granted to stop your deportation allowing time for the High Court to hear your judicial review of UKBA's refusal of your fresh claim.

Judicial review
Judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body (in asylum and immigration, this is usually UKBA). It is a challenge to the way in which a decision has been made. It is not really concerned with the conclusions of that process and whether those were 'right', as long as the law has been correctly applied and the right procedures have been followed.

Lawyer
In the UK, this term can be used for anyone qualified to give legal advice (which could include a caseworker, solicitor or barrister).

Legacy cases
See Case Resolution Directorate.

Legal advice
There are strict rules on who can give (legal) immigration advice, under the 1999 Immigration and Asylum Act. Section 82 of that act defines what is meant by immigration advice – 'advice which relates to a particular individual', though later case law has expanded this definition. Section 84 of the Act makes it a criminal offence for any who is not qualified and regulated to give immigration advice. You should check that your legal advisor is qualified to give individual advice on your case, and if you are not qualified as a legal advisor you should not give anyone legal advice.

Legal aid
Legal aid helps people with no or a low income pay for the cost of getting legal advice. The government allocates funds for this purpose, and the legal aid fees are paid directly to the legal advice provider. The amount that can be paid to legal advice providers, and the kind of work covered by this system, has been significantly reduced. Find out more here: http://soundoffforjustice.org/legal-aid

LSC
Legal Services Commission, responsible for the operational administration of legal aid in England and Wales.

Mayor
Council leader, elected by other councillors or in some places directly by the people that live in the locality.

McKenzie friend
People, usually volunteers who are not qualified to give legal advice, who work for legal advice or legal support projects, usually supervised by immigration specialists. They are not usually able to represent you but can assist you in gathering evidence to support your case, preparing witness statements and/or written legal arguments. If they support you at a court hearing, they cannot answer questions for you but can assist you in making notes of what happens at the hearing, and in some cases also giving you assistance in making submissions to the court.

MP
Member of parliament. A person elected to represent the people of a certain area of the UK in the lower house of UK parliament, the House of Commons.

MP's surgery
One-to-one meeting where an MP meets with a constituent(s) to discuss their concerns. Usually held at the MP's local office (where their constituency is, not at Westminster) on a regular day and at a regular time.

MEP
A member of the European Parliament. MEPs stand for a particular political party (or are independent) and are elected by region in the UK. They cannot directly influence local affairs and do not have power within the UK parliament.

MSP
A member of Scottish Parliament. Scotland is part of the United Kingdom, and elects MPs to the UK parliament, but also has a Scottish Parliament. The Scottish government has powers in areas such as health, education and justice, but not immigration and asylum. These matters are 'reserved' to the UK parliament, meaning the Scottish government and members of the Scottish Parliament can have no influence on the law.

NAM
The New Asylum Model (NAM) was introduced by the UKBA in April 2007 for all new asylum claims. NAM entails a 'case owner' from the UKBA who is responsible for processing the application from beginning to end.

NASS support
See Asylum support.

Non-state actor
The legal term used to refer to those persecuting you if they are not the state, working for the state, or a group ruling in place of a formal government. A non-state actor may be a member of your family, a gang, religious or political opponents who are not part of the state but who will persecute you. To qualify for refugee status because you fear persecution from a non-state actor, you must show that you cannot be protected from this persecution by the state/your government.

Notice of Deportation Arrangements
The document issued by UKBA to someone who is subject to a deportation order. The letter will give the details of the intended deportation flight (flight number, country, date and time).

Objective evidence
General information about the situation in your country from reliable sources such as human rights organisations or trusted media sources; or an expert statement on your country or situation.

OISC
Office of the Immigration Services Commissioner, which regulates immigration advisers.

Operational guidance notes (OGNs)
Produced by UKBA, they provide a brief summary of the general, political and human rights situation in a country and describe common types of claim. They give guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave.

Overstayer
A person who was allowed into the UK for a limited period but who has remained longer than the time allowed without permission from the Home Office or under the Immigration Rules.

Persecution
Persecution is the systematic mistreatment of a person or a group. Under the Refugee Convention, persecution has a distinct meaning that means serious, targeted mistreatment that goes above the level of discrimination.

The definition of persecution which UKBA will use when deciding on asylum claims comes from the Refugee or Person in Need of International Protection (Qualification) Regulations 200 (though there is case law which allows for a broader definition):

Act of persecution

5.— (1) In deciding whether a person is a refugee an act of persecution must be:
(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms(1); or
(b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).

(2) An act of persecution may, for example, take the form of:
(a) an act of physical or mental violence, including an act of sexual violence;
(b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
(c) prosecution or punishment, which is disproportionate or discriminatory;
(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7 [exclusion clauses]

(3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.

Pro bono
In law, the term pro bono refers to legal work that is performed voluntarily and free of charge. The lawyer does not seek any payment for the work.

Refugee
The word refugee has several meanings in international contexts, and in popular usage. In legal terminology in the UK, a refugee is someone whose asylum claim has been recognised under the Refugee Convention and who has been granted status (leave to remain).

Refugee Convention
The 1951 Convention Relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states. The Refugee Convention defines a refugee as someone

who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The UK is signatory to the Refugee Convention, which is translated into European law through the Qualification Directive.

Removal Directions
The legal document issued by UKBA to tell you the date, time, and flight number of an enforced removal.

Rule 35
Detention Centre rule 35 requires detention centre doctors to report to UKBA 'any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention'.

Rule 39
A Rule 39 application is an attempt to get the European Court of Human Rights (ECtHR) to make a binding interim measure on your case – this means a temporary measure before a long-term decision is made. One of the interim measures the Court can put in place is the suspension of removal directions.

Screening interview
This is the initial interview you will have after claiming asylum. In this interview, the UK Border Agency takes your personal details and information about your journey to the UK, and checks if you have claimed asylum in the UK or Europe before. They will give you a reference number for your application.

Secretary of state
A cabinet minister in charge of a government department. In most cases, the secretary of state referred to in legal documents and UKBA correspondence will be the Home Secretary, the minister responsible for the Home Office. When decisions are made in your case, it is said that the 'secretary of state' has decided, even though they will not have looked at your case personally. Similarly, appeals against a UKBA decision will often be '[your name] v SSHD' (secretary of state for the Home Department).

Section 4 support
Accommodation and financial (non-cash) support available for some refused asylum seekers. It is called Section 4 because it is given under the terms of section 4 of the Immigration and Asylum Act 1999.

To receive Section 4 support, you must prove you are destitute and meet one of the following UKBA criteria:

- you are taking all reasonable steps to leave the UK or you are placing yourself in a position where you can do so [you have signed for voluntary return]
- you cannot leave the UK because of a physical impediment to travel or for some other medical reason; or
- you cannot leave the UK because, in the Secretary of State's opinion, no viable route of return is currently available; or
- you have applied for a judicial review of your asylum application and have been given permission to proceed with it; or
- accommodation is necessary to prevent a breach of your rights within the meaning of the Human Rights Act 1998.

See: www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/

Section 95 support
See Asylum support. It is called section support because section 95 of the Immigration and Asylum Act 1999 provides for the provision of support for asylum seekers.

After the asylum decision, if you are granted leave to remain your support will stop 28 days after you receive the decision. After that you are allowed to work or claim welfare benefits such as Income Support or Job Seeker's Allowance. If your asylum application is refused and your appeal was dismissed, you will no longer be entitled to NASS support and it will stop 21 days after you get a negative decision in an appeal.

Short-term holding facilities
A detention centre where you can be held for less than seven days, before being transferred elsewhere. You may be held here immediately on being detained, for example, before being transferred to another detention centre for a longer period. Pennine House in Manchester, for example, is a short-term holding facility.

Solicitor
A solicitor is a lawyer who traditionally deals with any legal matter including conducting proceedings in court. In immigration cases, it is normally a barrister who will take a case to the higher courts (above the immigration tribunal).

Status
Immigration status could include: discretionary leave, indefinite leave to remain (which replaced the previous exceptional leave to remain), humanitarian protection, or refugee status.

Stayed deportation or case
To halt a deportation or judgment on a case, pending a further decision. A deportation might be stayed while a case is reconsidered, or a case may be stayed while the courts wait for the decision in an important case (usually in the higher courts) to guide their judgment.

Substantive interview
The 'substantive interview', or 'asylum interview', is held after your screening interview. This is when you describe to the UKBA case owner what has happened to you and what it is you fear in your own country. The interview will take several hours, sometimes all day.

Supreme Court
The highest court in the UK (the House of Lords used to fulfil that role).

Temporary admission
Temporary admission (also known as temporary release) is a status which allows a person to be lawfully in the UK without them being detained and before they have been granted leave to remain. Most people who claim asylum are given temporary admission while a decision is made on their case. The document that shows you have temporary admission is called an IS96. If you have been detained, you can apply for temporary admission from detention (which usually has less conditions attached to it than bail).

Ticket
This is how some people refer to removal directions or notice of deportation arrangements – if they have a date, time and flight number for enforced removal.

Tribunal
Asylum, human rights and immigration appeal hearings take place in a court called a tribunal. The Asylum and Immigration Chamber is independent from UKBA. There is a First-tier and an Upper-tier Tribunal.

Upper-tier Tribunal
This is part of the Immigration and Asylum Tribunal. If your appeal is refused at the First-tier Tribunal, you can apply for permission to appeal at the Upper-tier Tribunal if you think the First-tier Tribunal made an error in the way they applied the law in deciding your case. The Upper-tier Tribunal also exercises powers of judicial review in certain circumstances and enforces decisions made by the First-tier Tribunal.

UKBA
The UK Border Agency. The UK Government Home Office department responsible for handling all applications regarding immigration, nationality and asylum, as detention and removals/deportations (although they subcontract the running of detention centres and removal operations out to private companies). Formerly known as Border and Immigration Agency (BIA) and before that Immigration and Nationality Directorate (IND).

Visa
A visa is a document which gives someone permission to travel into a specific country and stay there for a set period of time.

Voluntary return
A refugee or asylum seeker may decide to leave the UK and return to their country of origin. If you return to your country of origin, you may lose permission to stay and a right of entry to the UK. At the time of writing, Refugee Action runs the voluntary return programme (with the International Organisation for Migration still operating the scheme in a few countries such as Afghanistan). When you receive a refusal letter from UKBA, it will suggest you should discuss voluntary return with Refugee Action.

Many destitute refused asylum seekers sign up for voluntary return in the hope of receiving some financial assistance, as they have no other way to live and they do not think it is actually safe for them to return home. Some refused asylum seekers sign for voluntary return because they cannot bear to be destitute and disbelieved any longer.

Vouchers

If you are on Section 4 support (see above), you may hear the financial support referred to as 'vouchers'. Although the voucher scheme has now been replaced by a card with the weekly financial support put on, people still use the term vouchers. You do not get financial support in cash if you are on Section 4 support.

Witness statement

A witness statement is a document recording the evidence of a person, which is signed by that person to confirm that the contents of the statement are true. A statement should record what the witness saw, heard or felt.

Campaigning TOOLKIT

An aid to understanding the asylum and immigration systems in the UK, and to campaigning for the right to stay

First and foremost, we aim to help migrants understand the asylum and immigration systems, to know their rights, and to be as well-equipped as possible to make a successful application. In the case of a refusal, we hope the Toolkit enables migrants to know what a campaign is, whether it's right for them, and to be at the centre of the campaign and of all of the decisions made. We want to help migrants' voices be heard.

Most of the Toolkit is written addressing a person going through the process, but is intended to be used by anyone who finds it useful in supporting migrants through anti-deportation campaigns. You or your organisation may be supporting migrants but be unable to get directly involved in individual campaigning work. The Toolkit contains information to assist people who don't have an organisation backing their campaign, information for signposting to appropriate campaign support, and may help you understand the process the person you're supporting is trying to navigate. The Toolkit explains what different campaigns may involve, so that more people are able to make an informed decision about whether they want a campaign.

Many people who campaign for justice have supporters from their community working alongside them. They may be from the same country of origin, social group, religious group, geographical area, or simply people who care about human rights. The Toolkit is also designed to help supporters, and there are particular sections directed to the needs of those in a supporting role rather than experiencing the process directly.

NCADC
National Coalition of Anti-Deportation Campaigns