The Right to Remain Toolkit is a guide to the UK immigration and asylum system. It gives an overview of the legal system and procedures, with detailed information on rights and options at key stages, and actions you can take in support of your claim, or to help someone else.

Understanding the asylum and immigration system, and your own legal case, is more important than ever. Cuts to legal aid (free, government-funded legal representation) mean that more and more people have no lawyer at all and are forced to navigate this very complicated system without legal representation.

Take an active role in your legal case. **The Right to Remain Toolkit will help you do this.** Even if you have a lawyer, it's important to understand your own legal case – this is your case and your life and you need to keep track of what is happening and whether the lawyer is doing the things they should be. You will also learn what you and your supporters can do to help strengthen the legal case

Don't try and get through this alone. Have good people around you who can support you. With people standing by you in solidarity, you are more likely to be able to keep going, and keep fighting for justice in your case.

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Your Legal Case

Even if you have a lawyer, it's important to understand your own legal case – this is your case and your life and you need to keep track of what is happening and whether the lawyer is doing the things they should be.

Know your rights at different stages of the system, and know what the options are for the stage you are at. Knowing what could come next will help you prepare.

Take an active role in your legal case. Don't passively accept the decisions of the Home Office and the courts if you think they are wrong.

Terminology - what is a lawyer?

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

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

A **solicitor** is a lawyer who traditionally deals with any legal matter including conducting proceedings in court. In immigration/asylum cases, it is normally a barrister who will take a case to the higher courts or who will represent you in court in the case of a judicial review.

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. In Scotland, the lawyer who represents you at higher courts is called an **advocate**.

Legal aid

Legal aid helps people with no or little 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.

In the UK, legal aid is available for asylum claims, but is no longer available in England and Wales for legal advice or representation in non-asylum immigration matters. In terms of legal aid, an "asylum claim" also includes humanitarian protection claims (on the basis of a real risk of serious harm/indiscriminate violence) and claims based on Articles 2 and 3 of the European Convention on Human Rights (the right to life; and the right not to be

subject to inhuman, degrading treatment/torture).

Legal aid is still available for non-asylum immigration cases in Scotland and Northern Ireland.

This means that if your immigration case is not an asylum case and you are in England or Wales, you cannot get legal aid advice or representation. You can no longer get legal aid, for example, for family migration cases, including family reunification applications under the Refugee Convention; matters around student visas; or visitor visas. If you are facing deportation, you cannot get legal aid if your case does not have an asylum/Article 3 element. You cannot get legal aid for Article 8 cases - the right to family and private life.

Exceptions in England and Wales

There are some non-asylum immigration cases that may still get legal aid: certain cases where there has been domestic violence; cases involving Special Immigration Appeals Commission (SIAC) proceedings; and certain immigration applications for leave to enter or remain in the UK made by victims of trafficking.

You can also apply for exceptional legal aid funding if you believe your human rights or European Union rights would be breached if you do not have legal aid. The Public Law Project provides information and assistance in some cases: http://www.publiclawproject.org.uk/exceptional-funding-project

Legal aid for detention matters

There is still legal aid available for challenging immigration detention - for bail, temporary release/temporary admission (including challenges to conditions applied on release) and challenging unlawful detention. People in detention in England and Wales cannot get legal aid, however, for their substantive immigration cases (non-asylum) if they are being represented by a lawyer based in England or Wales.

Legal aid for asylum support

In asylum support cases, legal aid for challenging a refusal of support is only available in cases where both accommodation and subsistence (money or pre-paid cards) are applied for. If you apply for asylum support and do not apply for accommodation (because you can live with someone else and do not want to be forced to move anywhere in the UK under their 'no choice' policy), you will not get legal aid to challenge a refusal to give you support. You will also not get legal aid for representation at the First-tier Tribunal for asylum support appeals.

Legal aid for judicial review

Recent cuts mean it is now much more difficult to get legal aid for a judicial review.

If you have had an appeal hearing or determination on the same, or substantially the

same, issue within 12 months and you lost the appeal, legal aid for a judicial review will not be available.

The government has brought in measures in England and Wales that mean, in general, legal aid lawyers only get funding for working on a judicial review if permission to proceed with that judicial review is granted. The Legal Aid Agency *can* allow legal aid for work done before permission is granted for a judicial review, but this is very hard to get. If you want to find out more, read this Legal Aid Handbook summary: http://legalaidhandbook.com/2015/03/26/moj-re-imposes-conditional-payments-for-judicial-review/

This means that legal aid lawyers taking on a judicial review are taking a risk, and are only likely to do this if they feel you have a strong case. The lawyer can receive the legal aid funding for the work done pre-permission stage if permission is subsequently granted, but if permission is refused that work will remain unpaid.

Moving from Scotland/N Ireland to England/Wales

While the legal aid changes currently only apply to England and Wales, if you are detained in Scotland or Northern Ireland you are likely to be moved to a detention centre in England prior to removal/deportation, with greatly reduced - and more restricted - legal aid provision.

Legal aid: time-limited and merits tested

Even if legal aid is available for your case, the amount of time the lawyer can spend on your case is limited. There are lots of things that, ideally, a legal aid lawyer would do on your case but legal aid funding doesn't cover it. This includes attending your asylum interview if you are an adult, or legal research if a case is likely to be seen as straightforward.

Legal aid lawyers also have to conduct a “merits test” on your case (as well as finding out whether you are financially eligible, i.e. that you no or very little income). At the start of the asylum process, the merits test is low. A lawyer is only likely to say an asylum case, at the pre-decision stage, fails a merits tests if it is “clearly hopeless” or would be “an abuse of process”. After a refusal of an asylum claim, the merits test threshold is higher. In order to determine whether a legal aid lawyer can take a case on for appeal, they have to consider that it would have over 50% chance of succeeding. The agency which manages the provision of legal aid conducts audits on whether lawyers are making appropriate judgments on merits tests (including how many of the cases that the lawyer judged likely to succeed, did succeed).

Law firms that have legal aid contracts are also limited in the number of “matter starts” they are given - they cannot take on unlimited clients, or unlimited issues in clients' cases.

Alternatives to legal aid

If you cannot get a legal aid lawyer, you are likely to be able to find a private lawyer to take on your case. The problem will be whether you can afford to pay their legal fees.

Private lawyer

Some private law firms have “fixed fees” arrangements - they tell you a fixed amount that working on your case (or more usually, one aspect of your case, such as a fresh claim or an appeal) will cost. With a fixed-fee arrangement, if the lawyer has to do very little work or if they have to do a lot of work, the cost remains the same and you are not hit with mounting costs as the case goes on. This is helpful if your supporters/community are fundraising to meet these costs.

Some law firms, whether using fixed fee or not, allow you to pay the costs in instalments and this may mean you are able to save/fundraise the money over a longer period of time.

When using a private lawyer, make sure you know what you are paying for, and how much you are paying.

Pro bono

Another option may be finding a lawyer who will take on your case pro bono. 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.

Because of the legal aid cuts, more and more work is being done pro bono, so it may not be easy to find a lawyer who is able to do this. The stronger and more compelling your case is, the more likely it is a lawyer will take it on. Think about how you can explain why your case is strong. Friends and supporters finding evidence to back up your case may help with this.

Your local law centre, or the law department at your local university, may have pro bono clinics. You can also try contacting the Pro Bono Unit: http://www.barprobono.org.uk/do-you-need-help.html

McKenzie friend

You may be able to get a McKenzie friend to assist you in a court hearing if you do not have a lawyer. This will usually be an English-speaking friend, relative or volunteer who is not qualified to give legal advice, but may have experience of the legal system. 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 you have a McKenzie friend to 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 can also give you assistance in making submissions to the court.

If you are using a McKenzie friend, you should tell the clerk at the Tribunal/hearing centre that you have someone with you to assist you. You should also ask the judge at the start of the hearing for permission to have assistance from your McKenzie friend. The judge may ask what relevant experience (if any) the person concerned has, whether he or she has any interest in the case and that he or she understands the role and the duty of confidentiality that arises if consent is given.

Communicating with your lawyer

Legal aid lawyers are so busy that they can find it hard to respond to you quickly. Remember that they need time to work on your case, and constantly ringing them will not allow them to do this. But if your lawyer is very slow in getting back to you, or doesn't explain themselves properly, you should try to get your questions answered (and find someone to help ask the questions if necessary).

ACTION SECTION

- If you are struggling to get a legal aid lawyer to take on your case, it may help to go through your case with a knowledgeable friend/supporter and think about how to present it to a lawyer in the strongest possible way. Getting evidence to back up your story may help with this.
- Similarly, friends/supporters may be able to help you think about how to explain your case to a lawyer you are asking to take on your case pro bono.
- If you cannot get a legal aid lawyer, supporters/your community could fundraise to pay for private legal fees.

It's ok to ask your lawyer questions: they are there to help you.

For example, if you have a question about going to report or missing a reporting event at the Home Office, speak to your lawyer. You shouldn't miss reporting events unless you have to, and you must provide evidence of why you will miss/did miss the reporting. If you know in advance you will be missing your next reporting, your lawyer can let the Reporting Centre know and give you reasons/evidence.

If it is difficult to speak to your lawyer on the phone, then an easier way to speak to them might be to arrange an appointment.

Alternatively, you can send a letter or email. Often lawyers will find it easier to reply to emails than phone calls.

If you do not want to speak to your lawyer, because you are feeling too stressed, upset, or another reason, you can ask a friend/supporter to speak to them for you but they must provide written and signed consent to do this.

At times, a busy lawyer may find it easier to quickly speak to or reply by email to a

friend/supporter who has knowledge of the legal system, but they should explain to you directly when there is important information or questions they need answering.

- You should always have a copy of your documents, and anything your lawyer has submitted to the Home Office. Keep all your paperwork together in one organised file.
- You should always know the last action your lawyer took: what they did, when, and when they expect a response.
- Your lawyer should speak to you before and after each stage in the process of applying for leave to remain (e.g. your Home Office interviews, the decisions on your case).
- Make sure your lawyer knows your contact details. If you change address or phone number, let your lawyer know as soon as possible.
- Contact your lawyer any time you receive a letter from the Home Office or from the Courts and Tribunals service.
- Contact your lawyer prior to any appointments with the Home Office (other than routine reporting/signing events).

People commonly say that they have had a certain lawyer for a long time and nothing is being done on their case. Find out why. Is your lawyer waiting for you to gather evidence? Has your lawyer done all they can and they are now waiting for a response from the Home Office? Has your lawyer actually said they can't do anything further on your case? This is a common problem with fresh claims: you might approach a lawyer to help you with this, but they will need evidence to submit before they can do it. You may think they are working on the fresh claim, but they are very unlikely to be doing anything on the fresh claim if you have not provided them with new evidence.

It's vital to know whether or not you have a current application with the Home Office. If you have no leave to remain and no outstanding applications, you are at high risk of detention and removal/deportation.

Finding a lawyer

You can look for an immigration advisor using these directories:

righttoremain.org.uk/resources/lawyers.html

The Law Society has a database on their website you can search:
solicitors.lawsociety.org.uk

Choose "immigration and changing countries" under Legal Issue, then put in your location. When the search results come up, you can then refine the search results to show those

that have legal aid services (“accepts legal aid”) and for the type of case your have (asylum, immigration etc).

If you are in Scotland, you can search for a lawyer on their website here. Choose “immigration” as the area of law: lawscot.org.uk/find-a-solicitor

A complaint against your lawyer

Many people seeking the right to remain do not make a complaint about their lawyer even if they wish to do so. If errors have been made in your case by your lawyer, and you are later trying to explain that to the Home Office, it may be helpful to have a written record of a complaint.

You can make a complaint if:

- you receive poor advice or service
- you are charged unreasonable fees
- an adviser claims you’ll be successful
- an adviser charges you for work not done
- an adviser misses deadlines or fails to appear in court

You can ask to speak to your lawyer’s supervisor for information on how to complain, or go to the OISC website: oisc.homeoffice.gov.uk/complaints_about_immigration_advice

You can also complain to the Legal Ombudsman: legalombudsman.org.uk

Legal support (not legal advice)

There is no replacement for specialised legal advice, but because of legal aid cuts, more people seeking the right to remain in the UK are now forced to represent themselves. It has become essential for individuals seeking the right to remain and their supporters and communities to have a better understanding of the system, and provide legal support where appropriate.

If you are not a 'qualified person', it is **illegal** to give immigration advice/legal advice as defined in section 82v of the Immigration and Asylum Act 1999. A 'qualified person' in this context is someone registered or exempted by the Office of the Immigration Services Commissioner (OISC), or another regulatory body (such as if you are a solicitor or barrister), or someone who is working under the supervision of someone who is a qualified person.

This section explains what legal advice is, and how communities and support groups can

provide essential legal support (even when someone has a lawyer), but making sure they do not give legal advice.

What is legal advice?

Legal advice can be defined as the application of legal rules and principles to a specific set of facts that proposes a course of action.

The Immigration and Asylum Act 1999 definition includes immigration advice and services "provided in the course of business, whether or not done for profit. This includes occasional help offered to members of a community". This means that community groups and support groups cannot give legal advice unless they are doing so as a regulated body.

If you are not qualified to give legal advice, you can still give legal information. Legal information is factual, generic, and does not address any one particular cause of action.

Providing legal information in the asylum and immigration context could be explaining how the asylum and immigration system works, what the country guidance case on The Gambia is, or what an "injunction" is. This is not providing legal advice.

Why you shouldn't give legal advice if you are not a qualified adviser

1. it's against the law

2. if you are not a full-time legal professional, it is very unlikely you will have the necessary up-to-date knowledge to provide the correct advice. Wrong advice is far worse than no advice.

Even if the advice you are giving does not fall into the category of "legal advice", remember that the person seeking the right to remain should be making all the decisions. Even if they ask for your advice, try not to be directive but instead give information about their options. You can give information about the benefits and risks of the various options, and then support them in making the decision themselves.

PROVIDING LEGAL SUPPORT

There are many things that community/support groups can do to provide legal support without giving legal advice. You can:

- provide general legal information (you can use this Toolkit to do this)
- before somebody applies for asylum or immigration status, or while they are going through the process, sit down and go through the different stages and what can happen at each stage. You may want to use our Toolkit, materials available online; or your own personal/professional experience.
- research evidence on a country of origin or particular situation of the person you are supporting

- use your contacts to ask an expert to write a report to support the legal case
- help gather useful letters for the case – this might be from a school, Social Services, medical or mental health professionals, community groups
- read someone's Reasons for Refusal Letter or court determination and point out which parts of their testimony are being doubted
- find other case law or guidelines that these documents may refer to
- explain the meaning of technical terms in legal documents
- type up what someone wants to say in response to a Reasons for Refusal Letter, or other negative decision, especially if they find written English difficult
- help someone talk to their lawyer, if they are not comfortable doing this themselves
- help someone prepare for an asylum interview, asylum/human rights appeal, or judicial review hearing. This may be by providing emotional support, practical information about where they have to go and how to get there, explaining the lay-out and personnel of the court, or listening to someone give their testimony so that the first time they do this is not in a hostile setting.
- help someone prepare in case they are detained, and agree a plan of action for if they are detained.
- visit someone if they are detained

You will find more information about all of these actions as you go through the Toolkit.

Next section: *Entering the UK*

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 and partner/spouse visas.

You can find information about visas for the UK on the Home Office website: www.gov.uk/browse/visas-immigration

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. See also the Toolkit *Family Migration* section.

You should always try and get legal advice before submitting an application.

Under the immigration rules, there are "general grounds" under which an application to enter the UK can be refused. This includes if you are subject to a deportation order, or are subject to a re-entry ban for other reasons. See Toolkit section on ‘Re-entry bans’.

Some of the grounds for refusal are quite vague (for example "failure by a person arriving in the United Kingdom to furnish the Immigration Officer with such information as may be required for the purpose of deciding whether he requires leave to enter and, if so, whether and on what terms leave should be given"); others are more specific. For example, on unpaid NHS debts: an application may be refused if the applicant has failed to "pay a charge or charges with a total value of at least £500 in accordance with the relevant NHS regulations on charges to overseas visitors." You can find the immigration rules on general grounds of refusal here: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal

The right to appeal refusals of visa applications is limited - there is now only the right of appeal for decisions regarding international protection (usually, refugee status or humanitarian protection), human rights applications or EU law applications.

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. For example, you may have successfully applied for a visa ("entry clearance") but an Immigration Officer may refuse to let you enter the UK if they are "satisfied" that false representations were made in your application, or false documents or information were submitted, or you did not disclose important information, or if your circumstances have changed since you applied. See Immigration Rules, section *Refusal of leave to enter in relation to a person in possession of an entry clearance*.

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, for example between tiers of the points-based system. If you do not renew your visa, you will be classified as an **overstayer**. Overstaying is an immigration offence, and the Home Office frequently use “poor immigration history” as one reason to refuse release from detention and applications for leave to remain.

This Toolkit will not go into detail about the many different kinds of immigration applications that can be made. See next pages for information on human rights applications, family migration and asylum claims.

Student visas

People who are not European Economic Area (EEA) nationals and are wishing to study in the UK for more than six months, will need to apply for a Tier 4 student visa. You will need to have been offered a place on a course; be able to speak, read, write and understand English; and have enough money to support yourself and pay for your course. You may be able to work during your time as a student in the UK, but generally this is restricted to 20 hours per week during term-time. Read more about the Tier 4 student visa here:

https://www.gov.uk/tier-4-general-visa

Work visas

The student visas mentioned above, and visas for people who are not EEA nationals wishing to work in the UK, come under the points-based system. There are five 'tiers' to this system. Tier 1 is for “high-value migrants” including entrepreneurs, investors, and those very few people who come under the “exceptional talent” visa. Tier 2 is a category for “skilled workers” with a job offer in the UK. Tier 3 is in theory for low-skilled workers filling specific temporary labour shortages but has never been used. Tier 4 is for students (see above), and Tier 5 is for certain categories of temporary workers.

European nationals

Nationals from the European Economic Area (EEA) can travel to the UK more easily than people from non-European countries. The EEA consists of the member states of the EU, plus Iceland, Liechtenstein and Norway. As an EEA national (or if you are Swiss), you can enter the UK with either a valid passport or a national identity card issued by a EEA country. It must be valid for the whole of your stay. As an EEA/Swiss national, you do not need a visa to enter the UK.

See the Toolkit *EU* page for information on the right to remain in the UK as an EU national.

Health surcharge

The government has introduced an “immigration health surcharge” (IHS) as part of some applications for leave to enter/remain in the UK.

All applicants for entry clearance (visas) for **more than six months**, and people already in the UK applying for time-limited leave to remain, are required to pay the charge to cover National Health Service (NHS) healthcare in the UK.

This includes people applying to come to the UK as a worker or student under the points-based system, people applying for leave to remain under *Article 8 family/private life*, and people applying for leave to remain under the five and ten-year *family migration routes or long residence rule*.

You do not need to pay the surcharge if you’re applying from outside the UK for a visitor visa or any visa that lasts 6 months or less. The rules state that you do not need to pay the surcharge if you are applying for indefinite leave to remain (ILR), but there have been occasions when the Home Office have stated it is required and will be refunded if the application is successful. If you apply for *indefinite* leave to remain and are instead granted a form of *limited* leave to remain by the Home Office, you are likely to be asked to pay the surcharge.

You currently do not need to pay the surcharge if you are an EEA national (or family member) exercising treaty rights. You do not need to pay the surcharge if you are a national of Australia or New Zealand; a child under 18 who is in local authority care; or an identified victim of trafficking. You do not need to pay the surcharge if you are an asylum seeker or applying for humanitarian protection, or other protection under Article 3 of the European Convention on Human Rights (ECHR).

Find a full list of exemptions to the surcharge here: www.freemovement.org.uk/nhs-surcharge-for-immigration-applications

The charge is £150 per year for students and £200 per year for all other types of application. You have pay the total amount for the length of visa you are applying for, upfront. For example, if you are applying for a visa that is valid for two years, you would need to pay £400 with your application. The charge is payable for each dependent as well as the main applicant. You pay the surcharge via the government's surcharge website.

If you can prove you are destitute, you can apply for a fee waiver on the basis that not getting a fee waiver would mean you couldn't exercise your human rights under the ECHR.

If you are required to pay the surcharge as part of your application, and your application is then refused, the health surcharge is refunded.

Entering UK and claiming asylum

Some people claim asylum immediately on arrival at the airport/port of entry in the UK. If you do this, you will have your *screening interview* at the airport/port.

The Home Office believes that everyone should claim 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, and may 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 that 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).

False passports

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 fleeing.

Article 31 of 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.

The “Article 31” principle is part of UK law as Section 31 of the 1999 Immigration and Asylum Act.

Section 31 provides that it is a defence for someone charged with “*document offences”*, if they can demonstrate that they have:

- come to the UK directly from a country where their life or freedom was threatened
- presented themselves to the authorities in the UK without delay
- showed good cause for their illegal entry or presence, and
- made a claim for asylum as soon as was reasonably practicable after their arrival in the UK.

Many asylum seekers are prosecuted by the UK government for the use of a false passport and are not made aware of the statutory defence above. If they are represented by lawyers who specialise in criminal law, and who do not know this Section 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 given advice about the Section 31 defence (which allows you to plead

not guilty).

If convicted, the personal may well serve a prison sentence and 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.

If you are in Scotland, you should ask your lawyer to look at the Crown Office's prosecution guidelines, designed to protect refugees fleeing persecution (find the link to the guidelines on the Toolkit *Entering the UK* page).

There are legal options, even after a criminal sentence has been given, that may help you if you have been prosecuted for use of a false passport. One of these is the Criminal Cases Review Commission (CCRC).

The CCRC was set up to deal with suspected miscarriages of justice. It 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 were 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.ccrc.gov.uk/making-application/how-to-apply

The CCRC can deal with cases in England, Wales and Northern Ireland. For cases in Scotland, contact the Scottish CCRC on 0141 2707030 or see their website for more information: www.sccrc.org.uk

Next section: Human Rights

Human Rights

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 **Article 3 and Article 8** of the Convention.

If you are seeking asylum, human rights arguments for leave to remain should be made at the same time as applying for asylum. It is common, however, for human rights grounds to arise after an initial application for asylum.

Article 3

Article 3 protects individuals from being subjected to torture, inhuman and degrading treatment.

Article 3 is absolute, so there is no situation in which it can lawfully be breached.

Many cases in which Article 3 rights could be breached are likely to fall under the Refugee Convention, such as if you are at risk of torture. Some Article 3 cases are about different risks, however. This includes exceptional medical cases.

The threshold for Article 3 medical cases is extremely high. Case law says that the threshold is when a person is close to death and where removal would hasten their death, and expose them to a real risk of dying “under most distressing circumstances”, because this would amount to inhuman treatment.

It is not sufficient to argue that you need to stay in the UK because the medicine you need to keep you well would be too expensive for you in your own country (unless it is so prohibitively expensive it is in effect unavailable).

To succeed, you would need medical and expert evidence to show that the treatment you need is not available in your home country. If you are successful in a human rights medical case, you are likely to be granted a time-limited period of Discretionary Leave. You may be given the right to work/claim benefits with this leave, but in some cases the Home Office may try to prevent you having the right to claim benefits/housing support (having “recourse to public funds”).

Medical grounds may also form part of an application based on Article 8.

If you are making a separate application for the right to remain (not as part of an asylum or other claim) on medical grounds you can make the application using Form FLR(O). You can find guidance notes about the form on the Toolkit webpage *Human Rights*. If you are

applying under Article 3 there is no fee, but if you are applying under Article 8 on medical grounds, you may have to pay the specified fee and health surcharge unless you can prove you are eligible for a fee wavier. For links to forms and fees, see the links on the Toolkit webpage *Human Rights.*

Article 8

Article 8 protects the right to family and private life.

Your family life consists of your relationships with members of your family. Your relationships with your wife, husband, civil partner, long-term partner or any children under 18 are considered to be family life under Article 8. Your life with other family members is not always considered to amount to family life under Article 8. Your private life includes things like your work or studies, your life with your friends and neighbours, and involvement with your local community or charity activities. It also includes long-term NHS medical treatment.

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 remove/deport you (a "disproportionate breach"), you should be granted leave to remain.

Because there are many case specific factors to Article 8 cases, and because proportionality and other factors are subject to interpretation, how Article 8 cases are decided depends very much on the latest case law.

Razgar Test

You may hear lawyers and the Home Office refer to the "Razgar Test" when talking about Article 8 rights. This is the case law from 2004 that provides a five-point test for Article 8 claims based on family or private life in the UK.

The Razgar test asks:

would someone's removal be an interference with their private or family life;

would this interference engage the operation of Article 8;

would the interference (removing the person) be in accordance with the law;

would the interference comply with the legitimate aim of a democratic society;

and would such an interference be proportionate to the legitimate public end sought to be achieved by the public authority (the Home Office)?

Not everything we think would be family and private life would be defined as Article 8 family/private life. The definition is case-specific and is shaped by case law. The Home Office's position is that, in terms of family life, only relationships between spouses and/or between parents/carers and minor children engage family life in the Article 8 sense. The courts, however, have tended to disagree and prefer a case-specific determination of whether someone's family or private life engages Article 8. See here for more on this: www.freemovement.org.uk/when-is-article-8-private-and-family-life-engaged

Generally, the interference *is* in accordance with the law (unless the Home Office hasn't followed its own policies, and is attempting an unlawful removal etc). The interference *does* comply with a legitimate aim – it has been accepted in law that maintaining effective immigration control is a legitimate aim. The Home Office may concede that they are breaching your Article 8 rights, but say that it is a proportionate breach when considering the other factors, and that your grounds to stay don't outweigh the government's need to pursue its legitimate aim.

Factors that count against you in these arguments are things like poor 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 having a British partner or child is not enough to be granted leave to remain in the UK. The Home Office *do* have to show that they have considered the “best interests” of the British child, but having a British child is not enough in itself to obtain leave to remain.

Sometimes, the Home Office will say the breach is proportionate (or even that there will not be a breach) because the British citizen or resident can go and live with the person being removed in their country, or they can keep in touch by Skype and email etc. Supporting evidence could be gathered to show why that would not work – why the person with British citizenship or leave to remain in the UK has to be in the UK, or why the relationship wouldn't work over the internet or through occasional visits.

Article 8 and the immigration rules

Since the government introduced new immigration rules in 2012, their position has been that the immigration rules cover the extent of the UK's obligations under human rights law, and so any Article 8 case that could be successful would meet the requirements of the immigration rules.

Some of the immigration rules can be helpful, and if you meet them, your application for leave to remain should be relatively straightforward. An example of this is the immigration rule that covers private life, and leads to leave to remain if you are between 18 and 24

years old and you've lived continuously in the UK for more than half your life. This also gives you access to the ten year route to settled status (indefinite leave to remain). See Toolkit *Family Migration* section for more information.

However, the fixed immigration rules criteria cannot possibly cover all case-specific variations of cases, and the courts have since ruled that if a case does not meet the requirements of the immigration rules, Article 8 elements should be considered outside of the rules.

It is increasingly difficult to prevent a deportation following a criminal sentence using Article 8 grounds. The decision makers (the Home Office and the courts) follow the official guidance on this, which states that it will "only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors".

Making an article 8 application

Article 8 cases, if they are not part of an asylum application, are generally not eligible for legal aid.

It is possible to apply for *exceptional legal aid funding*, but the threshold is very high.

You do not have to use a specified form for an Article 8 application if you have claimed or are claiming asylum; if you are in detention (in which case you make your Article 8 application to a member of Home Office staff at the detention centre, a detainee custody officer, or a prison officer/prisoner custody officer if you are being held in prison under immigration powers); you are making an appeal; or you are making an asylum/human rights fresh claim.

If none of these apply to you, you need to use the correct form to make an application to stay in the UK under Article 8. At the time of writing, that form is FLR (FP).

The form refers to applications on the basis of Family Life as a Partner (10 year route); Family Life as a Parent (5 year route); Family Life as a Parent (10 year route); Private Life in the UK (10 year route). These refer to routes under the Immigration Rules - see Toolkit page on Family Migration for more information.

On page 11, the form also refers to applications **outside of the immigration rules** and says if "you know you do not meet the requirements of the above categories, but would like to apply anyway, tick the box most closely relating to your circumstances ... Regardless of the category you tick, all applications will be subject to a consideration of family and private life under the Immigration Rules, and on the basis of exceptional circumstances outside the Immigration Rules."

See Toolkit *Human Rights* webpage for links information on exceptional legal aid funding, forms and fees.

Application Fee

At the time of writing, the fee for making the application is **£993** (and an additional £993 for each dependent included in the application). See the notes at the start of the application form for the latest information on this.

You do not have to pay the fee if your Article 8 application is part of a protection claim (asylum, humanitarian protection, Article 3).

If you are **destitute** and cannot afford to pay the fee, you can apply for a fee waiver. You will need to show evidence that you are destitute, or that you would become destitute by paying the fee.

Fee waiver

If you are destitute and cannot afford to pay the application fee, you can apply for a fee waiver.

The Home Office definition of being destitute is if you/your dependents do not have adequate accommodation or any means of obtaining it (whether or not your other essential living needs are met); or you have adequate accommodation or the means of obtaining it, but cannot meet your other essential living needs.

The Home Office will assess whether you have no or very limited disposable income:

- Could you pay the fee now?
- If not, could you realistically afford to save money for the fee so that you could apply within 12 months (if it were reasonable to delay your application for this length of time)?
- Could you borrow money from family or friends?
- Is there any prospect of your financial circumstances changing within the next 12 months?

You will need to show that you can't pay the fee and couldn't save the money for the fee in order to be eligible for a fee waiver.

It is essential that you provide evidence of your inability to pay the fee. Evidence might include:

- Information about and proof of your accommodation (or lack of it). Who provides the accommodation? If you do not pay for it, who does? Provide proof of this.
- If you have some income you will need to show how much this is. If you have a job, provide payslips or documents that show income over a period of time, like a P45 or P60. You will need to show that this income is not enough to meet you and your dependents' essential living needs *and* pay the application fees.
- If you are receiving asylum support, or support from the Local Authority (under the

Children Act) the Home Office position is that, by being in receipt of these kinds of support, you are not destitute. Therefore you will need to show that paying the fees would make you destitute. Do you have any money left over from this support once your essential living needs are met? We know this sounds like a ridiculous question as the support amounts are so low, but you need to prove this. What do you spend the money on? Provide proof of utility bills (heating, gas, water); food bills; essential travel costs; bank statements if you have them.

- If you are being supported by friends/the community/a charity, provide proof of this. What/how much are they giving you? Could they give you more? How long will this support continue?
- If you are street homeless, can someone provide statements to prove this? Were you previously evicted from a property and if so, do you have a copy of the eviction notice? Do you have records of interaction with any homeless charities?

The Home Office may carry out 'financial and residential enquiries', such as credit checks, interviews and home visits, when deciding on your fee waiver application.

To apply for a fee waiver, fill in the form. Submit the form, with your evidence, with your leave to remain application. Link to the form is on the Toolkit webpage *Human Rights*.

Health surcharge

You will need to pay the health surcharge as well as the application fee, unless you fall into one of the exempt categories or can prove you are destitute and entitled to a fee waiver. Read more about that in Toolkit section *Entering the UK*.

ACTION SECTION

As you will see if you look at the fee waiver form, it is a long form to fill out! Friends/supporter may be able to help with this, and with gathering the essential evidence to help your application be successful.

If a fee waiver is not granted, your supporters/community could help raise the money for the application/health surcharge.

After reading this page, and the page on *Rights of the child* if relevant to your case, think about the evidence you need to gather. Friends, supporters, your community can help gather this evidence and may even provide evidence in the form of statements/supporting letters.

Article 8 and appeals

If you apply for leave to remain (perhaps on human rights grounds, perhaps initially on asylum grounds) and you have the right to appeal, you may wish to raise Article 8 issues during your appeal, if they apply to you.

Colin Yeo, the top immigration barrister who edits the Free Movement blog, has some helpful advice about Article 8 appeals. The advice makes reference to young men, as it is from a blog post about young Afghan boys and men, but much of the advice is useful for all Article 8 appeals:
www.freemovement.org.uk/boys-to-men-how-to-prepare-asylum-appeals-for-young-afghans

"In all cases based on Article 8, evidence of social, cultural, educational and other connections to the UK will be critical. Such evidence requires witnesses; current and former foster carers, friends from school, teachers, social workers, counsellors and anyone else who can vouch for the young man should be approached. Many young men are reluctant to do this because they do not like to ask favours, they are proud and they do not want to appear needy or vulnerable. This tendency must be resisted and overcome.

It is best if the witnesses can attend court. The more the merrier. More than 10 or 12 is probably excessive but it is helpful to convey in the strongest way possible that the young man is genuinely well regarded and integrated, to the point that many different people are willing to go out of their way and come to court to support him. Judges tend to be self important (it is virtually part of the job description) and attending court is the best, perhaps only, way anyone can show their respect to a judge. Written statements by those "unwilling" to attend in person are bound to be given less weight.

With considerable social and community support for a particular Appellant, perhaps combined with his having done very well at school or college (I have had the privilege to represent young Afghans who have qualified for university), there is a possibility that an appeal might succeed. Without that visible support, though, an appeal on private life human rights grounds is basically doomed to fail."

From www.freemovement.org.uk

Leave to remain based on Article 8

If you are successful in an application based on Article 8 where your situation falls under the immigration rules, you will receive leave to remain for 30 months. This is renewable, and you will be able to apply for Indefinite Leave to Remain (ILR) after a certain number of these 30 months periods - see Family Migration section for more information, as this depends on whether you are entering the five or ten year route to settled status.

If your application is based on Article 8 outside of the rules, and you are successful, you will receive leave to remain outside of the rules. This will usually be for 30 months, which you can apply to renew.

The Home Office may apply a “no recourse to public funds” restriction on your leave to remain, meaning you cannot access welfare benefits and housing support. If you are destitute or there are compelling reasons relating to the welfare of a child why this should not be applied to you, you need to tell the Home Office this and provide evidence.

Next section: Rights of the Child

Right to remain via rights of a child

Section 55 of the 2009 Borders, Citizenship and Immigration Act means that there is a statutory duty - required by law - that the Home Secretary ensures Home Office decisions concerning children *safeguard and promote the welfare* of children.

This duty is usually referred to as having to consider the **"best interests"** of the child, referring to Article 3(1) of the United Nations Convention on the Rights of the Child 1989, which the UK has signed.

This duty applies to third parties acting on behalf of the Home Office, and the duty also applies when the Home Office makes immigration decisions that will affect a child (the decision does not have to be about the child).

Subsequent case law has further emphasised that the best interests of the child must not just be considered, but must be considered *first*.

In the important case of ZH (Tanzania), the Supreme Court judges said that though British citizenship was not a "trump card" (it doesn't overcome all other considerations), **"British citizenship** will hardly ever be less than a **very significant and weighty factor"** against moving children who have British citizenship to another country with a parent who has no right to remain in the UK. This will be particularly the case if the effect of leaving the UK is that they will lose the benefits and advantages of this citizenship (growing up in their own country, with their culture and language) for the rest of their childhood. The current Home Office policy is that in non-deportation cases (deportation after a criminal conviction), it is never reasonable to expect British children to leave the UK.

A child may be British by birth or descent, in which case you may need to provide proof/confirmation of this. A child might already be a British citizen if they were born in the UK **on or after 1 July 2006** to a mother or father who is British or who has settled status (Indefinite Leave to Remain or EU Permanent Residence). If the child was born in the UK **before 1 July 2006**, to a British or settled mother, or a British or settled father who was married to the mother or later marries the mother, they might also be a British citizen. There are also other circumstances in which a child or adult may be a British citizen. This UK government website is useful for checking if you or your child is a British citizen: www.gov.uk/check-british-citizen

A child not British by birth or descent may have the right to register as a British citizen by entitlement. This may help in establishing both the child and parent/carer's rights to stay in the UK. You can read more about some of the situations in which a child can register as a British citizen by entitlement on the website of the Project for the Registration of Children as British Citizens, here: prcbc.wordpress.com/information-and-resources

A parent/carer seeking to establish the right to remain in the UK through their child's best interests will need to look at the Immigration Rules, Appendix FM: family members. As best interests arguments are often connected to Article 8 family life claims, you should also read the Toolkit section on *Human Rights*, Article 8.

Seven year rule?

Until 2008, the Home Office had a seven-year policy for children, under which it was presumed that a child who had spent seven years in the UK should not be removed unless there were other significant factors to consider, such as the child's parent having a serious criminal conviction.

Although that policy no longer exists, the “seven years” factor is still considered in family cases and can be found in the Immigration Rules, Appendix FM.

- The rules refer to claims on the following basis:
- the parent has a “genuine and subsisting parental relationship” with a child;
- that child is under 18 years old;
- that child is in the UK;
- that child is a British citizen or **has lived in the UK for at least seven years immediately prior to the application**; and
- it would not be reasonable to expect the child to leave the UK.

If a non-British child has not lived in the UK for seven years prior to the application, they do not meet these criteria. However, you may still be able to argue that their best interests are not being considered and/or their Article 8 rights would be breached if they had to leave the UK.

A parent making a claim must also meet certain suitability criteria, which criminal convictions, poor immigration history and unpaid NHS debts can negatively affect.

Making your claim

If you are making a claim to remain in the UK based on the best interests of your child, you will need to show you meet the criteria of the Immigration Rules, above.

You will need to explain what **relationship** you have with the child - are they your biological child, adopted child, or step child? Or are you their legal guardian or other primary carer?

You will need to demonstrate a **genuine and subsisting relationship** with the child. Does the child live with you, or nearby? How often do you see the child? If relevant, is access to the child guaranteed by a court order? Is your supporting role for the child purely financial, or do you provide emotional and other support? It may help to get supporting letters/statements to prove how you support the child, and how the child's needs may be

being met by you (for example, statements from other family members, social workers, teachers or other appropriate professionals). This will be particularly relevant if the child has special behavioural, emotional or learning needs. How long have you been supporting the child? If it has only been for a short period, this may be used to say you do not have a “subsisting” relationship with the child.

It will be helpful to demonstrate the **life the child has established in the UK**, even if the child is a British citizen, because if there are strong factors in favour of removal of a parent, the Home Office may argue these outweigh the needs of the British citizen child. Have you got extended family in the UK that the child is dependent on? Are there other support needs that can only be, or can better be, met in the UK?

You need to demonstrate **it would not be reasonable to expect the child to leave the UK**. If the child has particular needs, make sure you provide evidence of this (see above). If these are particularly severe, you should seek evidence from specialists, particularly if they have been providing services/support for the child. This might be a doctor, educational psychologist or psychiatrist, or other medical, mental health or educational professional. Would these needs be made worse if the child were to live outside of the UK? Is there a lack of appropriate support in the country the Home Office are suggesting you could move to? You will need to try and provide evidence of this.

A child's ability or otherwise to integrate into another country will depend on the individual, family and country circumstances. Factors might include whether you or your child is a citizen of the country and so able to enjoy the full rights of being a citizen in that country; whether you and/or your child has lived or visited the country before for significant periods of time - not just a few weeks' holiday; whether you or your child has existing family or social ties with the country; whether the child has attended school in that country. Are there differences in quality of education, health and other public services and socio-economic opportunities that mean the best interests of the child would be significantly affected?

ACTION SECTION

You or your friends/supporters can gather/provide evidence that shows your child has established a life in the UK, and why they would not be able to sufficiently integrate into the country of your birth/residence.

Read the section above for ideas.

Leave to remain

If successful in your application, you will be granted 30 months leave to remain, without recourse to public funds (welfare benefits, homeless housing etc).

You can apply to renew your leave to remain which, if successful, will result in further grants of leave for periods of 30 months without recourse to public funds. When applicable, you can then apply for indefinite leave to remain via the family migration routes (see next section on *Family Migration*) - the five-year route if your child is British or has settled status in the UK and you meet the requirements; the ten-year route if not.

Zambrano

In the Zambrano case of 2011, the European Court of Justice ruled that the parents of a dependent child who is an EU national must be granted the right to work and the right of residence in the EU Member State of which the child is a national. In the Zambrano case, the parents were Colombian (so, not from the EU) but their children were Belgian (EU nationals), and the family wanted to stay in Belgium. If the parents were not given the right to stay in Belgium, the family would have had to leave the EU, breaching the children's rights to free movement in the EU.

This was a very significant decision, and predictably the UK government watered down its impact as much as they could when incorporating the judgment into UK immigration rules.

> Currently in the UK, Zambrano can only be used when a British citizen child is cared for by a non-EEA national parent or carer, there is no British or UK-settled parent to care for the child, and removal of the non-EEA national parent/carer would result in the child being unable to live in the UK or another EEA state.

If, for example: you are from Nigeria; you have a British citizen child; the other parent is British; you either live together with the other parent or, if separated, the other parent is the primary carer for the child, then Zambrano would not apply (according to the Home Office's current interpretation). If the British parent/carer is not able to care for the child on their own (for medical or other reasons), you may be able to make a Zambrano argument.

Since Zambrano applications became possible, there has been a problem with the Home Office refusing applications on the basis there is a British parent/carer even if that parent/carer has been absent from the child's life and even if they are unwilling to assume care for the child. Read more here: www.asirt.org.uk/wordpress/?p=187

If the Home Office position is that Zambrano does not apply to your case, you can see if section 55 best interests (see above) could apply, though that is focused on the child rather than the parent/carer, and/or Article 8 arguments. (see the Toolkit section on *Human Rights*, Article 8.) Remember the Home Office commonly argue that family life is not necessarily disproportionately breached by forcing one parent to leave the UK - they argue that visits, telephone calls, Skype etc are enough to maintain family life.

If you meet the Zambrano criteria

To prove you are entitled to reside and work in the UK because of Zambrano, you can apply for an EEA Derivative Residence Card.

The “derivative” right of residence granted if you meet the Zambrano criteria does not in itself mean you get the right to permanently reside in the UK, and also does not contribute to the 5 years needed for permanent residence under EU law (see the Toolkit section on *EU Law*.)

You should be entitled to the right as long as the child you are parent/carer for, is under 18 and you remain the sole or primary carer.

The right of residence under Zambrano does not allow you to bring other members of your family to the UK. You also cannot rely on a “public policy protection” argument against removal or deportation from the UK that is given to those exercising free movement rights under EU law.

If you are successful in securing the right to remain under Zambrano, this gives you the right to work in the UK. In the UK, Zambrano carers do not have access to mainstream welfare benefits. In a case from February 2015, the Court of Appeal confirmed that Zambrano status does not bring entitlement to mainstream welfare benefits, but that a level of social assistance must be made available to Zambrano carers "when it is essential to do so to enable them to support themselves and the EU citizen child/children in their care within the EU." The court did not specify what this level of assistance is.

Family migration

This section explains the five-year probationary period and the ten-year route to settlement in the UK for people who are not European Economic Area (EEA) nationals. At the time of writing, the process for EEA nationals wishing to settle in the UK after the UK leaves the EU is still not known.

This section also explains the private life grounds and long residence rule in the immigration rules that can lead to the right to remain.

Five-year probationary period

This route is available for spouses (husband/wife), civil partners or unmarried partners of British citizens or individuals with indefinite leave (settled) to remain in the UK.

It is also available for children of British or settled partners and the parents of British or settled children.

To apply to bring a parent of a British citizen or settled person to the UK, you now have to demonstrate that due to age, illness or disability, they require a level of long-term personal care that can only be provided in the UK by their relative here and without recourse to public funds. If you have the funds to support your parent so that they will not need public funds, the Home Office is likely to argue that you can pay for care to be provided in the country in which they live - it does not need to be *familial care*. Read more here: www.freemovement.org.uk/out-with-the-old

The requirements for the five-year route are very difficult to meet.

There is an income or savings threshold. If you wish to sponsor a partner to come to the UK, you will need to be earning a minimum (before tax) of **£18,600 per year** (or equivalent in cash savings).

If you are applying to bring a child under the age of 18 who does not already have leave to remain in the UK or British citizenship as well as your partner, this rises to £22,400 for your partner and one child, and an additional £2,400 for each further child.

You can find the application form and guidance notes for the 5 year spouse/partner application on the government website here: www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-as-a-partner-form-flrm

The application form and guidance notes for the 5 year route as a parent is here:

www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-form-flrfp

There is also a “suitability” requirement, meaning that criminal convictions, “bad character”, poor immigration history or unpaid NHS debts could disqualify you. The immigration rules currently state that an application may be refused if you have failed to pay charges "in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500."

At the time of writing, the fee for making the application is **£993** (and an additional £993 for each dependent included in the application). See the notes at the start of the application form for the latest information on this.

You will need to pay the health surcharge as part of an application under this route, unless you fall into one of the exempt categories. Read more about the health surcharge at the Toolkit section *Entering the UK.*

You cannot apply for a fee waiver for the fee and health surcharge for these applications, as your application is based on you meeting an income/savings threshold, therefore you are not destitute.

If you are successful in applying through this route, you will be granted two periods of 30 months leave to remain in the UK before you can apply for indefinite leave.

10 year route

This route to settled status in the UK is for people who cannot meet the requirements of the five-year route: for example if you cannot meet the income requirements of the five-year route, or your current immigration status does not meet the requirements mentioned above.

You also need to demonstrate there are serious reasons you and your partner can’t live together as a couple in another country, if you're applying based on family life with a partner. If you're applying based on a child in the UK, the child needs to be a British citizen or have lived in the UK for 7 years and it wouldn’t be in their best interests to leave the UK with you. See the Toolkit section *Rights of the Child*.

This route is also for people applying for the right to settle in the UK based on **private life in the UK**, rather than on having the family members mentioned above in the five year route.

The criteria for this are:

- you are between 18 and 24 years old and you’ve lived continuously in the UK for more than half your life, or
- you are 25 or over and you’ve been in the UK continuously for 20 years (see below), or

- you are under 18 and you've lived in the UK continuously for at least 7 years, and it would be 'unreasonable' to expect you to leave the UK. See the Toolkit section *Rights of the Child*.
- The "suitability" criteria (above) also applies to this ten year route.

At the time of writing, the fee for making the application is **£993** (and an additional £993 for each dependent included in the application). See the notes at the start of the application form for the latest information on this.

You will need to pay the health surcharge as part of an application under this route, unless you fall into one of the exempt categories. Read more about the health surcharge at the Toolkit section *Entering the UK.*

If you are destitute and cannot afford to pay the application fee and health surcharge, you can apply for a fee waiver. Read more about this at Toolkit section *Human Rights.*

You can find the application form and guidance notes for the ten-year route application on the government website here: www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-form-flrfp

If successful in applying through this route, you will be granted four periods of 30 months leave to remain before you can apply for indefinite leave. There is no access to public funds (apart from in exceptional circumstances) during the probationary (4 x 30 months) period.

Long residence rule

Previously the immigration rules allowed for applying for ILR if you could show you had been in the UK continuously for 14 years - including without any regular status. The immigration rules now require **twenty years'** continuous residence, and this only enables you to enter the ten-year route to settlement described above.

Bear in mind it is difficult to provide evidence of twenty years' continuous residence if periods of that have been without regular immigration status. You may not have had formal accommodation or income. Think about who can provide statements to evidence your presence in the UK.

European Union (EU) law

Under European Union (EU) law, there is freedom of movement within the European Economic Area (EEA) and Switzerland for nationals of the EEA/Switzerland.

The EEA consists of the EU members states, plus Iceland, Liechtenstein and Norway.

As well as free movement within the EEA/Switzerland for EEA/Swiss nationals, there are rights to work; to seek work; to be temporarily unemployed; to be self-employed; and to study. These are known as "treaty rights".

If you are an EEA/Swiss national, you do not need a visa to enter the UK. You can stay in the UK for up to three months without exercising your treaty rights (you do not need to be studying, working, or looking for work), but if you wish to stay for longer than three months, you will need to show you are exercising your treaty rights by being a worker, self-employed person, self-sufficient person or student.

After five years of continuously exercising your treaty rights in the UK as an EEA national, you are entitled to 'permanent right of residence' in the UK and no longer have to be exercising treaty rights.

Under EU free movement law, you also have the right to have certain family members reside with you, such as a spouse/civil partner; child or grandchild under 21 years old; and dependent parents/grandparents. These family members will also acquire permanent right of residence after five years of residing with you while you exercise your treaty rights.

You do not need to have EU residence documents to access these rights, but it can be useful to have them (eg residence card or family permit) to prove you have these rights.

There are circumstances in which your right to reside/permanent residence in the UK under EU can be revoked, for example after serving a criminal sentence in the UK. The UK government would have to show that deportation is in interests of "the public good, public health or public security". The threshold for showing that deportation is in one or more of these interests is generally higher for EEA nationals than the "public good" arguments for deportation of non-EEA nationals. The threshold is also determined by the length and permanence of your residence in the UK - for example, the threshold is higher for those with the right to permanent residence in the UK.

Surinder Singh

Although the UK is a member of the EU and therefore British citizens are EEA nationals, British citizens living in the UK are generally not exercising their 'treaty rights' to free movement (because they are exercising their right to reside in the UK as a British citizen rather than as an EEA national).

This means they generally do not have access to the right to bring n**on-EEA national family members** (such as a spouse/partner) come to live in the UK with them, in the way that a German national or French national living in the UK would.

An exception to this is when the British citizen has been exercising treaty rights in another EEA state (not the UK), then moves back to the UK and applies for their family member to be able to live with them in the UK. If the British citizen was exercising their EU treaty rights in the other EEA state, their return to the UK is considered free movement under EU law because that brings with it the right to return. As the return is considered free movement, the British citizen is exercising their treaty rights by returning to the UK and this brings with it the right to be joined by certain family members.

Applying for a family member's right to remain in the UK this way is known as a **Surinder Singh** application, because of the 1992 case law that established the right to do this under EU law.

There is no fixed time period that a British citizen has to exercise their treaty rights in another EEA state in order to make a Surinder Singh application to have a family member live with them in the UK. However, case law on this issue generally suggests that the longer the period, the easier it will be to establish the right applies to you.

The UK Home Office refuses a large number of Surinder Singh applications, often claiming 'abuse' - that either the family relationship is not genuine, or that the period spent in the other EEA state was done merely to obtain Surinder Singh rights by "circumventing" UK immigration rules.

> If you are considering the Surinder Singh route, or are currently making a Surinder Singh application, you may find it useful to contact the organisation BritCits: www.britcits.blogspot.co.uk or join this Facebook support group: www.facebook.com/groups/650212281695959

Asylum - introduction

What is asylum?

Asylum claims are considered under the 1951 UN Refugee Convention, and its incorporation into European and UK immigration law.

To be granted asylum (to get 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

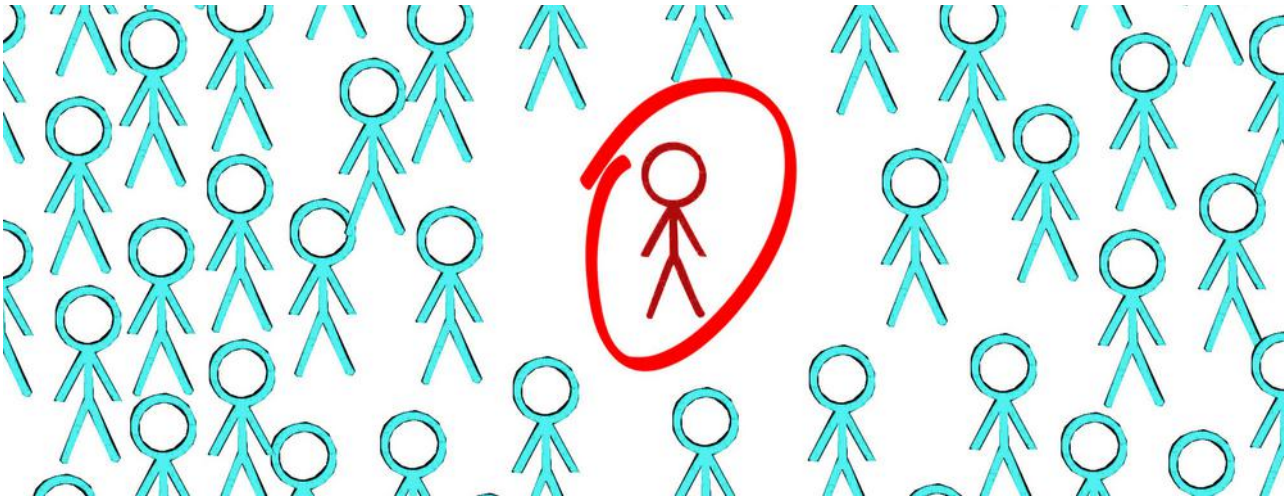
you are outside your country of origin or normal residence

and you cannot get protection in your own country.

Do you have 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?).

Persecution

Persecution, in terms of claiming asylum, is serious, targeted mistreatment of an *individual* because of who they are, or what they do, or what people think they are or do.



The Refugee Convention itself does not define "persecution". The Refugee Convention is international law. It is translated into EU law as the Qualification Directive. This is part of UK law (though this is likely to change once the UK leaves the EU) under rules known as the Qualification Regulations. The definition of persecution in the Qualification

Regulations (and any relevant case law) is what the Home Office should use to assess whether a person is at risk of persecution if removed from the UK.

The Qualification Regulations state:

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 l**egal, 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, see below]

(3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention [reasons of race, religion, nationality, political opinion or membership of a particular social group].

As you can see above, the 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.

Many people seeking safety in the UK are fleeing war and widespread violence. This in itself does not mean you can be granted protection under the Refugee Convention (given "refugee status"). There are other kinds of protection for people in this situation, but the UK government has a very high threshold of how bad and widespread the violence has to be,

how many civilians are affected by it, to give protection to people fleeing war and violence. See *Indiscriminate violence* section below.

Well-founded fear

An asylum claim should be based on a “well-founded fear” 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 there is a **real risk** it could 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.

To show this fear is well-founded, you will need to provide **evidence**.

The evidence that everyone has is their story – what has happened to you, what have you been threatened with, what has happened to your family/colleagues/people you know – do these things mean you are at risk? Why did you leave? Why can't you go back?

In most cases, the UK Home Office (the government department who makes the decision on your asylum claim), will not believe your story. If you are able to go to court and appeal the Home Office refusal of your claim, the judge may also not believe your story.

Try and obtain other evidence to support your story. You should not wait for the Home Office or courts to say they do not believe you before you try and get evidence to support what you have said.

Are there witnesses to things that happened to you? Have you got documents that prove any part of your story? These might include arrest warrants, court documents, letters from friends/organisations showing you are in danger. Is there newspaper coverage of an event

you are talking about? Are there human rights reports that show the situation in your country is like you say it is?

Grounds for an asylum claim

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: reasons of race; religion; nationality; political opinion; or membership of a particular social group.

You do not need to specify or say in legal language which Refugee Convention grounds you are applying under. Your case may actually come under more than one of these grounds. You tell the Home Office 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.

Nationality, race, and religion are relatively straightforward grounds (if often difficult to evidence), but imputed beliefs and particular social group require further explanation.

Imputed identity or beliefs: what people think you are or do

“Imputed” identity or beliefs means what people think you are or do. What people think you are, or do, could put you at risk of persecution even if it’s not true.

For example, if your local community *thinks* or says you are a Christian or an atheist, this may put you in danger even if you are not actually a Christian or atheist. If your family and neighbours *believe* you are gay or lesbian, you might be at risk irrespective of whether you are gay or straight. You may not actually be a member of an at-risk political group, but someone might spread rumours that you are, to try and get you in trouble.

Imputed beliefs might be a factor if 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 asylum applicants). It may be because you are a gay rights campaigner, and therefore would be at risk in a homophobic country because people assume you are gay. Or it may be that because of your lifestyle (for example, you are unmarried in a country/culture where this is unusual) people assume you are gay and you would be at risk of persecution because of that.

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)

Particular social group is the most complicated area of the Refugee Convention grounds. This is because it is quite vague and can cover a variety of situations. This category 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.

Gender and **sexuality** are not distinct Refugee Convention grounds but come under particular social group. Gender as a particular social group 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 particular social group is particularly important when dealing with non-state actors of persecution (see below), because it can be argued by the Home Office 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.

Who are you at risk from?

You may fear persecution from the state and/or its agents such as the army or the police. If this is the case, it is fairly clear why you would be “unable or unwilling” to seek protection from the state, to use the words of the Refugee Convention.

You may fear persecution from people that aren't officially recognised as the state, but are the de facto state (they are in effective control of a country or part of the country). Examples of this could be Al-Shabaab in areas of Somalia that it controls, or ISIS in Iraq. Again, it should be fairly easy to explain why you cannot get protection from the 'state' in these circumstances.

Persecution might also come from “**non-state actors”,** such as a member of your family or community, a gang, religious or political opponents.

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.** 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 the Home Office – they may accept that you would be at risk in your home region of Afghanistan, for example, but argue that you would be safe if you relocated to the capital Kabul. 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 in the place it is being suggested you could internally relocate to, 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".*

Indiscriminate violence

Refugee status should be granted if you can show you are at risk of serious, targeted mistreatment of you as an individual because of who you are, or what you do, or what people think you are or do. If you are fleeing war or violence that is threatening/harming many people - not you specifically - you may not qualify for refugee status.

You may, instead, have your case considered under **Article 15c of the Qualification Directive**, which is the interpretation of the Refugee Convention in EU (and therefore UK) law.

Article 15c refers to 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 is different from the specific threat to an individual covered in the Refugee Convention. Article 15c covers situations where civilians are at serious risk simply by being present in a very dangerous situation of armed conflict where indiscriminate violence is widespread.

Very few situations have been ruled to reach this high threshold, but if they have then *humanitarian protection* may be granted.

Exclusion from protection

In some cases, the Home Office may take the view that a person should be excluded from protection under the Refugee Convention (excluded from being granted refugee status and humanitarian protection).

This can happen in cases where the person has committed a serious criminal offence, or where the Home Office 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 human rights abuses.

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

If the Home Office 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 or humanitarian 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 from the UK (see *Article 3 Human Rights*).

Claiming asylum

If you have come to the UK and you need to stay because you would be in danger in your country of origin or residence, and you want the UK to grant you international protection, you need to claim asylum.

You claim asylum via the UK Home Office, the government department that handles asylum and immigration claims, as well as enforcing borders.

The Home Office expect people to claim asylum immediately on entry to the UK. If you do not do this, the Home Office will use this to argue you are not really in danger. If you didn't claim asylum as soon as you came to the UK, you will need to explain why you didn't claim asylum immediately, and provide evidence of this where possible.

Some people claim asylum immediately on entering the UK, at the port at which they arrive. They do this by telling the immigration officials there that they wish to claim asylum. If you do this, you will usually have your first interview to gather basic information about you and your journey - your screening interview - that day or in within the next five days.

If you don't claim asylum immediately on entering the UK, you will need to telephone to make an appointment to claim asylum at the Screening Unit in Croydon. Read more in the Toolkit *Screening Interview* section.

You cannot claim asylum at a police station - though in some cases people who make themselves known at a police station (particularly children) may be signposted to the Home Office.

If you are picked up by immigration enforcement teams before you have arranged to claim asylum, you need to tell them you wish to claim asylum.

Some time after your screening interview, you will then have your **asylum *substantive* interview**. This is the long, in depth interview where you explain why you would be at risk if returned to your country. Read more about the substantive interview, and how to prepare for it, in the Toolkit *Asylum Interview* section.

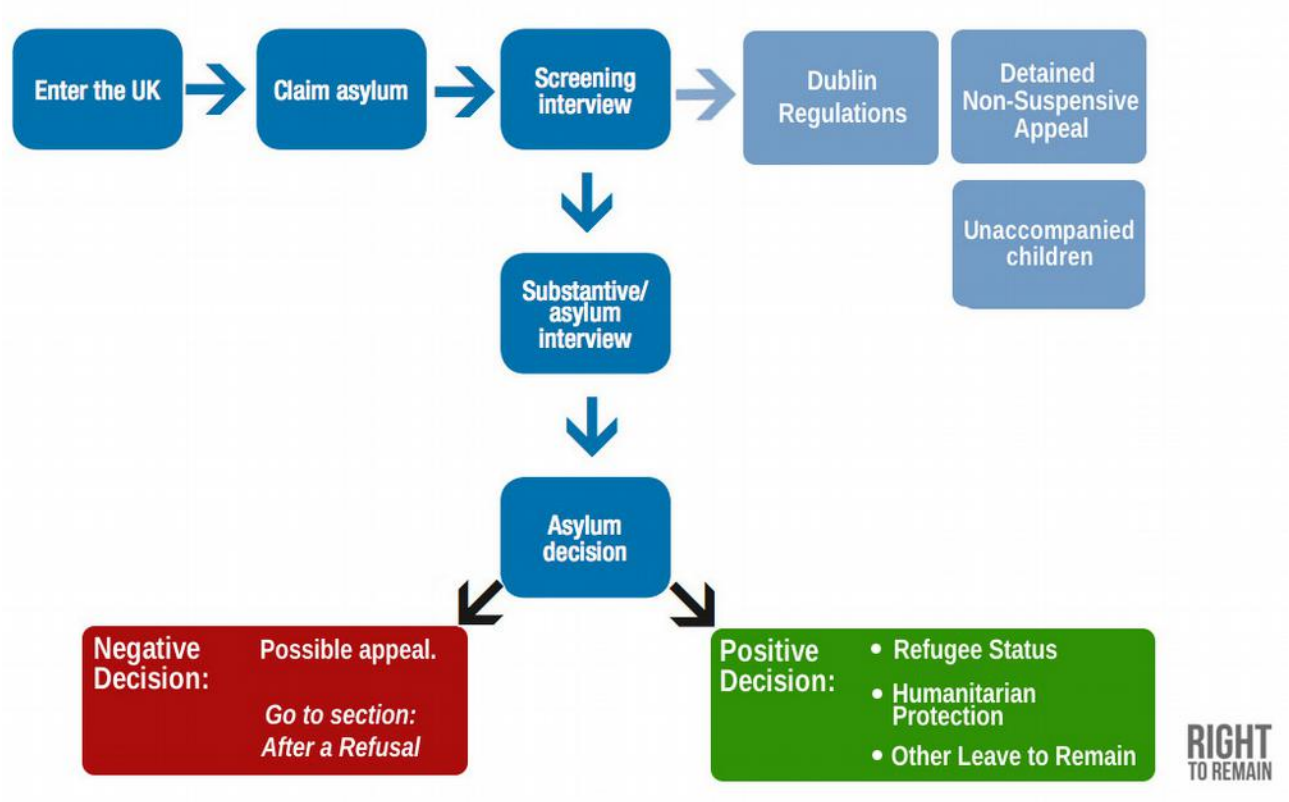
The time period between the screening interview and substantive interview can vary. It can be many months, and some people wait as long as year.

You may want to submit **evidence** to the Home Office at your substantive interview. If you have a lawyer, make sure you discuss this with them first. You also have five days after the substantive interview within which to submit evidence. Read about what is meant by “evidence” in the Toolkit *Asylum Interview* section.

You should be informed of the Home Office decision on your asylum claim within six months of your substantive interview. The Home Office says that it may take longer than

this if your supporting documents need to be verified, you need to attend more interviews or your personal circumstances need to be checked (for example if you have a criminal conviction or you're currently being prosecuted).

If your asylum claim is refused, you may have the right to appeal the refusal in the courts. The first place you would appeal is the First-tier Tribunal. Read more about the legal process after a refusal in the Toolkit *Refusal* section.



Legal representation

If you have no or little income, you may be able to get **legal aid** to 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.

If you claim asylum immediately or soon after arriving in the UK, you will usually be able to meet with a legal aid lawyer after your screening interview and before your substantive interview.

You will not be automatically allocated a lawyer, but you can find out about your nearest legal aid law firm or law centre by asking at your asylum accommodation (see below).

If you have already been in the UK for some time, you should try and see a lawyer before you claim asylum. You can search for a legal aid lawyer using these directories: righttoremain.org.uk/resources/lawyers.html

Read more about legal aid, and alternatives if you are not eligible for it, in the Toolkit *Your Legal Case* section.

Accommodation and financial support

If you do not have anywhere to live and you have no money to support yourself, you need to tell the Home Office this when you claim asylum. At this point of the legal process, you will be entitled to housing and a small amount of money, but you will have no choice where in the country you live, unless you have someone who will let you stay in their house.

Asylum seekers in almost all cases do not have permission to work. **If you work without permission, you are liable to criminal prosecution.** If you are caught working without permission, you can go to prison.

If you are **destitute**, you can apply for housing and basic living expenses - "**asylum support"**, which is administered by the Home Office.

To begin with, if you have nowhere to live, you will be usually be placed in temporary "initial accommodation" by the Home Office. This is usually a hostel with other asylum seekers. You should be provided with food, and a small amount of money for essential living expenses. This is known as "Section 98 support", after the section of law that governs it.

Next, after some days, weeks, or sometimes months, you will be taken to new accommodation, usually a flat or shared house, somewhere else in the country. You will now qualify for what is known as "Section 95 support", which is housing plus £36.95 per week for each person. You do not have any choice about where in the UK you are housed. You can be to dispersed to anywhere in the UK (though usually not London and the south-east of England). You will still not have the right to work. You will be issued with an identity card (called an Application Registration Card or "ARC card") and instructions on how to receive your money.

If you know someone you can stay with (friends or a family/community member) long-term, you can ask the Home Office to just provide you with money for basic living expenses. This is known as "**subsistence only"** or "**subs only"** asylum support. If you apply for this kind of support, you will not be dispersed as you will be accommodated by your friend or family/community member.

Detention

If you do not have the right to remain, you are liable to being held in immigration detention. The detention centres, known officially as "Immigration Removal Centres", are like prisons.

You can be detained at any time during your claim, but there are several points in the asylum process when it can be more likely to happen.

When you claim asylum, if your claim is deemed "clearly unfounded" you may be detained

at the screening interview. Read more in the Toolkit section *Screening Interview* (detained non-suspensive appeals).

When you claim asylum, if the Home Office prove you passed through another European (EEA) country they may try to transfer your claim under the Dublin regulations and detain you while they do this. Read more in the Toolkit *Dublin Regulations* section.

If you have been in the UK for a while and do not have regularised status (for example, if you have overstayed your visa), are picked up by immigration enforcement and claim asylum, you may be detained and your case placed in the "detained asylum casework" category. If your asylum claim is refused, you will have the right of appeal in the UK (unless your case has been categorised as "non-suspensive appeal"). Most people in the "detained asylum casework" category are released from detention before their appeal is heard.

If you not detained when you claim asylum, you will usually not be detained until after a refusal of your asylum claim and a dismissal of an appeal at the First-tier Tribunal (if you had an appeal right). This is when you are (what the Home Office calls) "**appeal rights exhausted".** You may in fact still have legal avenues open to you, including further appeals. See the Toolkit *After a Refusal* section.

Although the law states that you should only be detained if your removal/deportation is imminent, you can be detained *indefinitely*. The UK does not have a time-limit on detention.

ACTION SECTION

- **Start to make contacts in your new local area as soon as you can.**

  It is very difficult to go through the asylum process without support. In the ACTION SECTIONS throughout this Toolkit, there are suggestions of actions that people around you can take, to help you get through the process.

  Most towns and cities in the UK where asylum seekers are dispersed to have community centres where you can meet other people seeking asylum, and volunteers who will be able to help and advise you. When you arrive in a new place, ask other people and look for these places, until you find one or more that you like.

- **Prepare for what is coming next**

If you have not yet had your asylum interview, start preparing for it now.

Most people who apply for asylum are refused asylum by the Home Office. Make sure you know what your legal options are if this happens.

You may have the right to appeal the Home Office refusal of your asylum claim. Is there evidence that you were not able to get in time for your asylum interview, but can get now?

Have good people around you who can support you. It is not a nice experience to be told by the Home Office, and maybe by the courts as well, that you are not telling the truth. With people standing by you in solidarity, you are more likely to be able to keep going, and keep fighting for justice in your case.

- **Find out who your local MP is.**

  Your MP will depend on the constituency you live in or have strong connections to. A constituency is an area of the UK where the voters elect one MP.

  You can find out who your local MP is, and how to contact them, at TheyWorkForYou.com.

  It’s never too early to start thinking about meeting your MP. If they already know you, they will be more likely to want to help if you go to speak to them when something has gone wrong in your case. It’s much more effective to meet them in person than to phone or email. You can meet them during their “surgery” where they meet members of their constituency face-to-face to talk about local issues.

  If you're a member of a local group, you might like to invite your local MP to one of the group's events. If you later approach the MP for help, your connection to that group may be a positive factor and may encourage them to help you.

Asylum 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 usually be interviewed there by an immigration officer. If you claim asylum some time after entering the UK, you will usually be interviewed at the Screening Unit in Croydon.

If you claim asylum at the port of entry when you enter the UK, or if you are picked up by an immigration enforcement team at some other time, you will either have your screening interview **that day or within five days.**

If you are claiming asylum other than at the port of entry or after being picked up by an enforcement team, you need to **telephone to make an appointment** at the Screening Unit in Croydon. For contact details, check this page of the Home Office website: wwwgov.uk/asylum-screening-centre

If you have nowhere to live, you do not need to telephone and book an appointment before going to the Screening Unit. The staff there may tell you otherwise, so you need to be prepared to argue for your right to be seen as a “walk-in”. It may help to take a friend/supporter with you to help you with this.

The Home Office have a target of conducting screening interviews within ten days of someone claiming asylum, but this target is often missed for people who claim asylum at the Screening Unit in Croydon.

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 lawyer need to speak to the Home Office to see if it’s possible to be interviewed elsewhere.

If you are detained when you claim asylum, your screening interview will probably be conducted in the detention centre. Many people who are detained when they claim asylum are released after the screening interview. Others may continue to be detained, if their case is put into the “detained asylum casework” category. See ‘Detention’ section of the Toolkit.

Most people do not have chance to meet with a lawyer before their screening interview (though it is good to try and speak to a lawyer before the interview if possible). Your lawyer will not attend the screening interview with you. The screening interview cannot be audio-recorded, unlike the longer substantive asylum interview.

The Home Office interviewer will take notes on a screening interview form during the interview. **It is very important that you get a copy of this screening interview record.**

There will be an interpreter provided if you need one. 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 the Home Office interviewer this and ask them to write it down.

You can also tell your lawyer at a later date if there have been problems, 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 the Home Office interviewer noted that there were problems with the interpretation.

Questions in the screening interview

In the screening interview, you will be asked some basic questions (often called "bio-data"):

- your name,
- your date of birth,
- your nationality,
- your ethnicity,
- your religion,
- about your family members.

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, as you will be asked about this in much more detail in your (later) substantive interview.

There is case law that establishes that information given in the screening interview about reasons for claiming asylum should not be overly relied upon. This is the information, however, on which the Home Office will decide which category your case should go into. If they need more information to decide this, they should seek further information after the interview, before making a decision.

Although these questions may seem fairly straightforward, the information you give will be used by the Home Office to compare against what you say in other interviews or statements. Read more about this in the Toolkit *Asylum Interview* section..

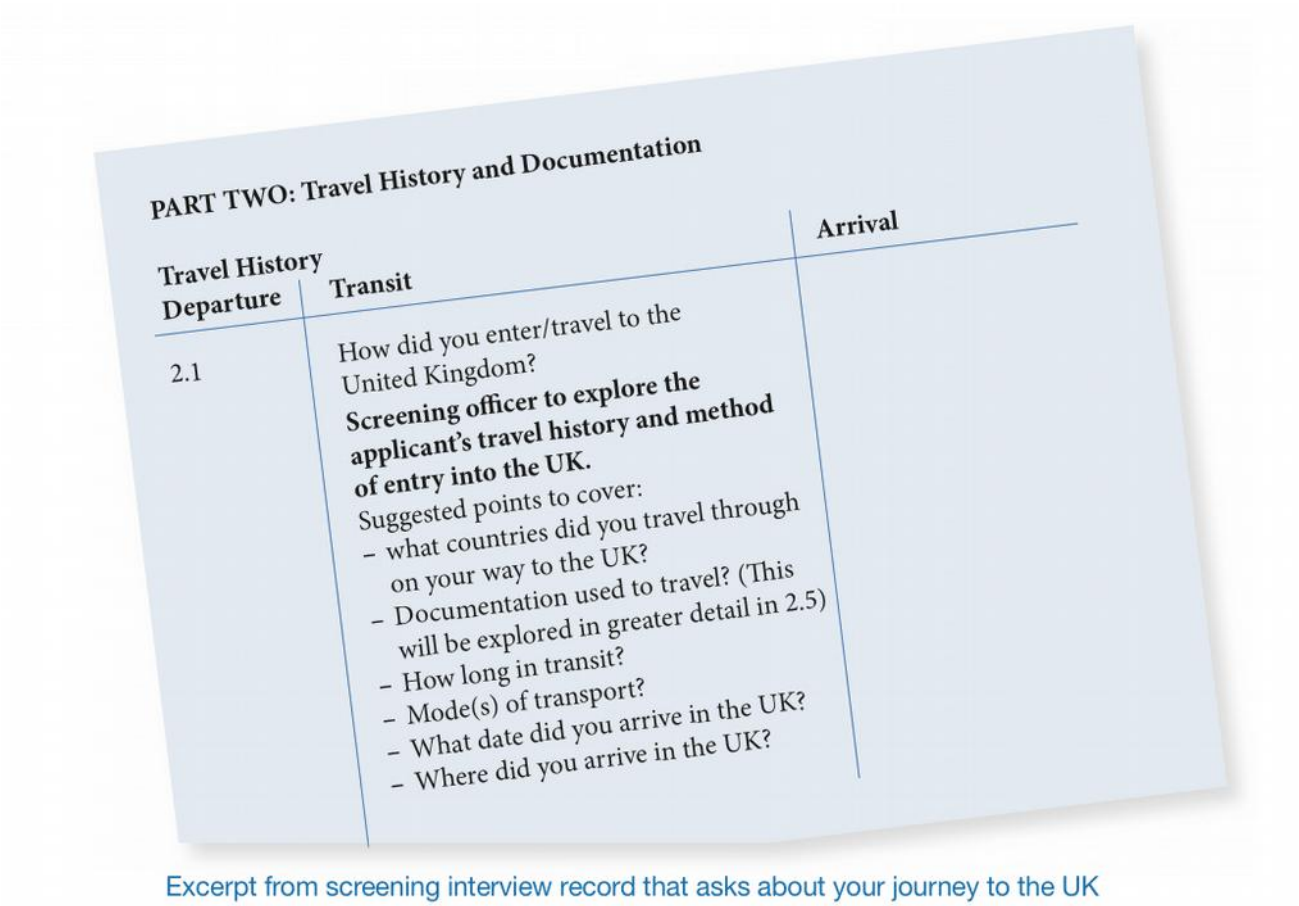
You will be asked if you wish to have a male or female interviewer for your main substantive interview. If you do not state a preference in the screening interview but later wish to request a male or female interviewer (and interpreter), you can do this before your asylum substantive interview. *Make the request far in advance, don't wait until the day of the interview.*

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

Your journey to the UK

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*). There will be 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.

Even if the Home Office do not use this information to try and pass responsibility for your asylum claim to another European country, they may use it to undermine your credibility. If there were other countries you travelled through where you could have claimed asylum and did not, the Home Office is likely to argue that this shows you are not telling the truth when you say you fear persecution. They may argue that if you are really in danger, you would have claimed asylum in the first place you could.



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?	

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

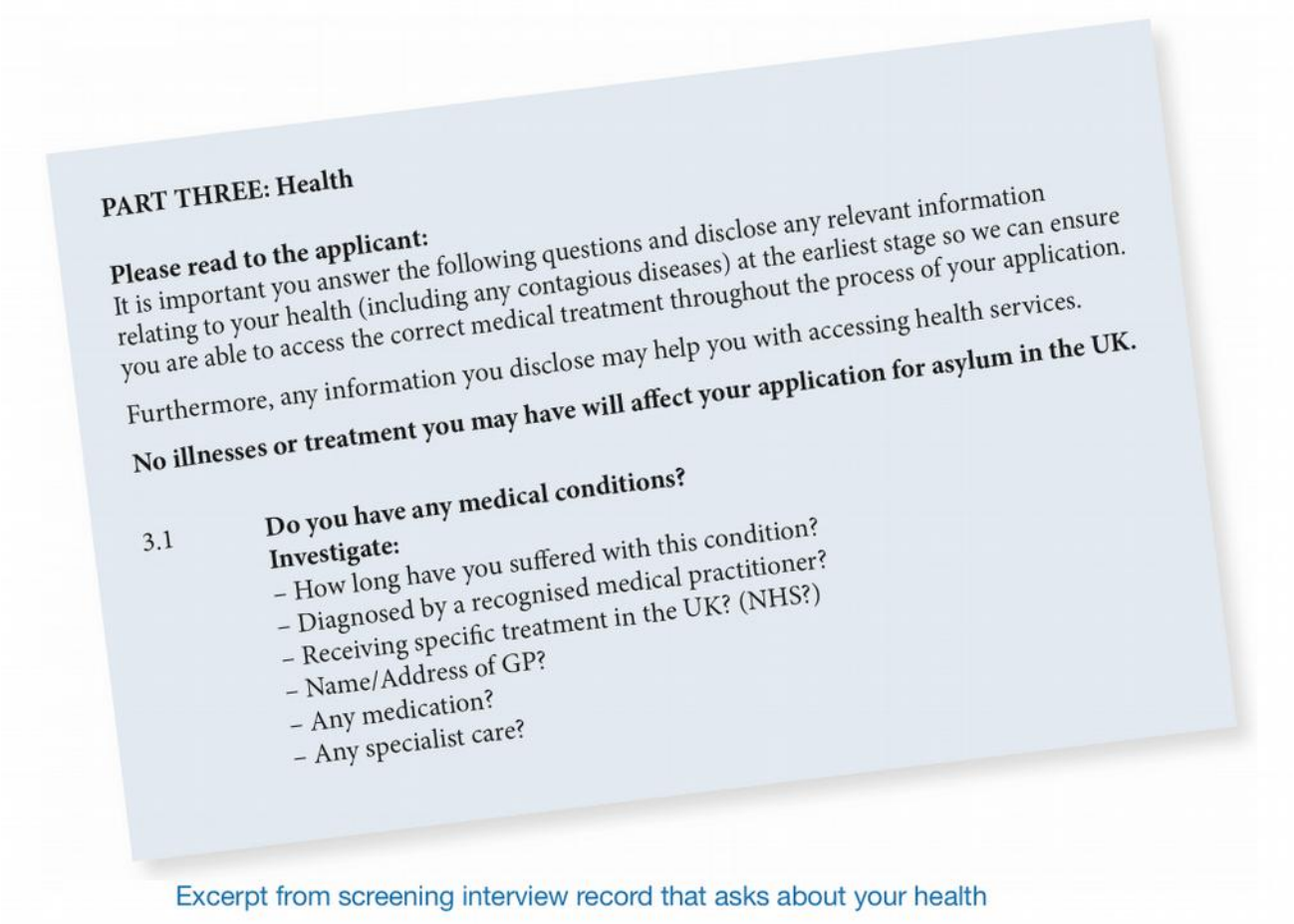
If the information you give in this interview is different from the information you give in later interviews, this will be used against you. If you are not sure of something or can't remember a date or detail you can say "I'm not sure of the date" or "I don't remember".

Health questions

You will be asked about your health in this interview. Although it is difficult to give personal details to someone you don't know, if you don't feel well you should say so.

You may be feeling tired, distressed or ill, especially if you have your screening interview at port just after arrival. 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 you.

Disclosing information about any illnesses you have will not negatively affect your application for asylum. Some people do not disclose illnesses such as HIV/AIDS or TB because they fear they will be 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?

Excerpt from screening interview record that asks about your health

Categorising your case

At the screening interview, the Home Office will decide which of the following categories your case falls into:

- general casework
- detained non-suspensive appeal
- Dublin/safe third country
- unaccompanied minors

Detained non-suspensive appeal

If your asylum claim is categorised as “non-suspensive appeals”, you will have an *asylum substantive interview* but you will have **no right to appeal within the UK if the Home Office refuse your asylum claim after the substantive interview**, which they are very likely to do if your claim is in this category.

If it decided you case is "*detained non-suspensive appeals"*, you will be detained straight after the screening interview. Read more about immigration detention, and your legal options if detained, in the Toolkit *Detention* section.

The term “non-suspensive” refers to the fact the **Home Office does not have to suspend your removal until you have had the chance to appeal a refusal**, unlike other asylum cases. In order to do this, the Home Office “***certify”*** your asylum claim under Section 94 of the Nationality, Immigration and Asylum Act 2002.

This category is clearly problematic as the decision that you do not have the right to appeal is being made before the asylum interview, when you would give full reasons of why you fled. The decision is usually made on the grounds of country of origin, if you come from a country in which it is thought you are unlikely to need the protection of international law. These countries are often called the “White List”. Some countries are included as "men only" - only men claiming asylum from those countries are likely to have their asylum claims certified. You can find out more about the Safe Country/White List here: https://www.ein.org.uk/bpg/chapter/3

The timing of your asylum claim may also be a factor in this decision. The Home Office may decide that an asylum application is “opportunistic” (meaning made solely to get leave to remain because you have no other options) and certify a claim on that basis. For example, if you have lived in the UK for a long time but only claim asylum when you are picked up by an immigration enforcement team, the Home Office is likely to say that asylum claim is opportunistic.

A decision to certify an asylum claim (categorising it as “non-suspensive appeals”) can be challenged by a judicial review.

Detained Fast-Track:

this used to be one of the categories a case could be routed in to at screening interview. This category does not currently exist as the detained fast-track system for asylum applications was suspended following successful litigation that showed it was being operated unlawfully.

Dublin/safe third country

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 the Home Office proves that you have travelled through a safe country on your journey to the UK, they will try to “transfer” your case and say that you have to return to that safe country (the “third country”) to have your asylum claim heard. They are called “third” countries because they are not the UK and not your

country of origin/residence.

In practice, this is usually enforced for people who have travelled through countries that are European Economic Area (EEA) member states plus Switzerland, as removal back to those member states is allowed under a European agreement called the Dublin Regulations. There have been several versions of the Dublin Regulations, and the ones currently in use are called Dublin III (three).

If your case is considered to be a Dublin case, you will not have an asylum substantive interview in the UK.

Read more in the Toolkit section on the *Dublin regulations*.

Unaccompanied minors

If you are an unaccompanied minor, and the Home Office accept this, your case will be dealt with slightly differently by the Home Office than if they say you are an adult. An unaccompanied minor is a child who is under the age of 18 years old; is applying for asylum in their own right; and is separated from both parents and is not being cared for in the UK by an adult who in law or by custom has responsibility to do so.

If you are an unaccompanied minor you will in most cases still have an asylum (substantive) interview, and your lawyer will usually attend the interview with you.

If you are an unaccompanied minor, you may find general information in this Toolkit useful. The legal process explained in this Toolkit, however, is mainly for adults and does not contain child-specific procedure.

For more information on the asylum process if you are an unaccompanied minor, contact the Children's Panel at the Refugee Council or the Migrant Children's Project at Coram Children's Legal Centre.

The Home Office may not believe that you are under 18 years old - this is called an “age dispute”. The Home Office may undertake an age assessment, and may also ask a local authority social services to assess your age. Read more at the website of the Migrant Children's Project at Coram Children's Legal Centre.

Next section: *Dublin Regulations*

Dublin regulations: a “safe third country”

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 the Home Office proves that you have travelled through a safe country on your journey to the UK, they will “transfer” your case and say that you have to return to that safe country (the “third country”) to have your asylum claim heard.

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In practice, the Dublin Regulations are usually enforced for people who have travelled through countries that are European Economic Area (EEA) member states plus Switzerland, as removal back to those member states is allowed under a European agreement called the Dublin Regulations. There have been several versions of the Dublin Regulations, and the ones currently in use are called Dublin III (three).

If the Home Office can prove that you have travelled through another EEA country, they will not consider your asylum claim. They will attempt to transfer your case to the country that they can prove you travelled through and where you could have claimed asylum. If the transfer request is accepted by that country, the UK will remove you to that country without looking at your asylum claim at all.

It is usually at your screening interview that the Home Office will attempt to identify if your asylum claim is their responsibility or not. The Home Office will check your fingerprints against the Eurodac European-wide database of fingerprints. If your fingerprints show up as being registered in another EEA country where you could have claimed asylum or did claim asylum, the Home Office will attempt to remove you to that country.

The Eurodac database is the most common way of identifying that someone's asylum claim falls under the Dublin regulations, but the Home Office may also use other means such as visas/permits and other official documents issued by another EEA state.

You are legally obliged to allow the Home Office to fingerprint you. If your fingerprints aren't clear (including if you have deliberately damaged them), the Home Office have a policy of scheduling routine appointments to check your fingers until the fingerprints are clear enough for use.

Detention in Dublin cases

The Dublin III regulations state that people should not be detained solely because they are being put through the Dublin regulations transfer process, and they should only be detained if there is a "significant risk of absconding". The UK Home Office determines that most people are at risk of absconding, so detains most people whose case falls under the Dublin regulations.

Although there is no general time-limit on the period someone can be detained in the UK, if you are being detained because your case is in the Dublin process, the maximum time you can be detained is six weeks.

Humanitarian clause

Article 16 of the Dublin III regulations states that if an asylum-seeker has family ties in a particular EEA state, and because of a particular vulnerability is dependent on that family tie, those individuals should be kept or brought together. The UK interprets this family tie very narrowly, and says this only applies to a spouse, parents or children in the UK (though this may be the subject of legal challenge).

Forced removal under Dublin Regulations

You should not be removed under the Dublin Regulations if you have been outside of the EEA for **three months** before coming to the UK.

For example, as an Iranian asylum seeker, you may have spent some time in Germany then returned (either voluntary or you were returned by force) to Iran for six months where you faced further persecution. If you then came to the UK straight from Iran, you should not be removed to Germany under the Dublin Regulations.

This "breaking the chain" - being registered in the EEA but then returning/being returned to your country of origin before coming to the UK - is the most common reason that the UK's attempts to transfer cases under Dublin fail.

Transfer request deadlines

- In a *take charge case* (where the Home Office have identified you have travelled through another EEA state but have not identified that you have claimed asylum there), they have only **three months from when you claim asylum in the UK to make a transfer request under the Dublin Regulations on your case**.
- In a *take back case* (where the Home Office have identified that you have claimed asylum in another EEA state), the transfer request must be made within **two months** of *matching your fingerprint* on the European-wide database, a 'Eurodac hit'.
- If you are **detained** during the Dublin procedure, the UK has only **one month** in

which to make the transfer request.

Receiving country's response deadlines

- If you have only claimed asylum in the UK but the Home Office believe you travelled through another country in which you could have claimed asylum, that country has **two months** to respond to the transfer request. If the country does not respond within two months, it has taken responsibility for your case.
- If the Home Office have evidence **you claimed asylum in another EEA country**, that country has **one month** to respond to the transfer request, or two weeks if the transfer request is based on a Eurodac fingerprint request. If the country does not respond within these deadlines, it has taken responsibility for your case.
- In either of these situations, if you are **detained** during the Dublin procedure, the other country has just **two weeks** to respond to the request.

Transfer/removal deadlines

- If the other country accepts responsibility (or fails to reject responsibility) for your case, the UK has **six months** in which to remove you to that country. The six month countdown starts from when the other country accepts responsibility for your case; or if you challenge the decision, for example through a judicial review, six months from when the court rules you can be sent to that country. This time limit may be extended up to a maximum of one year if the transfer could not be carried out because you are imprisoned (following a criminal conviction as opposed to detained under immigration powers) or up to a maximum of eighteen months if the Home Office deems that you have 'absconded' (have not complied with reporting requirements or bail conditions etc).
- If you are **detained**, the UK has just **six weeks** to remove you. The six week countdown starts from when the other country accepts responsibility for your case; or if you challenge the decision, for example through a judicial review, six weeks from when the court rules you can be sent to that country.

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

Unaccompanied minors

If you can prove you are under 18 and in the UK without your family, the Home Office cannot remove you under the Dublin Regulations even if you have already claimed asylum in another EEA country, if you can show that staying in the UK would be in your best

interests. This is following a 2013 European Court of Justice ruling.

Challenges to Dublin removals to certain countries

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 removals are also prohibited to these countries.

The courts have found that conditions in Greece for asylum seekers are so bad that they breach Article 3 of the European Convention on Human Rights. This means that conditions are so bad they amount to inhuman or degrading treatment. Because of this, **the UK cannot remove any asylum seeker to Greece under the Dublin regulations.**

Lawyers have established that conditions for some particularly vulnerable asylum seekers in Italy would breach Article 3 conditions. There are also challenges to removals to countries such as Hungary, Bulgaria, Cyprus and Malta.

There is no blanket ban on Dublin removals to any EEA country apart from Greece. If the Home Office are attempting to remove you to an EEA country where you think your human rights would be breached, you need to challenge the removal on this basis.

Challenging a Dublin removal

If you think your human rights would be breached by removal under the Dublin Regulations, you need to try and speak to a lawyer about proving this.

Although the Dublin III regulations allows for an appeal right to decisions to transfer your asylum claim, in practice the UK Home Office certifies these claims and the legal option for challenging a Dublin removal is likely to be a judicial review.

Using Dublin to come to the UK

In theory, it is possible for some people who have travelled to Europe to use the Dublin III regulations to request their asylum claim be heard in the UK. In January 2016, lawyers working with NGOs successfully brought a legal challenge where the British courts agreed that four people living in the refugee camp at Calais could have their asylum cases heard in the UK instead of France. Three of these people were children, and one was a vulnerable adult. They were allowed to come to the UK to claim asylum because they could prove that they had family in the UK. At the time of writing, the UK government intends to appeal this decision, and we do not know if it will be successful.

To qualify for this route, you must be able to prove that you have a parent or child or husband or wife in the UK. If you do, it is possible that you can apply to have your asylum claim transferred from another European country to the UK. Please note there is no guarantee you will be able to do this. You will almost certainly need a lawyer to help you, and you will need to apply for asylum in the other European country first. One UK

organisation is working with lawyers to try and bring more people to the UK in this way. Find out more here: http://safepassage.org.uk/refugees/ It is important to note that even if you were successful by this route, you would still need to apply and go through the whole UK asylum process.

Next section: *Asylum Substantive Interview*

Asylum Interview

The asylum, or substantive, interview is when the Home Office interviewer will ask you 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 the same questions several times in different ways.

It can be a very long, difficult and traumatic interview, and could be the most important part of your asylum application.

You are going to be asked questions about things that may be very difficult to talk about. Be prepared for not being believed. It is common for the Home Office interviewer to explicitly say they do not believe you.

You need to be very clear, give as much detail as possible, and try to remember to include all the important information.

Have friends, neighbours and supporters on hand to talk to before and after the interview. See the ACTION SECTION below.

If you have a lawyer, they may ask you to tell them your story before the interview with the Home Office and submit a written 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). Not all lawyers will do this, as some lawyers feel it can be risky to submit a statement in advance that the Home Office interviewer can then “test” you on during the interview. A statement may also be 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.

If you cannot attend the interview, you must provide very good reasons for this, through your lawyer if you have one. 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, the Home Office may refuse to re-arrange your interview and will assess your application on paper (which almost always leads to a refusal).

If you are an adult and you have a legal aid lawyer, they will not normally be able to attend the substantive interview with you. If you are being held in immigration detention at the time of your substantive interview, however, your lawyer is allowed to attend under legal aid rules and so may attend the interview with you.

Some people are now having their substantive interviews conducted via video conference/Skype: the person seeking asylum sits in a room in one location, and the Home Office interviewer and interpreter sit in another location, and the interview

takes

place over a video link. This means the interview is automatically recorded (which is good), but most people are not given a copy of this at the time of the interview (it is usually sent to their lawyer some days later). This makes it harder for you to check straight after the interview if there were any issues around interpretation or things you don't think you explained properly.

Audio recording and written transcript

It is your legal right to have the interview audio-recorded. You or your lawyer must request this in writing, 24 hours or more in advance of the interview. If you are detained, you need to provide three days' notice.

If you have requested it, make sure the interview is recorded. The interviewer may not mention it, or may try and convince you not to have it done, but it is very important to have your interview recorded.

At the end of the interview, make sure you are given a copy of the audio recording, as well as a written copy (a "transcript") of what was said by you and by the interviewer during the interview. These should be given to you immediately after the interview. Your lawyer will need a copy of these. *You will not be given a written transcript if you are interviewed via video/Skype.*

These records are important: it may become clear later that your asylum claim has been refused because of something the Home Office *said* you said when in fact you didn't, or something was written down wrong, or was misinterpreted. If your case goes to appeal, your lawyer can listen to the audio recording and compare this to what has been written down (with the help of an interpreter if necessary).

Male or female interviewer

You have the right to request a male or female interviewer, and the Home Office will usually grant this request. If you want to be interviewed by an interviewer of a particular gender, make sure you request this as soon as possible. If you request it just before the interview, it is very unlikely the Home Office will be able to arrange this.

Interpreters

The Home Office will provide an interpreter for the interview. You can request a male or female interpreter. As with the request for a male/female interviewer, the earlier you make the request, the more likely it is to be granted. You may not be comfortable giving your testimony to an interpreter from your home country/community. You can request an interpreter who speaks your language but who is from a different country/community, but

there is no guarantee this request will be granted.

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 the Home Office interviewer and ask them to write it down.

After the interview, you should also inform your lawyer if there were problems with the interpreter (or any other problems), but it is far better if it has been recorded at the time of interview.

If there are discrepancies in your testimony because of poor interpretation during the interview, and these are used to refuse your asylum claim, it will be much easier to respond to the reasons for refusal if the problems were recorded during the interview.

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 you, your lawyer, or one of your supporters looks at the transcript of the interview, and in light of what you have told them that the errors become clear.

Know your rights

- Request that your substantive interview is audio recorded. Make the request in writing, and more than 24 hours before the interview (or three days if you are in detention). Make sure you are given a copy of the audio recording and the written transcript at the end of the interview.
- You have the right to request a male or female interviewer, and a male or female interpreter. Make this request as far in advance as possible.
- 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 you need a break during the interview, ask for one – this is your right, do not be afraid to ask.
- If you think there is a problem with interpretation, say so as soon as possible, and ask for this to be noted on the interview record.
- If there were things you forgot to say, or said wrong, or 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, towards the end of the interview, "Is there anything else you want to add?"

Dates and times, cultural issues

During the interview, you may be asked to fit your story into a chronological timeline of what happened when, perhaps in a way you are not used to. For example, “x” happened in 2009, then “y” happened in May 2010, after that “z” 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 explain 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. For example, you may remember that something happened during Ramadan, or after the harvest. Or that it was winter, because the nights were cold.

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

lawyer, an interpreter, the Home Office, or a judge. It is better not to switch between calendars as this can lead to mistakes. If 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 the Home Office or your lawyer (if you have one). If you have a lawyer, you can ask them to check that the dates have been converted properly by the Home Office, an interpreter or by themselves.

Be aware that the person interviewing you may know very little about your country and/or culture. This can lead to misunderstandings in the interview, and ultimately to a refusal of your asylum claim. For example, you may use the word “auntie” or “uncle” to refer to someone you know. In the UK, these words have specific meanings - the brother or sister of your mother/father. If you use the word “uncle” in the broader meaning, for example if you said “my uncle in Kabul helped me”, it will cause confusion if you later say you haven't got any family in Kabul.

Evidence

To be granted refugee status, you must show your fear of persecution is “well-founded”, meaning there is a real basis for your fear. Read more about this in the Toolkit *Asylum Introduction* section.

Many people are unable to get documentary evidence to support their 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. Because of this, **your “evidence” at this stage of the asylum process will often just be your testimony about what has happened to you and/or what you think may happen.**

The Home Office 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.

You may be re-telling difficult experiences, and remembering these events can be upsetting. It is important, however, to try and give enough detail about the events to explain them to someone who wasn't there, isn't from your country, and to explain why these events led to you having to leave your country.

Giving details about a physical or sexual assault can be particularly distressing, but your testimony will be used to make a decision on your asylum claim. It is therefore important to include information such as who attacked you; what they were wearing; if they were police or army or secret police (and their rank if you know it); what they did to you; how often it happened, particularly if you were in prison/detention at the time; who was in the room; how you managed to survive.

Documentary evidence

Documentary evidence is often hard to get because of the circumstances in which you had

to leave your country. Nonetheless, the Home Office tends to disbelieve what you say (your testimony) and so it is very helpful if there is genuine documentary evidence to support your story. Documentary evidence might include a political party membership card, an arrest warrant, a birth certificate, or newspaper articles about you or persecution of people like you.

If you are going to submit any documentary evidence, **make sure you have shown this to your lawyer beforehand and they have agreed it should be submitted.** You can either give this evidence to the Home Office **at the interview**, or you have **five days after the interview** within which to submit any documentary evidence or any statements.

If you are going to submit documents, make sure you know where they came from. Who sent them to you? How did they get them? If posted to you, keep the envelope they came in and any other proof of postage. Wherever possible, you need to submit original documents, not photocopies or scans. If they are in a language other than English, you (or your lawyer, if you have one) will need to get a formal translation.

Never submit documents if you are not sure they are genuine - this could seriously damage your case. If possible, your lawyer should get an expert on your country/reason for claiming asylum to comment on whether they are genuine. This is because the Home Office position is that documentary evidence is likely to be fake.

In addition to documentary evidence specific to your case, general information about the situation in your country from reliable sources may be useful. This is sometimes called "*objective evidence*". This may show that what you have experienced fits a pattern of human rights abuses or persecution in your country of origin. This is particularly important if you were persecuted by a state official such as a police officer or army officer. You will need to demonstrate that the state cannot protect you from these people because state officials are routinely *involved* in these abuses, and that it was not just a one-off attack which would be unlikely to happen again. For more on where to find objective evidence, see *After a Refusal* section of the Toolkit.

Questions you might be asked in the interview

About you - personal details

Although these questions may seem basic, these details could be used against you. Are you giving consistent answers about yourself, in this and other interviews/statements?

- **What is your date of birth?** If you do not know your date of birth, don't make one up. You can say that you do not know your date of birth, and explain why (for example, do you have a birth certificate?). If you give an estimate of your date of birth, explain it is a guess (and what you are basing the guess on).
- **What is your nationality?** The Home Office may say they don't believe you are the nationality you say you are. In your interview, give as much information and details as you can about where you are from. For example, which area did you live in? Where did you go to school? How many people lived there? What were the local languages?
- **Have you ever been convicted of a criminal offence?** If you were imprisoned/convicted in your country of origin as a result of persecution from the authorities, and you are now seeking asylum because of this persecution, give as much detail as possible. When were you arrested? By whom? For what reason? How long did you spend in prison? What were the conditions like? Did you ever go to court? Why were you released?
- **Do you speak other languages?** If you speak other languages, the interviewer will want to know how you know these. If you didn't have a formal education or you are from a country with a poor education system, the Home Office may say they don't believe you. You must explain how you know these languages. If you are not fluent in these languages, say so. Otherwise, the Home Office may try and interview you in these languages instead of your mother tongue.

About your journey

- If you are not sure which date you left your country, give the answer as close as possible. What month was it, what year? Explain why you are not sure. Try to give any details you can about the time of year. Was it winter or summer (warm or cold)? Was it around Ramadan or another festival? Was it around the harvest or another important time of year? **If you give different dates in different interviews, this will be used to doubt your story.**
- If you left your country a long time ago and you are not in contact with your family, the interviewer may ask you how you know information about your home country now. If you're not in contact with your family, how do you know you would still be at risk if returned?

- If you are in contact with your family in your country of origin and they are in danger/are being persecuted, it may be helpful to get as much details/documentary evidence about this as possible (without putting them at risk).
- **Did you claim asylum in any of the other countries you have travelled through?** If you claimed asylum in another European country or you could have claimed asylum but didn't, the Home Office will say your asylum claim is not their responsibility and will try and remove you under the Dublin regulations. If you did not claim asylum in another country on the way to the UK, the Home Office will want to know why.
- **Remember: in this interview, you are explaining why you need international protection (refugee status or humanitarian protection).** You may have specific reasons for wanting to come to the UK - personal contacts, family, friends, religious, political or community connections. The Home Office interviewer may not understand that “wanting a better life” can include needing to be protected from persecution *and* wanting to work or study in the UK - be very clear about why you had to leave your country and why you can't go back.

Why are you claiming asylum?

- You should tell the Home Office about any specific events that have happened to you, giving as much details as you can. Where possible, include the date or dates of these events - but remember to say if you are not sure of the date. Being persecuted in the past does not in itself mean you are need of protection - **you need to show you are risk of something happening if you were returned to your country now.**
- Was there a specific event which made you leave your country? Was it just one event that made you leave? If you'd been suffering persecution over time, what was it about that final event/threat that made you leave, then?
- You should try and give your answers in chronological order (the order in which they happened). See section on 'dates and times' above.
- Why can't you return to your country (or another country you've come from)? What could happen to you if you did?

Who is responsible?

- **Who are you in danger from?** The government, military or police? If you are not in danger from the authorities, but from a “*non-state agent”,* you will need to explain why you can't get protection from the authorities. If you are describing events that have already happened to you, did you report what happened to you? If not, why not?
- Would you be safe going to live elsewhere in the country? The Home Office may say

you are only in danger in one village, city or region and you could “relocate” somewhere else.

- If you have already tried going to another area of your country to escape from danger, explain why you could not stay there.
- If you stayed there for a while, what made you leave in the end?

Has the threat affected other people?

- Has anyone in your family experienced the same treatment? It is important to give relevant information if someone in your family has or is still experiencing the same treatment. If someone in your family has been granted asylum in Europe because of it, mention this and give details.
- If your family or other people persecuted in the same way did not leave the area, why did they not leave? Why did you leave and they didn't?
- If family members or other people in similar situations to you haven't been threatened, explain why you have.

Arrest/imprisonment

- If you were imprisoned in your home country as part of your persecution, you will need to explain how you were released, or if you escaped explain how you managed this. The Home Office are usually very suspicious of escape stories - be clear about how this was possible, and don't assume the Home Office know anything about how things work in your country (clan/ethnicity loyalties on the part of guards, common bribery etc).
- Are other people facing longer sentences/torture, and might this happen to you if you were imprisoned again?
- If you were mistreated while you were imprisoned, make sure to give information about this. Were there bad conditions/incidents of torture? For example, many people sharing a small cell, withholding of food rations, no “yard” time outside, or were you kept in isolation?

Medical, psychological problems

- Do you have any medical or psychological problems? Are these a result of torture/mistreatment in your home country? You should tell the Home Office about these, and show them any evidence of this (if you have scars on your body, do not just show these during the interview as this may make the interviewer angry. But you could say you have scars and can show these when appropriate). You should also speak to your lawyer about getting a “scarring” report, or other medico-legal report.

ACTION SECTION - Prepare for the interview

Your testimony in the asylum interview may be 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.

You may find it helpful to **practice in advance of the interview**, using the guidance above about questions you may be asked. Is there someone you trust you can do a "mock interview" with? Remember, if your friend/supporter is playing the part of the Home Office interviewer they should not be too friendly!

Are there parts of your story that don't make sense to them? Is this because there are things you've forgotten to say? Or there 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 these into the interview with you, however.

You may wish to write out, or tell a friend who will write it for you, a **timeline** of the events that took place leading up to you having to leave your country (this may cover many years). Discuss this with a friend, and it may prompt memories of important facts or details that you had forgotten.

Be prepared, but in your interview try not to sound like you are repeating 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 will be** (visit the place in advance of the interview), how you will get there and how long it will take to get there. Being late or being lost will distract you from focusing on telling your story in the interview.

- **Be prepared for not being believed**: it is common for the Home Office interviewer to explicitly say they do not believe you, or make comments hinting as this. You need to be very clear, give as much detail as possible, and try to remember to include all the important information. Have friends, neighbours and supporters on hand to talk to before and after the interview.

- This is a crucial time for **emotional support** from those around you.

After the Interview

Soon after the interview, perhaps the next day, you can go through the transcript to check for any mistakes or misunderstandings in your answers, or how they were written down, or in the interpretation. You might find it useful to have a friend/supporter to help you with this. It may be several months before you receive your asylum decision based on this interview, so it is best to look for potential problems while it is still fresh in your mind.

You can submit documentary evidence or statements explaining any issues that occurred during the interview to the Home Office within five days of your interview.

Asylum Decision

You should be informed of the Home Office decision on your asylum claim within s**ix months** of your substantive interview.

The Home Office says that it may take longer than this if your supporting documents need to be verified, if you need to attend more interviews, or if your personal circumstances need to be checked, for example if you have a criminal conviction or you're currently being prosecuted.

Positive decision

If the Home Office make a positive decision on your asylum claim, you will be granted leave to remain in the UK. You will be granted Refugee Status or Humanitarian Protection, (see the Toolkit section *Asylum Introduction*) or sometimes another form of leave to remain.

Refugee status

If the Home Office decide you have a need for protection, and your claim falls under the grounds for protection in the Refugee Convention, you will be granted refugee status.

Refugee status currently means **five years leave to remain in the UK**. You will have the right to work and claim benefits, access to mainstream housing, and the possibility of applying for family reunion and a travel document.

After five years, you can apply for indefinite leave to remain (ILR), known as settled status, and after a year of ILR you can apply for British citizenship.

Humanitarian protection

Humanitarian protection normally means **five years leave to remain in the UK** and brings almost all of the same rights as refugee status.

One exception to these rights is the right to apply for a Refugee Convention travel document. Someone granted Humanitarian Protection will either need to use their national passport or if they have proof of not being able to do this, apply for a Certificate of Travel.

Other leave to remain

In some cases, your asylum claim may be refused but you may be granted other leave to remain.

If you have applied for asylum, and that application is refused, you may be granted leave

under the immigration rules (on human rights grounds, for example).

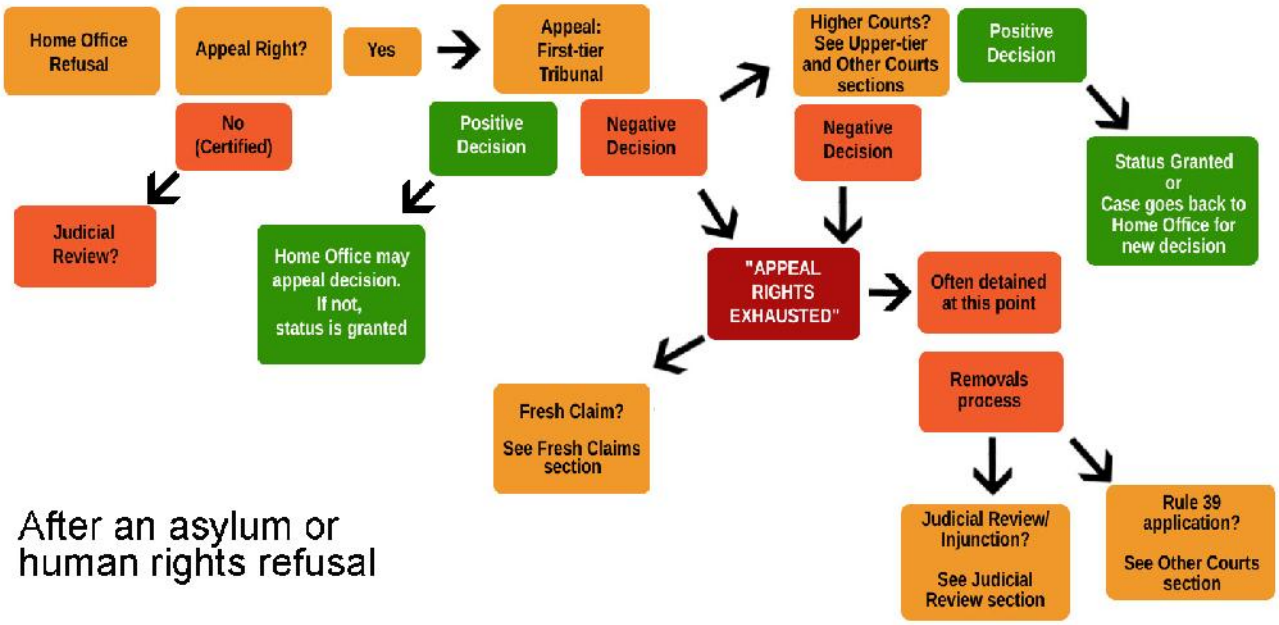
If you are unaccompanied minor and there are not adequate reception arrangements in your country of origin, the Home Office may grant you limited leave to remain until you are 17.5 years old.

In some modern slavery/trafficking cases, discretionary leave may be granted. This may be if asylum is refused (the Home Office do not accept you are at risk of re-trafficking in the future) or was not sought, but there are particular circumstances meaning that you, as a recognised victim of trafficking need to stay in the UK. This includes situations where you are assisting the police with inquiries, or where there are particularly compelling personal circumstances.

There are other rare circumstances in which discretionary leave may be granted. For example, if you are excluded from receiving refugee status or humanitarian protection, but your Article 3 rights under the European Convention on Human Rights would be breached if you were removed from the UK (e.g. if you would be tortured on return).

Some medical cases may also result in discretionary leave, if removal would breach Article 3 or Article 8 rights. See the Toolkit section *Human Rights* for more on this.

Negative decision - a refusal



See also:

Other Courts section ➡ | Fresh Claims section ➡ | Judicial Reviews section ➡ | Upper Tribunal ➡

Next section: *After a Refusal*

After a refusal

f your asylum or immigration application is refused by the Home Office, you should try and get legal advice.

If you do not have a lawyer, or you cannot pay for private legal help if your case is not eligible for legal aid, there may be things you can do yourself and with the help of supporters.

Appeals

If your application was an asylum, human rights case, or EU law case, you may be able to appeal the refusal. **See next section on *Appeals*.**

There is currently only the right of appeal if the Home Office refuse an application based on:

- a human rights claim,
- an "international protection" claim (asylum or Humanitarian Protection applications),
- a decision to revoke refugee status or humanitarian protection
- a decision that you have no right to remain under European law.

There is **no right of appeal for refusals of immigration applications made after 6 April 2015** that are not asylum/humanitarian protection, human rights, or EU law based.

Even if your application was not based on protection, human rights or EU grounds, you may be able to claim a right of appeal on these grounds. For example, a refusal of a visitor visa may raise human rights grounds. This is not straightforward, however. Read more here: https://www.freemovement.org.uk/visit-visa-refusals-appeal-or-judicial-review/

If you made your application before 6 April 2015 you may still have the right of appeal if you are refused. See the Home Office website for more information: https://www.gov.uk/immigration-asylum-tribunal/applications-made-before-6-april-2015

In the case of a visa refusal, the simplest remedy may be to reapply, submitting a new application form with new evidence and a new fee. This is only likely to work if you are able to fix the things that led to a refusal (submitting insufficient evidence, for example).

Administrative review

If your immigration application is refused and you do not have the right to appeal the

decision, you may be able to apply for administrative review. This is where you apply to the Home Office to review the decision it has made.

You can apply for administrative review in some circumstances even if you are granted leave to remain, but are not happy with the length of leave given or the conditions imposed.

Not everyone will have the right to ask for an administrative review. People applying for visitor visas, for example, do not have the right to review. Nor do family members applying for the right to stay under the Family Migration immigration rules. See the Toolkit section *Family Migration* for more on this.

Your refusal letter will tell you if you have the right to apply for a review, and will tell you how to apply.

Administrative review will only be available if the error you believe the Home Office has made could have made a difference to the decision. It can be used to resolve “case-working errors” on a number of grounds. See page 21 of the Home Office guidance for more information: http://bit.ly/adminrev7

The review will be carried out by someone other than the original decision maker.

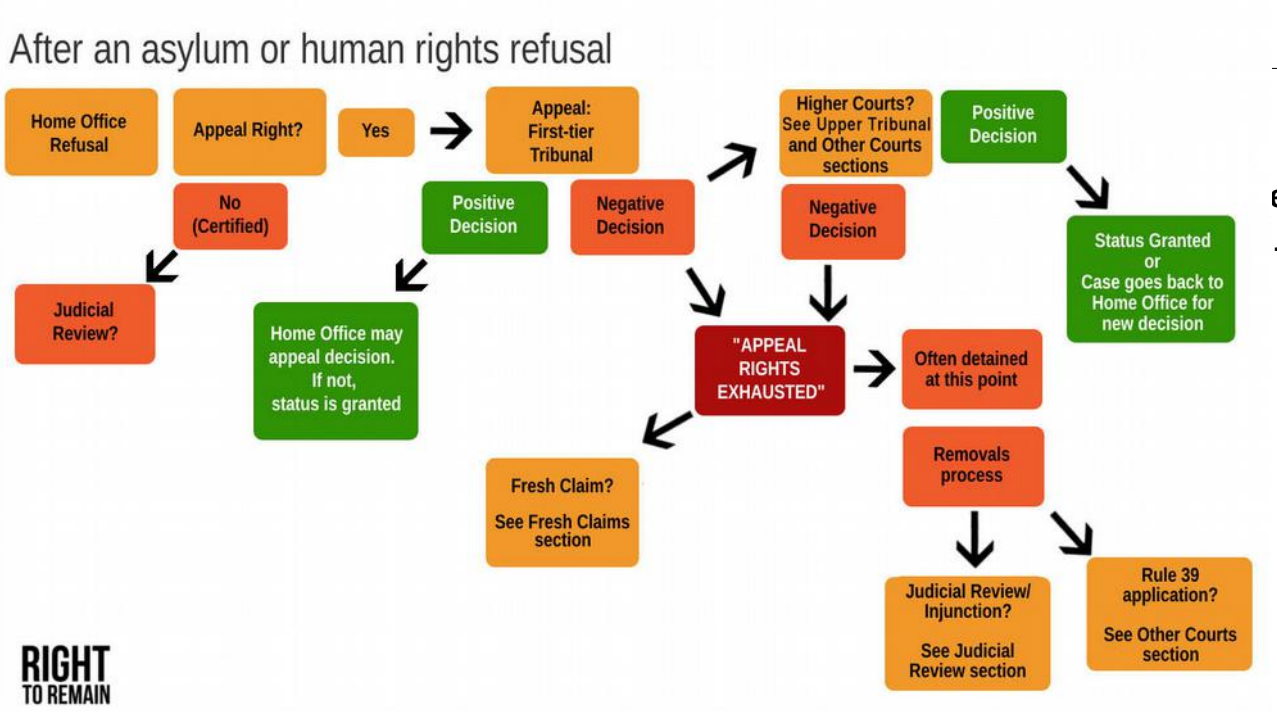
If you are already in the UK, you need to apply for an administrative review within **14 days** of getting the decision, or **7 days if you are detained.** It costs £80 (which will be refunded if you are successful in overturning the decision through the review).

For information on administrative reviews if you are applying from outside of the UK, see the Home Office website: http://bit.ly/askforadreview

No new evidence can be submitted when applying for an administrative review, apart from certain circumstances (see: http://bit.ly/appendix-AR) when you are providing new evidence to demonstrate a case-working error in the Home Office decision. In any case, you may be asked at a later date to send new information or documents.

In most cases, you should not be removed from the UK until your review has been completed. However, if you ask for a review but its outcome would not make a difference to the decision to remove/deport you, a review will not prevent removal taking place. This includes if you are facing automatic deportation or your case is a national security case.

You can’t request a second review, unless the result included new reasons why you were refused. If the review doesn't result in your being granted leave to remain (or a change to the time period or conditions of your leave, if that was what you have requested to be reviewed), you may be able to apply for judicial review of the administrative review decision.



interview before you received a refusal letter.

Look at your other documents to identify when the error has occurred.

These might include the record of an asylum screening interview, asylum interview, or any statements/evidence submitted to the Home Office. An asylum reasons for Refusal Letter (RFRL) may reference the different documents with abbreviations: Screening Interview (SCI), Asylum Interview Record (AIR), Witness Statement (WS).

Have all areas of your claim been considered? If you are claiming asylum, has it been considered under the correct Refugee Convention grounds?

If you are applying under **human rights grounds as well as claiming asylum**, have these been considered properly in the decision letter? For example, if you have claimed asylum and applied to stay under Article 8 (family and private life), has your Article 8 case been considered in the decision?

You can write a statement about the things you think are wrong with the refusal letter. You can get a friend/supporter to help with this if you find writing in English difficult. If you have a lawyer, they should write and submit this statement for you. You should submit this statement to the Home Office and, if you have the right of appeal, to the court in advance of your appeal hearing.

What **evidence** can you find to support your statement? This might be evidence specific to your case, country of origin information, expert evidence. See below for more information.

Have there been problems because you couldn't remember something clearly, especially if the event was traumatic? You can find useful resources about **memory recall and traumatic events** on the Centre for the Study of Emotion and Law website.

Challenging Home Office country guidance

If you have claimed asylum, the Home Office 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 documents that the Home Office use contains references to **country guidance cases** and include **guidance notes** on how cases should be dealt with. They give guidance on whether claims are likely to justify the grant of asylum, humanitarian protection or other leave, based on the general, political and human rights situation in the country as viewed by the Home Office.

The Home Office guidance for your home country may be flawed – it may be out of date, or not reflect the concerns of human rights organisations. You can find the Home Office's country guidance documents here: https://www.gov.uk/government/collections/country-information-and-guidance

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. You can find the last country guidance decisions here: http://bit.ly/trib-decisions

Case law can be quite old and may not reflect a current or changing situation. 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.

Expert Evidence

Expert evidence may be obtained by your lawyer 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.

Note: you are not asking the expert to say whether or not you are telling the truth. You are asking them to use their knowledge to comment on how your story fits into known information on that topic.

Usually, a lawyer will instruct an expert, and pay them a fee. This fee will normally be covered by legal aid, if you case is eligible for this.

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 Toolkit section *Human Rights*), a teacher, psychologist, psychiatrist or social worker may be able to comment on the impact the removal/deportation of you or your child might have on their development.

You may find it useful to look at the 'Best Practice Guide to Asylum and Human Rights Appeals' section on expert evidence: www.ein.org.uk/bpg/chapter/19

This is a guide written by lawyers for lawyers, but you may find parts of it helpful or be able to ask someone with legal knowledge to help you go through and read what an "expert" in this context is, and what they can and can't say.

Objective Evidence

When challenging a Home Office refusal of your asylum or human rights claim, especially if your are appealing the decision, you may need 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. It could also include an expert statement on your country or situation (see above).

Objective evidence is especially important if your credibility has been questioned by the Home Office - the evidence isn't based on what you say happened or could happen.

ACTION SECTION: getting expert help

- 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.
- You could also try contacting the experts listed on the Refugee Legal Aid Information website www.refugeelegalaidinformation.org or on the EIN website: www.ein.org.uk/experts/country
- If the expert cannot produce an export report for free, a reasonable price might be £300-£400.
- Remember this amount is just for producing the report.

The evidence needs to be relevant to your asylum claim (your fear of persecution) and

ACTION SECTION: getting expert help

- An expert may not be required to attend the appeal, especially if they have simply verified they think a document is genuine, but you should check that the expert would be willing to appear in court just in case. If you are paying the expert yourself, they may ask for more money if they are required to come to court.
- If the expert asks to be paid, your friends/community could consider fundraising for this. You need to decide if this is a good use of funds - is there a crucial element of your case that the Home Office doesn't believe, that an expert report could realistically help with?

either cover the time period when your previous persecution occurred, or be recent evidence if you are talking about a future fear of persecution.

Finding objective evidence for an asylum/human rights claim

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.

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

See the Toolkit webpage for links, and For more suggestions of where to look for evidence, see the country information page on the Right to Remain website, where sources are also listed thematically: www.righttoremain.org.uk/coi

All the sources listed above 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, the Home Office and the courts might not consider it to be objective/good evidence.

Next section: *Appeal - First-tier Tribunal*

ACTION SECTION: after a refusal

Think about what might happen next, and make a plan of action.

After a refusal, you need to think about what your options are and what might come next. If you have made an immigration application and it has been refused, read the information above about administrative review and appeal rights. If you have made an asylum or human rights claim and it has been refused, use the diagram above to see what the process involves after this point.

Stay strong, and look after yourself.

Going through the asylum and immigration system is very difficult and stressful. Sometimes it can be hard to think about anything else. But constant worry about your case can leave you feeling emotionally exhausted, and less able to cope with the process.

Everyone has a different way of coping – think about what works for you. While your immigration status is of course very important, it's also important to try and give yourself a break from thinking about it. Think about activities that can distract you or help you relax for at least a short period every day, which can help your mind and body recover a little.

Talk to people you trust. You may be very upset or even feel ashamed if your application/claim is refused, but don't hide it from people. You're going to need people to help you - don't be afraid to ask for their solidarity. Don't leave it till it's too late for them to do anything.

You may wish to go and speak to your MP about your refusal, especially if you don't have the right to appeal. Think about how to explain what has happened clearly and calmly. What has gone wrong? Why is the decision unjust? What do you want the MP to do about it? Read more here: www.righttoremain.org.uk/toolkit/politicians.html

Appeals: First-tier Tribunal

This section looks at appealing a Home Office refusal at the First-tier Tribunal.

This is the first court you have access to if you have the right to appeal a refusal by the Home Office. You do not need to apply for permission to appeal at the First-tier Tribunal - if you have the right of appeal, you can go ahead and appeal.

If you have a lawyer, they will prepare and submit the appeal form for you, and represent you at court. The information in this section is intended to give you more information about the process, especially if you do not have a lawyer and will be appealing the decision yourself.

Right of appeal

Not all immigration decisions have the right of appeal.

There is currently only the right of appeal if the Home Office refuse an application based on:

- a human rights claim,
- an "international protection" claim (asylum or Humanitarian Protection applications),
- a decision to revoke refugee status or humanitarian protection
- a decision that you have no right to remain under European law.

If you made your application *before* 6 April 2015 you may still have the right of appeal if you are refused. See the Home Office website for more information: https://www.gov.uk/immigration-asylum-tribunal/applications-made-before-6-april-2015

If your *application* was not based on protection, human rights or EU grounds, you may be able to claim a *right of appeal* on these grounds. For example, a refusal of a visitor visa may raise human rights grounds. This is not straightforward, however. Read more here: https://www.freemovement.org.uk/visit-visa-refusals-appeal-or-judicial-review/

Not all applications based on protection grounds have a right of appeal. For example, you do not have the right of appeal in the UK if your asylum claim is certified and put in the “non-suspensive appeals” category. See the Toolkit section *Screening* for more on this.

If your claim is certified, you may able to appeal the decision from outside of the UK.

See the Toolkit section *Removals* for information on appealing a deportation after a criminal sentence.

Grounds for appeal

The grounds for an appeal based on protection or human rights would need to be one of the following:

- that your removal or the revocation of your protection status (refugee status or humanitarian protection) would breach the UK's obligations under the Refugee Convention, in relation to persons eligible for a grant of humanitarian protection. Or under the Human Rights Act;
- or that the decision is unlawful under section 6 of the Human Rights Act (it is unlawful for a public authority to act in a way which is incompatible with a right protected by the European Convention on Human Rights).

No right of appeal

If you do not have the right of appeal, you may be able to apply for administrative review from the Home Office (see the Toolkit section *After a Refusal)* and/or apply for permission for a judicial review of the decision.

A judicial review is not the same as an appeal – an appeal looks substantively at the issues of your case. A judicial review looks only at how the law/policy has been applied to your case. (See the Toolkit section *Judicial Review)*

Submitting your appeal

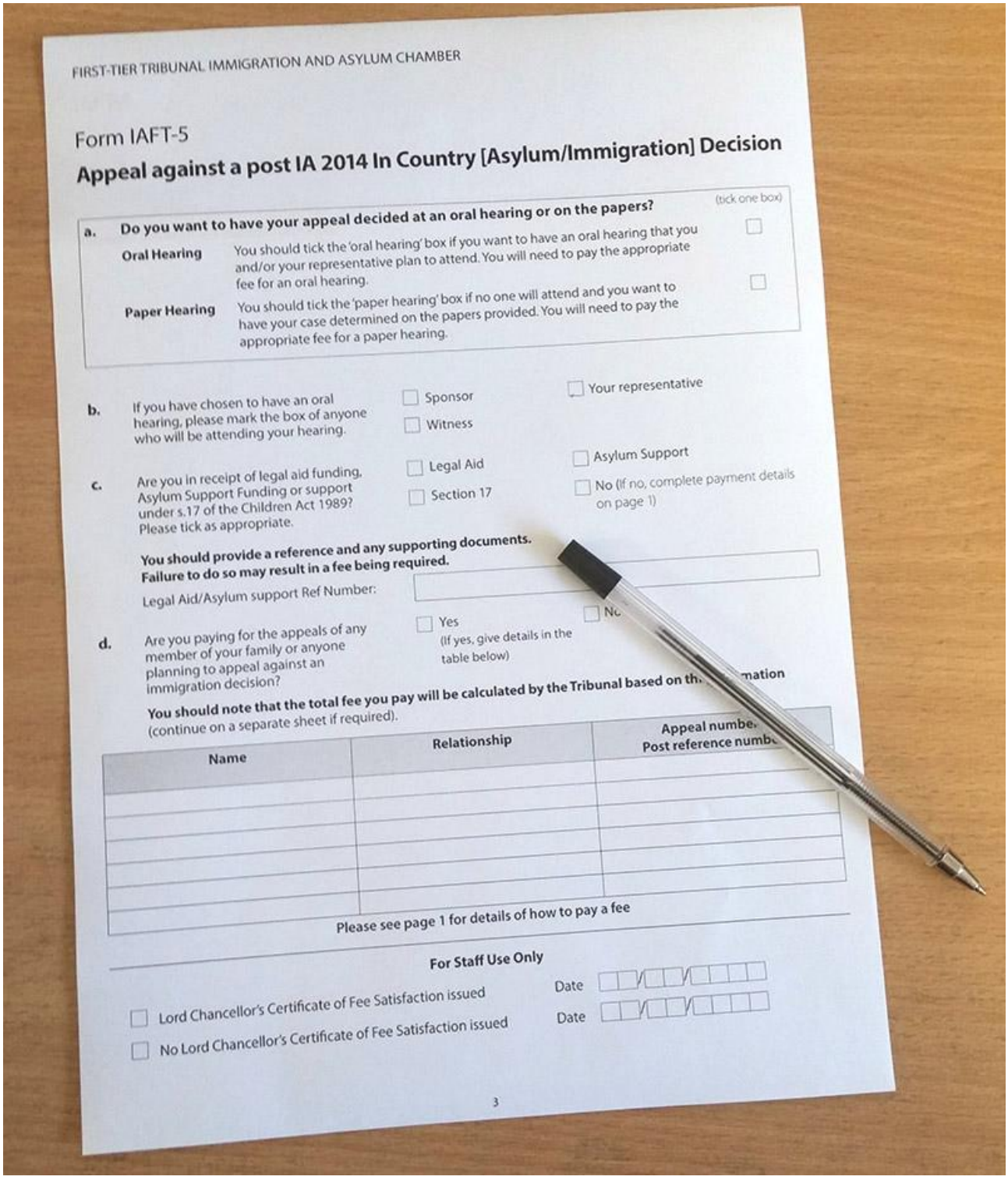
Note - this section contains information for if you are representing yourself. If you have a lawyer, they will fill out the appeal form for you.

Time limit

If you are in the UK, your completed appeal form (and accompanying documents/evidence) must be received at the Tribunal no later than 14 calendar days after you are sent the notice of the decision by the Home Office

If you miss this deadline, you may be able to apply for an 'out-of-time' appeal but you would have to have good reasons for doing so, and explain these to the Tribunal. The Tribunal may refuse to consider your appeal.

The appeal form



FIRST-TIER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Form IAFT-5

Appeal against a post IA 2014 In Country [Asylum/Immigration] Decision

a. **Do you want to have your appeal decided at an oral hearing or on the papers?** (tick one box)

Oral Hearing You should tick the 'oral hearing' box if you want to have an oral hearing that you and/or your representative plan to attend. You will need to pay the appropriate fee for an oral hearing. ☐

Paper Hearing You should tick the 'paper hearing' box if no one will attend and you want to have your case determined on the papers provided. You will need to pay the appropriate fee for a paper hearing. ☐

b. If you have chosen to have an oral hearing, please mark the box of anyone who will be attending your hearing. ☐ Sponsor ☐ Witness ☐ Your representative

c. Are you in receipt of legal aid funding, Asylum Support Funding or support under s.17 of the Children Act 1989? Please tick as appropriate. ☐ Legal Aid ☐ Section 17 ☐ Asylum Support ☐ No (If no, complete payment details on page 1)

You should provide a reference and any supporting documents. Failure to do so may result in a fee being required.

Legal Aid/Asylum support Ref Number:

d. Are you paying for the appeals of any member of your family or anyone planning to appeal against an immigration decision? ☐ Yes (If yes, give details in the table below) ☐ No

You should note that the total fee you pay will be calculated by the Tribunal based on th… …mation
(continue on a separate sheet if required).

Name	Relationship	Appeal numbe… Post reference numb…

Please see page 1 for details of how to pay a fee

For Staff Use Only

☐ Lord Chancellor's Certificate of Fee Satisfaction issued Date ☐☐/☐☐/☐☐☐☐

☐ No Lord Chancellor's Certificate of Fee Satisfaction issued Date ☐☐/☐☐/☐☐☐☐

3

If the Home Office refuses your application they will send an appeal form (called IAFT-5) and guidance notes when they send you written notification of their refusal.

You can submit an appeal to the tribunal using the appeal form sent to you or an online form. If you are not sent an appeal form, you can find it on the Home Office website where you will also find the link for submitting your appeal form online: www.gov.uk/immigration-

asylum-tribunal/appeal-from-within-the-uk

You can submit the completed appeal form by post, fax, or online. If you are filling in the hardcopy (on paper) appeal form, you can either fax it to 0870 739 4053 or post it to: First-tier Tribunal (Immigration and Asylum Chamber), PO Box 6987, Leicester, LE1 6ZX.

If you are posting your appeal, you should try and send it by recorded delivery or another service that shows proof of postage and acknowledgement of receipt.

Note: these details were correct at the time of writing. Before you submit your form, check where you should be submitting ("lodging") the completed form by looking at the Home Office website: www.gov.uk/immigration-asylum-tribunal/appeal-from-within-the-uk

If you are handwriting on the pdf (hardcopy paper) of the appeal form, you should write your answers in BLOCK CAPITALS. You can also fill in the form on a computer, depending on which software you use (for example, if you download the form and use Adobe Reader software).

The online application form is a quick way to submit your appeal form, but it is not straightforward to use. For example, you cannot jump ahead to see what questions are coming up. Some questions are mandatory, which may be useful for making sure you don't leave out important information, but may also require an answer you cannot give. For example, one mandatory question is "If you have chosen to have an oral hearing, please say who will be attending your hearing" with options of "sponsor", "witness" and "representative". None of these options may apply to you. It is also not altogether obvious when you are at the point of finally submitting the form so be careful not to send it before you have finished!

If you are going to use the online form, make sure you prepare your answers beforehand, using the pdf available on the website.

If you submit your appeal online, you will need to send all your supporting papers (including your Notice of Decision) to the Tribunal by post at the address given on the Home Office website: www.justice.gov.uk/tribunals/immigration-asylum/appeals

If you are **detained** and have the right to appeal a refusal, you cannot use the online form to submit your appeal. You should be given an appeal form called IAFT-5(DIA) when you are given written details of your refusal. You should submit the form as per the instructions with this form.

ACTION SECTION

If you find writing English difficult, a friend or supporter may be able to help you to fill out the appeal form. You need to tell them what to write, and they write it on the form. They should read back everything they have written for you, to check it is correct.

You must send a copy of your Reasons for Refusal Letter and the accompanying Notice of

Decision document with your appeal form. You may also want to submit further evidence, witness statements or a detailed explanation of what you are challenging in the Home Office decision. See the Toolkit section *After a Refusal*.

If you are submitting documents with your appeal, all documents in other languages have to be translated into English. The documents should be signed by the translator to certify that the translation is accurate and the translation attached to the original document.

You may also find it useful to look at the 'Best Practice Guide to Asylum and Human Rights Appeals': www.ein.org.uk/bpg/contents This is a guide written by lawyers for lawyers, but you may find parts of it helpful or be able to ask someone with legal knowledge to help you go through the relevant sections about process and good practice (some of the information is only relevant to lawyers).

Questions in the form

- The form asks for payment details for paying the appeal fee. You do not need to fill this out if you do not need to pay the fee (see below).
- “Do you want to have your appeal decided at an oral hearing or on the papers?”.”On the papers” means the judge will read all the documents without you being present in the court. If you have your case heard in court (an “oral hearing”) you will be able to give evidence and speak to the judge who will be deciding your case – this is usually a better option than having your appeal decided on the papers.
- When the form refers to the “appellant”, this is you! The appellant is the person appealing a decision.
- You need to give your various reference numbers. You will find these on your Reasons for Refusal Letter from the Home Office.
- The “date of application to Home Office” means the date you made the asylum, human rights or other application for which you have now received a refusal.
- “Have you been served with a deportation decision?”. This is referring to deportation after a criminal sentence, not just “removal” (which there are questions about prior to this question).
- Grounds of your appeal - the form asks you to explain why your removal from the UK would breach the UK's obligations under the Refugee Convention; and the UK's obligations in relation to persons eligible for a grant of humanitarian protection. If you would be at risk of specific, individual persecution *and* serious harm that affects people more broadly, you can fill in both sections.
- If you have made an application for leave to remain on human rights grounds, or

have made an asylum/protection claim and you also have human rights grounds to stay in the UK, you need to fill in the section on “Human Rights Decision”.

- There are boxes relating to “Revocation of Protection Status Decision”. You only need to fill these in if the decision you are appealing is the Home Office revoking (taking away) refugee status or humanitarian protection that they have previously given you.
- “New matters” - the form so far has been asking you to give your reasons why you disagree with the Home Office decision on the application you made. New reasons why you should be given the right to remain in the UK may have arisen since you made that application. You should explain these in the “new matters” section.

  This should be information you have already notified the Home Office of, as under section 120 of the Nationality, Immigration and Asylum Act 2002 (expanded by the 2014 Immigration Act) there is now an "ongoing duty to inform the Secretary of State as soon as reasonably practicable of any new or additional reasons the person should be permitted to remain or should not be removed." If you have not done this, the Home Office may certify your claim, meaning you lose the right to appeal in the UK.

You do not need to fit everything you want to say into the boxes on the form. If you have a lot of information or need to give a long explanation, you can write “see attached statement” and write your information/explanation on a separate sheet. Make sure you put the heading of the form section/the question you are answering at the top of your extra information.

Make copies of the completed form and all documents that support your appeal, keep the original documents and send copies with the completed form.

Fees

You **do not have to pay a fee** for your appeal if:

- your legal case is being paid for by legal aid
- you are in receipt of asylum support payments from the Home Office
- There are other circumstances in which you may be exempt from paying a fee. See the guidance on fees for more information: www.hmctsformfinder.justice.gov.uk/courtfinder/forms/t495-eng.pdf

If you do have to pay a fee, it is currently £80 without a hearing (decision made 'on the papers') or £140 with an oral hearing. Note - these fees were hugely increased in October

2016, but reversed in November 2016 and are now under review. Read more here: http://www.righttoremain.org.uk/legal/first-of-the-huge-court-fee-increases-come-into-force/

As was noted above, if you have your case heard in court you will be able to give evidence and speak to the judge who will be deciding your case – this is usually a better option than having your appeal decided on the papers.

After submitting your appeal

- After you have submitted (or "lodged") your appeal, you will be sent a "**Notice of Hearing"**. This will tell you the time and date of the hearing, and where the hearing will be heard. It will also tell you if you will have a Case Management Review (CMR) hearing scheduled before the full hearing (see below).
- If you need an interpreter and did not say this in your appeal form, you must notify the Tribunal, informing them which language and dialect you speak.
- You can ask for a male or female judge if you think there are issues in your appeal that make it appropriate. The Tribunal will decide if it can do this.
- If you have **documents** you want the judge to look at, you should send copies to the Home Office and the Tribunal as soon as you can. The Notice of Hearing will tell you the deadline for doing this. You need to bring the originals of the documents with you to the Tribunal. These documents must be in English or be officially translated.
- If you are unable to attend the hearing, you must tell the Tribunal as soon as possible and ask for the hearing to be adjourned to a different date. If this is because you are ill or have a medical appointment you need to send evidence of this when you apply for an adjournment. A judge will consider this and you will be told whether the hearing date has been changed or not.
- You may not be able to take young **children** into the hearing with you - wherever possible, arrange childcare for the day of the hearing, and remember you may be at the Tribunal all day.
- If your address changes after you have submitted your appeal, you need to notify the Tribunal. You also need to notify the Tribunal if you change lawyer (or you no longer have a lawyer).
- Hearings are **in public**, so when you have your hearing there may be members of the public in the room too. If you do not want your hearing to take place in public, because you fear for your safety or because of the sensitive nature of your case, you can request that the hearing takes place in private. You should do this well in advance of the hearing.
- You can also request **anonymity directions** so that any materials about the

hearing in the public domain including the written record of the court's decision (which may be published publicly including on the internet) does not contain your name. You can find the application for anonymity and guidance here: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2877

- If you have included witness statements in your evidence, those witnesses should attend the appeal hearing if at all possible (if they are based in the UK). Read more here about witnesses in Article 8 appeals in the Toolkit section *Human Rights.*

McKenzie friend

If you want a friend or volunteer to assist you during this hearing (and the full hearing), you may be able to arrange this. This person is often called a “McKenzie friend”.

A McKenzie friend is usually an English-speaking friend, relative or volunteer who is not qualified to give legal advice, but may have experience of the legal system. 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 you have a McKenzie friend to 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 can also give you assistance in making submissions to the court.

If you are using a McKenzie friend, you should tell the clerk at the Tribunal that you have someone with you to assist you. You should also ask the judge at the start of the hearing for permission to have assistance from such your McKenzie friend. The judge may ask what relevant experience (if any) the person concerned has, whether he or she has any interest in the case and that he or she understands the role and the duty of confidentiality that arises if consent is given.

Case Management Review Hearing

In *asylum* cases there may be a pre-hearing of the appeal case called a Case Management Review (CMR) hearing. At this hearing a judge decides whether you and the Home Office are ready to proceed with the full hearing a few weeks later.

If you need more time to gather important evidence, you can request an adjournment (postponing the date of the full hearing) at the CMR hearing. The judge may refuse this request. The Home Office may request an adjournment, or they may do this at the full hearing. Be warned – it is more common for the Home Office to be granted an adjournment than the appellant!

If you do not have a lawyer it is very important that you attend your CMR (if you have been notified you are due to have one - not all cases do). If no one attends the judge may decide to determine your case without a full hearing. If you need an interpreter you need to let the Tribunal know in advance.

Full Hearing

Your case will be listed for hearing at 10am on the date you are given on your Notice of Hearing. The judge will decide on the day the order in which the cases will be heard so you may have to wait until later in the day for yours to be heard.

The Tribunal clerk will keep you informed during the day about how long you may have to wait. You might want to bring some money with you in case you want to buy drinks or refreshments, although you will usually be provided with water in the hearing room once your hearing has started.

You should arrive early at the Tribunal - you may need to arrive more than 30 minutes or an hour early, depending on how busy the Tribunal is and how long it takes to get through security. You can ask someone at the Tribunal for advice about what time to arrive.

It's a good idea to visit the Tribunal location in advance, so you know how to get there and where you should go.

> If you are representing yourself (you do not have a lawyer), remember to bring all the necessary documents with you. This includes your Notice of Hearing and any documents you want the judge to consider.

When the judge is ready to hear your case, the clerk will take you into the hearing room. If you have witnesses who will be giving evidence, make sure the clerk knows they are present. They will stay outside the hearing room until it is time for them to give evidence.

The hearing is usually held in a room with desks and chairs. The judge will sit at the front of the room (they will come in after you) at a desk or table and the other people sit at tables and chairs in front of him/her. The Home Office representative (Home Office Presenting Officer, or HOPO) will usually sit on one side of the room, and you will sit on the other side (with your lawyer, if have one). The Home Office do not always send a HOPO to attend. The hearing will usually go ahead anyway, with the judge asking more questions.

Your appeal will probably be heard by one judge. Occasionally, more than one judge will sit as a panel but this is unusual.

You may turn up for your hearing, and find out the Home Office are asking for an

adjournment for some reason. If this is granted by the judge, the hearing will take place at a later date. You can also ask for an adjournment, but it is less likely to be granted. It is best to request an adjournment at the CMR hearing (in asylum cases), if you can.

Mobile telephones must be switched off whilst in the hearing room. You cannot record the proceedings or take any photographs.

If you need an interpreter they will sit next to you. They will interpret the proceedings to you in a low voice or whisper, either while people are speaking or after a statement has been given.

You should call the judge 'Sir' (if they are a man) or 'Madam' (if they are a woman).

You will be asked to stand up when the judge enters the room. After that there is no need to stand until the end of the hearing when the judge leaves the room. You can stay sitting down when you address (speak to) the judge.

Making your argument

This information is for if you do not have a lawyer representing you. If you have a lawyer, they will address the judge and give the legal arguments, but you will also have to give evidence.

- You will normally give your evidence first as to why your appeal should be allowed.
- You will then be asked questions by the Home Office Presenting Officer and perhaps by the judge.
- The Home Office Presenting Officer will then address the judge and say why they think the appeal should be dismissed. It may be useful to take notes while they do this as you may want to respond afterwards to what they have said.
- You will then have the last word to explain why your appeal should be allowed (responding to what the Home Office Presenting Officer has said, if you can).

In advance, you might want to write down a summary of the key points of your argument, to remind yourself what you want to say. You can give a copy of this to the judge if you want, as long as you give a copy to the Home Office presenting officer as well.

If you have several points to make, make this clear. You can say “my first reason is”, “my second reason is” etc. Try and stick to one reason at a time, without mixing up different areas of argument (though if the areas of argument are connected, you can say this).

You can't interrupt the judge, the Home Office presenting officer, or a witness if they are in the middle of talking. If you think the judge is moving on to the next part of the hearing and you haven't finished what you wanted to say, you can raise your hand.

ACTION SECTION

- You may be feeling nervous about going to court. You can ask a few friends or supporters (not too many) to sit in the court room in the public area, for moral support. They are not allowed to speak or make any interventions in the proceedings, but it can help to have a friendly face or two in the room.
- You may even want to practice by doing a pretend hearing with friends/supporters, with someone playing the judge and someone else the Home Office Presenting Officer.
- As hearings are public, you have the option to going to watch someone else's hearing in advance of your own. Think about whether you think this would be helpful or not.

The Decision

The judge does not usually decide whether or not your appeal has been allowed (successful) or dismissed (unsuccessful) at the hearing.

You will be informed the outcome of your case in writing after about three or four weeks. The judge may say in the hearing when you can expect to receive the decision.

If you change lawyer, or cease to have a lawyer after the hearing but before you are notified of the decision, make sure you notify the Tribunal. This is because they are likely to send the decision to the lawyer they have on record for you, not you directly.

If you receive a positive decision in your case, the Home Office may appeal. If they do not appeal, or they appeal and lose, the Home Office should reverse their decision and take the necessary next steps.

For example: the court has given you a positive decision, overturning the Home Office's refusal of your asylum application. The Home Office do not appeal this decision. They should then proceed to grant you refugee status and issue you with the documents to show you have this status.

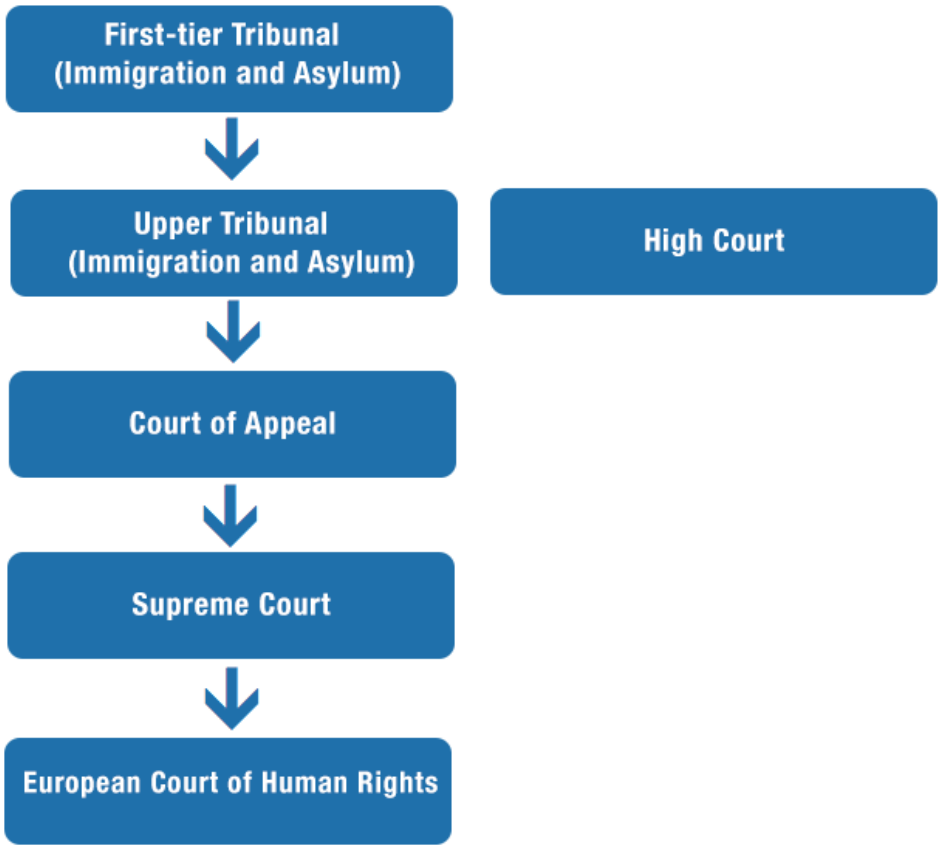
If the Home Office are not taking the necessary steps, or are being very slow about it, speak to your lawyer (if you have one) and also consider asking your MP to intervene.

If your case is refused (“dismissed”), you may be able to appeal that decision at the Upper Tribunal. See next section, *Upper Tribunal*

Upper Tribunal

This section deals with appealing First-tier Tribunal refusals at the Upper Tribunal.

If your appeal is refused at the First-tier Tribunal, you can apply for permission to appeal at the Upper Tribunal if you think the First-tier Tribunal judge made an error in the way they applied the law in deciding your case.



The Upper Tribunal is also where most asylum and immigration judicial reviews are now heard, but **this section does not deal with judicial reviews**. For information on judicial reviews at the Upper Tribunal, see the Toolkit Judicial Review section.

Note – this section is written assuming you do not have a lawyer. If you have a lawyer, they will be applying for permission/appealing for you, and will give you advice about the proceedings on the day.

Errors of law

In applying for permission to appeal a dismissal by the First-tier Tribunal of your appeal, you would need to demonstrate that the judge in the First-tier Tribunal made an error of law in their determination (decision).

Examples of errors of law include:

- if the First-tier Tribunal judge has made a mistake about the meaning of the immigration rules;
- the First-tier Tribunal judge has not followed a binding decision of a higher court;
- the First-tier Tribunal judge has overlooked important evidence;
- the First-tier Tribunal judge has made a decision for which there is no evidence or not enough evidence;
- or where there has been unfairness in the way matters have proceeded.

It is essential that when applying for permission to appeal, you set out how you believe the First-tier Tribunal made an error in law. You cannot simply say you disagree with their decision.

Permission

You do not have the automatic right to appeal at the Upper Tribunal if the First-tier Tribunal dismissed your appeal. You need to apply for permission first.

1. Apply for permission at the First-tier Tribunal

First, you apply to the First-tier Tribunal for permission to appeal at the Upper Tribunal.

To apply for permission from the First-tier Tribunal to appeal at the Upper Tribunal, you need to fill out a form called **IAFT- 4.**

You should be sent a form with a copy of the First-tier Tribunal's refusal of your case. You can also find it, along with guidance notes, at the tribunal website: www.gov.uk/upper-tribunal-immigration-asylum/how-to-appeal

FIRST-TIER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Office stamp (date received)

IAFT-4

First-tier Tribunal Application for Permission to Appeal to Upper Tribunal

This form should be used when making an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal. You **must** apply to the First-tier Tribunal for permission to appeal before you make an application/appeal to the Upper Tribunal.

Plese read the guidance notes before completing the application for permission to appeal. Use black ink and complete the form in CAPITALS or in typewriting.

Use another sheet of paper if there is not enough space for you to say everything. Please put your name at the top of any additional sheets.

A Applicant's details

Appeal number	
Home Office Ref No	
Full name	
Address	

If you are filling out the form by hand, you should use black ink and write in BLOCK CAPITALS. Alternatively, you can fill the pdf form out on a computer, depending which software you have (for example, if you download the form and use Adobe Reader software).

You send the completed form by fax, email or post to the First-tier Tribunal. The postal address is: First-tier Tribunal (Immigration and Asylum Chamber), PO Box 7866, Loughborough, LE11 2XZ. The fax number is 0870 739 4053. If you send your form by email, the size of documents attached should not exceed 17MB. The email address is IAFT4@hmcts.gsi.gov.uk

If you have queries about your application after you have sent it, you can either write to the postal address above, telephone 0300 123 1711 or email Customer.Service@hmcts.gsi.gov.uk

Check for up-to-date details at the tribunal website: www.gov.uk/upper-tribunal-immigration-asylum/how-to-appeal

The application form asks you to state *both* what error(s) of law you consider the First-tier Tribunal has made, and also the *result you are seeking.*

You can attach additional sheets of paper if you need to write more than will fit in the space on the application form.

When you send your permission application, you also need to send a copy of the First-tier Tribunal refusal you wish to challenge, along with the full reasons why you think the Tribunal made an error of law (including supporting documents/evidence where relevant).

Usually, an application to the First-tier Tribunal for permission to appeal at the Upper Tribunal is decided on the papers, without an oral hearing.

Time limits

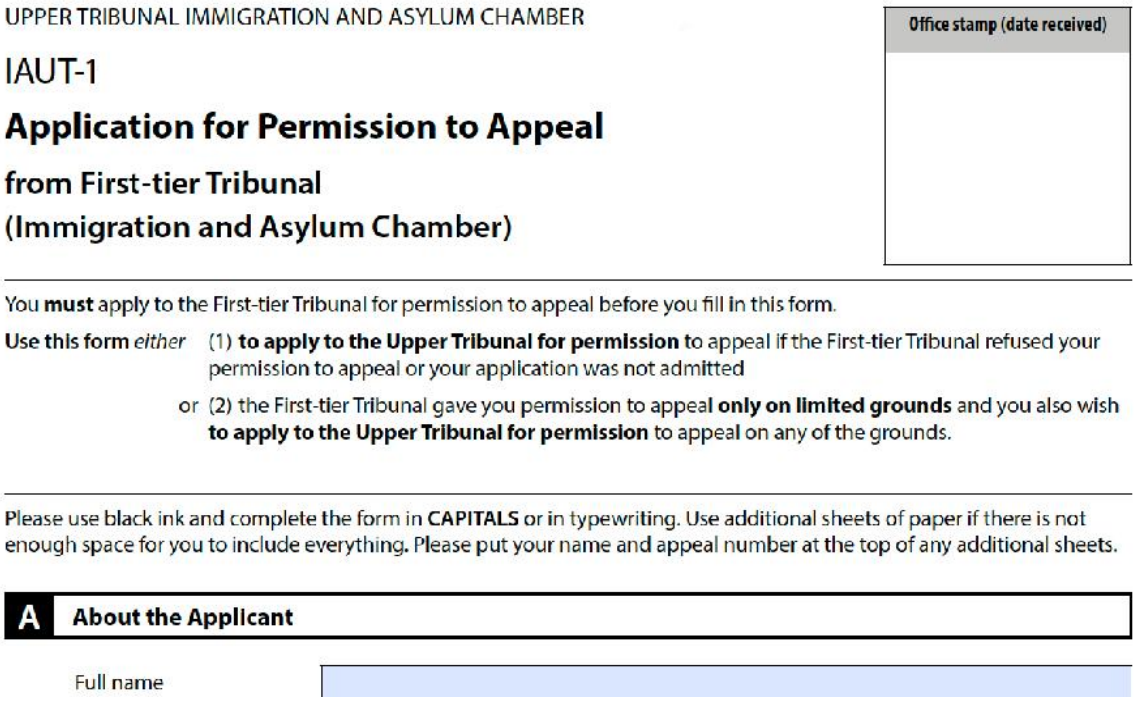
If you are **in the UK**, you must submit your application for permission within **14 days** of the date on the written dismissal of your appeal from the First-tier Tribunal. If you are outside of the UK, the time limit is 28 days. If you miss these deadlines, you may be able to apply for an 'out-of-time' appeal but you would have to have good reasons for doing so, and explain these in your application for permission.

Fees

There is currently no fee to appeal to the Upper Tribunal.

2. Apply for permission at the Upper Tribunal

If the First-tier Tribunal do not grant you permission to appeal at the Upper Tribunal, you can apply directly to the Upper Tribunal for permission to appeal there. To apply for permission directly from the Upper Tribunal, you need to complete a form called **IAUT-1**. You can find the form, and guidance notes, at the Tribunal website: www.justice.gov.uk/tribunals/immigration-asylum-upper/appeals#3



UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

IAUT-1

Application for Permission to Appeal

from First-tier Tribunal
(Immigration and Asylum Chamber)

Office stamp (date received)

You **must** apply to the First-tier Tribunal for permission to appeal before you fill in this form.

Use this form *either* (1) **to apply to the Upper Tribunal for permission** to appeal if the First-tier Tribunal refused your permission to appeal or your application was not admitted

or (2) the First-tier Tribunal gave you permission to appeal **only on limited grounds** and you also wish **to apply to the Upper Tribunal for permission** to appeal on any of the grounds.

Please use black ink and complete the form in **CAPITALS** or in typewriting. Use additional sheets of paper if there is not enough space for you to include everything. Please put your name and appeal number at the top of any additional sheets.

A About the Applicant

Full name

You send the completed form by fax or post to the Upper Tribunal. The postal address is: Upper Tribunal (Immigration and Asylum Chamber), IA Field House, 15-25 Breams Buildings, London EC4A 1DZ. The fax number is 0870 3240111.

If you are detained you will need to submit the application to your detention centre

See the tribunal website for up-to-date information:
www.justice.gov.uk/tribunals/immigration-asylum-upper/appeals#3

Time limits

If you are in the UK, the form should be completed and sent to the Upper Tribunal no later than **14 days** after the date on which the First-tier Tribunal's refusal of permission was sent to you.

If you are outside of the UK, the time limit is one month.

The time limits are even shorter if the First-tier Tribunal's decision was emailed to you or handed to you in person, rather than posted. Contact the Tribunal to ask them about time limits if this is the case for you.

If you send the application to the Upper Tribunal so that it will arrive later than the deadline, your application must include a request for an extension of time and explanation of why you were unable to send it in time. The Upper Tribunal will consider whether they will accept these reasons and grant you permission for an "out of time" appeal.

Your application for permission

- In your application for permission to the Upper Tribunal, you need to explain what error(s) of law you believe the First-tier Tribunal made. Provide evidence where possible.
- You can attach additional sheets of paper if you need to write a lot. The Upper Tribunal's guidance states, however, says *"It is important to keep the reasons or grounds why you consider permission should be granted as clear as you can. The Upper Tribunal Judge will not be assisted by a large number of pages with a great deal of irrelevant material."*
- When you send the application, you also need to send a copy of the First-tier Tribunal's refusal/dismissal of your appeal, and the "notice of refusal of permission to appeal" sent to you by the First-tier Tribunal or the "refusal to admit the application for permission".
- In the application, you need to say whether you want the application for permission to be considered at an oral hearing. An oral hearing means you will be able to give evidence and speak to the judge about the errors of law you believe the First-tier

Tribunal made. If you want an oral permission hearing, you need to give reasons why.

- You are also asked whether, if given permission to appeal, you want that appeal to be through an oral hearing or decided on the papers. The opportunity to speak to the judge and give evidence in person may be important for making your argument. The tribunal can decide to have a hearing even if you don't ask for one.

ACTION SECTION

If you find writing English difficult, a friend or supporter may be able to help you to fill out the appeal form. You need to tell them what to write, and they write it on the form. They should read back everything they have written for you, to check it is correct.

If permission is refused

You may be able to apply for a judicial review of the refusal of permission to appeal at the Upper Tribunal, if you can demonstrate an error of law that raises an important point of principle or practice or show some other compelling reason for the case to be heard.

Sometimes the Home Office receives the refusal of permission to appeal to the Upper Tribunal and does not notified the appellant. They then detain the individual (either at a reporting event or through a raid on their home), at which point they inform them of the Tribunal's refusal of permission.

If you are granted permission to appeal

If you are granted permission to appeal to the Upper Tribunal, there will be either a hearing before one or more Upper Tribunal judges or the case may be decided without an oral hearing, on the papers available.

- The Upper Tribunal will send you **Directions** setting out the steps that are required to be taken before the hearing. Make sure you read these carefully, and follow the instructions within the time-limits given in the Directions.
- You may wish to submit **written submissions** (a summary of your case) and/or a **skeleton argument** (sets out the main arguments you wish to rely upon at the hearing) to expand on the grounds you used to apply for permission to appeal. You should explain in these documents why you think the First-tier Tribunal made an error of law. If you wish to submit these documents, you need to send them to the Upper Tribunal and the Home Office in advance, as per the instructions in the

Directions.

- If you want the Upper Tribunal to consider new evidence, you must submit it to the Tribunal and the Home Office in advance, explaining why it has not been submitted before (in your original application or first appeal). You need to bring the originals of any documents with you to the Tribunal. These documents must be in English or be officially translated.
- If you need an **interpreter** and did not say this in your permission application, you must notify the Upper Tribunal, informing them which language and dialect you speak.
- You can ask for a male or female judge if you think there are issues in your appeal that make it appropriate. The Upper Tribunal will decide if it can do this.
- If you are **unable to attend the hearing**, you must tell the Upper Tribunal as soon as possible and ask for the hearing to be adjourned to a different date. If this is because you are ill or have a medical appointment you need to send evidence of this when you apply for an adjournment. A judge will consider this and you will be told whether the hearing date has been changed or not.
- You may not be able to take young children into the hearing with you - wherever possible, arrange **childcare** for the day of the hearing, and remember you may be at the Upper Tribunal all day.
- If your **address changes** after you have submitted your appeal, you need to notify the Upper Tribunal. You also need to notify the Upper Tribunal if you change lawyer (or you no longer have a lawyer).
- Hearings are **in public**, so when you have your hearing there may be members of the public in the room too. If you do not want your hearing to take place in public, because you fear for your safety or because of the sensitive nature of your case, you can request that the hearing takes place in private. You should do this well in advance of the hearing.
- You can also request "**anonymity directions"** so that any materials about the hearing in the public domain including the written record of the court's decision (which may be published publicly including on the internet) does not contain your name. You can find the application for anonymity and guidance here: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=4411

The Hearing

Your case will be listed for hearing at **10am or 2pm** on the date you are given on your Directions. The judge will decide on the day the order in which the cases will be heard so you may have to wait until later in the day for yours to be heard.

You might want to bring some money with you in case you want to buy drinks or refreshments, although you will usually be provided with water in the hearing room once your hearing has started.

You should arrive early at the Upper Tribunal - the Upper Tribunal guidance recommends arriving **one hour** early in order to get through security in time.

If possible, visit the Upper Tribunal location in advance, so you know how to get there and where you should go. You may live a long way from it, however, so this may not be easy to do. The Upper Tribunal for England and Wales is in London: Field House, 15-25 Breams Buildings, London, EC4A 1DZ.

> If you are representing yourself (you do not have a lawyer), remember to bring all the necessary documents with you. This includes your Hearing Directions and any documents you want the judge to consider.

On arrival at the Upper Tribunal you should go to the reception area where you will find a list of the day's hearings on a notice board. The order of the list may change during the day, meaning cases are not heard in the same order as they appear in the list. It is important to keep in touch with the clerk if you are waiting outside the hearing room.

Report to the receptionist, who will tell you where your appeal will be heard and the name of the judge or panel who will hear it. Unless you are asked to wait in the reception area, you should go to the allocated court room and wait outside the door.

Shortly before the start of the hearing, an Upper Tribunal clerk will arrange for you to take your place in the hearing room. If no one has approached you, go back to reception for assistance.

The hearing is usually held in a room with desks and chairs. The judge will sit at the front of the room (they will come in after you) at a desk or table and the other people sit at tables and chairs in front of him/her. The Home Office representative (Home Office Presenting Officer, or HOPO) will usually sit on one side of the room, and you will sit on the other side (with your lawyer, if have one). The Home Office do not always send a HOPO to attend. The hearing will usually go ahead anyway, with the judge asking more questions.

Your appeal will probably be heard by one judge. Occasionally, more than one judge will sit as a panel to hear your appeal.

You may turn up for your hearing, and find out the Home Office are asking for an adjournment for some reason. If this is granted by the judge, the hearing will take place at a later date.

Mobile telephones must be switched off whilst in the hearing room. You cannot record the proceedings or take any photographs.

If you need an interpreter they will sit next to you. They will interpret the proceedings to you in a low voice or whisper, either while people are speaking or after a statement has been given.

You should call the judge “Sir” (if they are a man) or “Madam” (if they are a woman).

You will be asked to stand up when the judge enters the room. After that there is no need to stand until the end of the hearing when the judge leaves the room. You can stay sitting down when you address (speak to) the judge.

Making your argument

This information is for if you do not have a lawyer representing you. If you have a lawyer, they will address the judge and give the legal arguments, but you will also have to give evidence.

- You will normally **give your evidence first** as to why your appeal should be allowed. Remember for an appeal at the Upper Tribunal to succeed, you must demonstrate that an error of law was made in deciding your appeal at the First-tier Tribunal, and not just say you believe they got the decision wrong.
- You will then be asked questions by the Home Office Presenting Officer and perhaps by the judge.
- The Home Office Presenting Officer will then address the judge and say why they think the appeal should be dismissed. It may be useful to take notes while they do this as you may want to respond afterwards to what they have said.
- You will then have the last word to explain why your appeal should be allowed (responding to what the Home Office Presenting Officer has said, if you can).

In advance, you might want to write down a summary of the key points of your argument, to remind yourself what you want to say. You can give a copy of this to the judge if you want, as long as you give a copy to the Home Office presenting officer as well.

If you have several points to make—for example make this clear. You can say “my first reason is”, “my second reason is” etc. Try and stick to one reason at a time, without mixing up different areas of argument (though if the areas of argument are connected, you can say this).

You can't interrupt the judge, the Home Office presenting officer, or a witness if they are in the middle of talking. If you think the judge is moving on to the next part of the hearing and you haven't finished what you wanted to say, you can raise your hand.

ACTION SECTION

- You may be feeling nervous about going to court. You can ask a few friends or supporters (not too many) to sit in the court room in the public area, for moral support. They are not allowed to speak or make any interventions in the proceedings, but it can help to have a friendly face or two in the room.
- You may even want to practice by doing a pretend hearing with friends/supporters, with someone playing the judge and someone else the Home Office Presenting Officer.
- As hearings are public, you have the option to going to watch someone else's hearing in advance of your own. Think about whether you think this would be helpful or not.

The decision

The judge will either make a decision then-and-there, or they may “reserve” their decision and let you know in writing at a later date.

Positive decision

If the judge makes the decision then-and-there that the First-tier Tribunal made an error of law, they may proceed to hear the appeal so they can make a fresh decision immediately, or they made decide that it is necessary to hear new evidence or consider new documents and so they will arrange a hearing at a later date.

The judge will decide whether any findings of fact made by the First-tier Tribunal are to be preserved, even though the First-tier Tribunal's decision has been set aside.

The judge may send the case back to the First-tier Tribunal (“remit the case”) to re-decide the case, with no need for consideration of new evidence. The judge may give the First-tier Tribunal directions to make sure the error of law is not repeated. This is a possible outcome if the Upper Tribunal judge agrees with the First-tier Tribunal on findings of fact.

The judge may order the First-tier Tribunal to rehear the case, with a chance to hear new evidence. This is a possible outcome if the Upper Tribunal judge decides the findings of fact by the First-tier Tribunal can't be relied upon.

If you lose your case at the Upper Tribunal

If you were granted permission to appeal at the Upper Tribunal, your case was heard, but the judge decided that the First-tier Tribunal did not make an error of law, there is the option of appealing that finding at the Court of Appeal. You will need to apply for permission to do this. Accessing this level of the court process without a lawyer is very tricky.

Next section: judicial reviews

Judicial Reviews

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 cases, that public body will usually be the Home Office.

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.

In a successful judicial review, 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 the Home Office, or the court found to have made an error of law. They may be able to make the same decision again, but this time make the decision following the proper process or considering all relevant case law or evidence reasonably.

Since 2013, most judicial reviews in asylum and immigration cases in England and Wales are heard in the **Upper Tribunal.**

Previously, most judicial reviews were heard in the High Court. Some immigration and asylum judicial reviews in England and Wales are still heard in the High Court. These include judicial reviews challenging the lawfulness of detention and challenges to decisions of the Upper Tribunal.

If you have a judicial review hearing, the documents that the court sends you or your lawyer will tell you which court your judicial review is being heard in.

In Scotland, judicial reviews are heard in the Outer House of the Court of Session. In Northern Ireland, they are heard at the High Court in Belfast. See the Toolkit *Other Courts* section for more information.

Judicial reviews and legal aid

Recent cuts mean it is now much more difficult to get legal aid for a judicial review.

If you have had an appeal hearing or determination on the same, or substantially the same, issue within 12 months and you lost the appeal, legal aid for a judicial review will not be available.

The government has brought in measures in England and Wales that mean, in general, legal aid lawyers only get funding for working on a judicial review if permission to proceed

with that judicial review is granted. The Legal Aid Agency *can* allow legal aid for work done before permission is granted for a judicial review, but this is very hard to get. If you want to find out more, read this Legal Aid Handbook summary: http://legalaidhandbook.com/2015/03/26/moj-re-imposes-conditional-payments-for-judicial-review/

This means that legal aid lawyers taking on a judicial review are taking a risk, and are only likely to do this if they feel you have a strong case. The lawyer can receive the legal aid funding for the work done pre-permission stage if permission is subsequently granted, but if permission is refused that work will remain unpaid.

If your case would not qualify for legal aid under the current rules, you may be able to apply for exceptional legal aid funding, if you can show that your human rights or European Union rights would be breached if you do not have legal aid.

Is a judicial review your best option?

Judicial reviews are very complicated and you should always seek legal advice where possible on applying for a judicial review.

If you are unable to get legal aid for a judicial review, it is possible to represent yourself but this can be very difficult and there are risks in representing yourself in a judicial review. You will have to pay the fees yourself (see below) and if you lose, you are liable for the costs of the proceedings. A bad judgment may also be very unhelpful for your case, and for others.

It may seem like a judicial review is your only legal option, especially if you have no right of appeal or if your removal/deportation is imminent. **This does not necessarily mean it's the right thing to do.**

Think carefully about whether a judicial review is the best way to spend your time, energy and possibly money. A private lawyer may charge you a great deal of money for a judicial review, even if there is little hope it will help your situation.

Sometimes people see judicial reviews as a way of slowing down the process of removal/deportation. This is understandable when the asylum and immigration system can move so fast, denying you your rights. A poor application for a judicial review, however, may just speed up the process because a judge may order that any further applications are no bar to your removal/deportation.

ACTION SECTION

Look carefully at your case and the legal process and decide if a judicial review is the right option for you, or if there are better ways of using your (and your friends/supporters') resources.

- Have all aspects of your reasons to remain in the UK been considered?
- Have you exercised all your appeal rights?
- Can you find new evidence for further submissions to be considered as a fresh claim?
- Could you/your supporters work on presenting your case in the strongest way possible to convince a lawyer to take it on, either under legal aid or pro bono?

Reasons you may consider a judicial review

- If you have been told your asylum claim will be transferred to another European country under the Dublin regulations, and you wish to argue your human rights will be breached in that country.
- If your asylum claim has been certified (no right of appeal within the UK)
- If your further submissions have been rejected as not a fresh claim, with no right of appeal
- If you have been detained unlawfully
- If you have been refused permission to appeal at the Upper Tribunal
- To try and challenge an imminent removal (apply for interim relief – an injunction). See below.
- Your immigration application has been refused and you have no right of appeal on human rights grounds.

Time limits

An application for judicial review should be made as soon as is reasonably possible, and no later than **3 months** after the decision that you are trying to challenge was made. In asylum and immigration cases, this decision will usually be the one made by the Home Office.

Pre-action stage

If you intend to apply for a judicial review, you should write to the Home Office informing them of this, giving them chance to withdraw their decision or correct an error without having to go the point of a judicial review. This is called the “pre-action” stage. The letter you write to the Home Office is called a “pre-action letter” or “letter before claim”.

If you have a lawyer, they should write the pre-action letter for you. They will then usually “instruct” a barrister to represent you if the judicial review gets to a permission hearing, and then at the full hearing if permission is granted.

The pre-action stage does not affect the 3 month time limit for applying for a judicial review.

Read the “Pre-Action Protocol for Judicial Review” on the Ministry of Justice website for details of what should be included in this letter and what to do with it.
http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv

In the letter, you should:

- explain in detail how you think the Home Office has acted unfairly, irrationally, or unlawfully etc;
- say what you want the Home Office to do to put this right, and when you would like them to do it by;
- ask for a response within a time limit, which is usually 14 days

You are unlikely to receive any response to this letter (but it's still an important stage of the process, and may be used against you if you fail to do it). If you do not receive a response with the time limit, or the response is not satisfactory, and you want to continue to apply for a judicial review, you can move on to the permission stage.

Fees

If you are not applying for a judicial review through a legal aid lawyer, you have to pay the fees for the judicial review application.

The fee is **£140** to apply for permission for a judicial review.

If you are refused permission, and you apply for reconsideration at a hearing of the decision on permission (see “renew”, below), the fee is **£350**.

If you are granted permission, the fee for proceeding with the judicial review – which must be paid within 7 days of being informed you have permission – is **£700**.

For up-to-date information on fees and forms for applying for judicial review, go to the Ministry of Justice judicial review website: http://bit.ly/jr-info

If you do not have any or much income, you can apply for a reduction in the fees. See the application forms and guidance here: http://bit.ly/jrfees-help

Permission stage

To have a judicial review heard, you must apply for permission. The permission stage used to apply only in England and Wales, but now also applies to Scotland as well. The process described here on applying for permission is for judicial reviews in **England and Wales only.**

When applying for permission, you need the "judicial review claim" form.

You should always check you are using the correct form and paying the correct fee. Check the Upper Tribunal website for the latest information: https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber

At the time of writing, if you are applying for a judicial review that would generally be heard at the Upper Tribunal, you need to use form **T480**.

Some judicial reviews are still heard in the Administrative Court (the High Court). These include challenges to unlawful detention and challenges to decisions made by the Upper Tribunal. Read this Free Movement blog post for the type of judicial reviews still heard at the High Court: https://www.freemovement.org.uk/transfer-of-immigration-judicial-reviews-to-upper-tribunal/

If this applies to you, you need to use a different form and apply for permission to the High Court. You can find the application form and guidance here: http://bit.ly/jrform-high

and more information on applying for judicial review at the High Court here: http://bit.ly/jr-high

Remedy

When completing the application for permission for judicial review (the judicial review claim form), you need to say what **remedy** you are seeking in applying for a judicial review. This needs to be one of the following:

- **a mandatory order**: this makes a public body do something the law says it has to do
- **a prohibiting order:** this stops a public body from taking an unlawful decision or action it has not yet taken
- **a quashing order**: an order which overturns or undoes a decision already made. This is the most common remedy in successful asylum/immigration judicial reviews. A quashing order means the Home Office has to remake a decision on, for

example, your immigration application, or whether your asylum case can be transferred under the Dublin regulations, or on whether your further submissions meet the fresh claim test.

- **an injunction**: a temporary order requiring a public body to do something, or not do something, while waiting for a decision to be made in your case.

Questions in the form

- Who is the applicant? You are the **applicant**.
- If you are challenging a decision made by the Home Office, the r**espondent** is the Home Office. The form asks you to give the respondent's name and address. If it is the Home Office, the details you need are: Home Office, Status Park 2, 4 Nobel Drive, Harlington, Hayes, Middlesex, UB3 5EY.
- The applicant's “counsel” details. This means your barrister. If you have a barrister, you should not need to be filling out this form as your legal representative should be completing it for you!
- "Is this application being made under the terms of Part 5 of the Senior President of Tribunals’ Practice Directions entitled ‘Immigration Judicial Review in the Immigration and Asylum Chamber of the Upper Tribunal’?" This refers to judicial reviews *challenging forced removal*, either a removal the Home Office has said they intend to carry out or a removal they have already carried out.
- "Is the applicant in receipt of a Civil Legal Aid certificate?" This refers to whether you have legal aid funding for your judicial review. If the answer to this is “yes”, your legal representative who is being funded by legal aid should be filling in this form.
- "Are you claiming exceptional urgency, or do you need this application determined within a certain time scale?" This might be if you are applying for an injunction to stop a removal, in which case you will also need to fill out an Urgent Consideration form (see below).
- "Have you complied with the pre-action protocol?" See 'Pre-Action Stage', above.
- "Does this application challenge a Home Office Administrative Review decision?" Read more about Administrative Reviews in the 'After Refusal' section of the Toolkit.
- "Does the claim include any issues arising from the Human Rights Act 1998?" The most common human rights issues that are relevant to asylum/immigration applications are Article 3 and Article 8. Read more in the 'Human Rights' section of the Toolkit.
- Statement of grounds: this is where you set out the legal basis for requiring a judicial review. Remember, you are not just saying you disagree with the Home Office's decision. A judicial review will consider whether the decision was unlawful, unfair, irrational or disproportionate. Read more in the Public Law Project's leaflet.

- Remedy - see above
- Statement of facts: the guidance notes state "the facts on which you are basing your claim should be set out in this section of the form, or in a separate document attached to the form. It should contain a numbered list of the points that you intend to rely on at the hearing. Refer at each point to any documents [including a page number] you are filing in support of your claim".

Lodging your permission application

To lodge (submit) your permission application, you can send it by pre-paid post (ask at the post office) or by document exchange, or take the form in person to the Upper Tribunal (Upper Tribunal Immigration and Asylum Chamber, Field House, 15-25 Breams Building, London, EC4A 1DZ). You may be able to lodge your application in person at regional offices of the Tribunal. You can ask the Tribunal for information about this - see contact details here: https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber

When you lodge your application for permission, you must also file two copies of the documents you wish to rely on (including the decision you are challenging).

These should be put together in a file, called a bundle. You should number each page, and include an index (a list of the contents with the relevant page number next to each item).

The decision on whether you are granted permission to proceed with a judicial review will usually be made on the papers: a judge considers the documents and written arguments that have been lodged.

If you are refused permission

If your application for permission is refused on the papers – you do not go to court but a judge looks at your documents and makes a decision – you may be able to apply to “renew” the decision. This means you are asking the court to reconsider the decision – in an oral hearing rather than on the papers – to not grant you permission for a judicial review of your case.

If permission is refused on the papers and the case is deemed as “totally without merit”, you do not have the right to apply to renew the decision.

An application to renew by oral hearing must be must be filed no later than 7 days after service of the notification of the judge's decision (refusing permission for judicial review) upon you. A request for an oral hearing must be made on the Notice of Renewal, which you should receive with the written refusal of permission.

If you are granted permission

ACTION SECTION

If you applied for permission without a lawyer and have been granted permission, you now stand a better chance of a legal aid lawyer taking on your case. Go back to your previous lawyer, or try to find a new lawyer. If they take on your case, they will instruct a barrister to represent you in the hearing.

If you cannot find a legal aid lawyer to represent you, you may be able to find a lawyer to take on your case pro bono.

The rest of this section assumes you do not have a lawyer to represent you.

If you are granted permission, you need to pay the fee (see above) for proceeding with the judicial review within 7 days of being informed you have permission. You should receive information about this along with notification of permission being granted. This information should also tell you what else you need to submit in advance of the hearing.

Remember: if you change address, you must inform the Tribunal/court. Otherwise they may send vital information to the wrong address.

The Home Office must file and serve its detailed grounds within 35 days of permission being granted. This means they must set out the basis on which they are defending the claim (if they are defending the claim. In some cases, the Home Office will withdraw or change their decision without you having to go to a full hearing). Their grounds must include any written evidence they want to rely on.

If you want to rely on additional grounds during your judicial review hearing (other than those you set out in your application for permission), you need to give written notice to the Tribunal and the Home Office no later than 7 working days before the date of the hearing.

You also need to serve a **skeleton argument** on the Tribunal and the Home Office, no later than 21 days before the hearing. Your skeleton argument should include a list of the legal points you wish to raise (and any relevant authorities such as case law with page references to the passages relied on); a chronology of events in your legal case, such as Home Office decision, court decisions and any subsequent applications by you (with page references to the bundle of documents); and a list of essential documents to be read in advance by the Tribunal (if different from that served with the application).

You also need to serve a bundle of all the relevant documents upon the Tribunal and the Home Office. Serving the bundle means officially submitting/sending it. Keep proof of how and when this was done. The documents should include all those referred to in your skeleton argument. These might include witness statements, any “written submissions” you have prepared and any relevant letters or emails from the Tribunal or from the Home Office.

The hearing

If permission is granted, **a substantive hearing** will take place where a judge will consider the claim in detail.

The hearing may not be for several months from when you first applied for a judicial review, although this will depend on the urgency of the case.

You need to take your bundle of documents with you. The Tribunal will have asked you to send them a copy of the bundle in advance of your hearing date, which you must do, but you may want to bring several spare copies of all your documents with you, so that you can give them to the judge or the Home Office in case they haven't got them. If you have any witnesses speaking for you, they will also need a copy of your bundle in case they want to refer to any of the documents during their evidence.

To find out more about preparing for the hearing, read the Bar Council's Guide to Representing Yourself in Court:
http://www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf#21

At the end of the hearing the judge can give a decision on the day, but that is unusual. The judge usually "reserves" the judgment, which means you will be notified of the decision at a later date.

Outcomes

In a judicial review, the court will not substitute what it thinks is the ‘correct’ decision.

Positive

If you are successful in your judicial review, the case will normally go back to the Home Office (or if you are judicially reviewing a decision of a court, it will go back to that court) found to have made an error of law. They may be able to make the same decision again, but this time make the decision following the proper process or considering all relevant case law or evidence reasonably.

If you are applying for emergency relief to stop a removal (see below) and are successful, the court will issue an injunction to prevent that removal from taking place for a certain period of time.

If you argued that you needed time to proceed with certain aspects of the legal process, you will need to proceed with those.

If you argued you should not be removed while important other cases that have relevance to your case were waiting to be heard, you should not be removed until that case/those cases are decided. Be aware that the Home Office may move very swiftly to remove you if that case is decided in a way that is unhelpful for your case.

Negative

If you are not successful in a judicial review, it is possible to ask permission to appeal the decision at the Court of Appeal but this is very tricky without legal representation.

Urgent application, injunction

If you have been informed by the Home Office that you are liable to removal/deportation, you may be able to apply for an urgent judicial review to try and secure an injunction to prevent that removal/deportation.

An injunction is an emergency, interim measure.

In applying for an injunction, you are asking a judge to issue an injunction after looking at "the papers" of your urgent application (you will not present evidence at a hearing). You would be asking for an injunction - stopping a removal/deportation from taking place - to allow time for a full judicial review hearing or other decision-making process to take place. You cannot ask for an injunction in itself, to stop a flight – there must be some legal avenue to pursue as a result of a successful injunction.

For example, it may be argued that the refusal of a fresh claim by the Home Office was unreasonable and an error of law, and that removal should be postponed ("stayed") while a judicial review decides if the Home Office must reconsider the fresh claim. Or you may be seeking an injunction to stop a very imminent removal, and also be judicially reviewing the decision to issue removal directions.

You may know that an important case that has relevance to your case is due to be decided. You may apply for an injunction in order that your removal is stayed while that other case is decided. Be aware that the Home Office may move very swiftly to remove you if that case is decided in a way that is unhelpful for your case

Making an application

To apply for the emergency measure of an injunction, you need to complete the form for permission for a judicial review (a "judicial review claim form"), if you haven't already. See above for information on this form.

You **also** need to complete an "Application for urgent consideration form". You can find the form (T483) here: http://bit.ly/injunction-form

You need to explain why the application is urgent, and how quickly you require the application to be considered. This is likely to be before the end of your removal notice period (before the removal window begins).

You also need to state the date by which you wish the substantive hearing to take place (if you are granted permission).

You must include a **draft order** with your application. The draft order is what you are suggesting the judge should order. For example, your draft order may ask for your removal directions to be cancelled and no further directions to be issued while you wait for

completion of a vital medico-legal report to substantiate your testimony of torture in country of origin.

You must also explain the grounds (the reasons) on which the injunction should be granted. Remember that an injunction is part of a judicial review, so the grounds for the injunction should reflect this. Would your removal be the result of an illegal, unfair or irrational/disproportionate decision?

You should include the notice of being liable to removal/deportation, recent relevant Home Office refusals or appeal dismissals, and other relevant evidence to support the application.

Within the working hours of the Upper Tribunal, you should fax the completed forms and above documents to the Upper Tribunal Immigration and Asylum Chamber. The fax number is 0870 324 0185. For fax numbers of Welsh and regional offices, see the Tribunal website: https://www.gov.uk/upper-tribunal-immigration-asylum

You should make your application within the Upper Tribunal's opening hours whenever possible. If you are making your application "out of hours" (overnight, for example), you need to submit the application to the Administrative Court (the High Court). To do this, you will need to speak to the Royal Courts of Justice out of hours duty clerk (general telephone number is 020 7947 6000).

Judicial review: enough to stop a flight?

Submitting an application for a judicial review is **not enough** to prevent a removal/deportation. In some cases, judicial review proceedings against the removal/deportation (if permission for pursuing a judicial review has been granted) will mean that the Home Office will defer the removal/deportation.

There are, however, several exceptions to this.

The Home Office will not defer removal if:

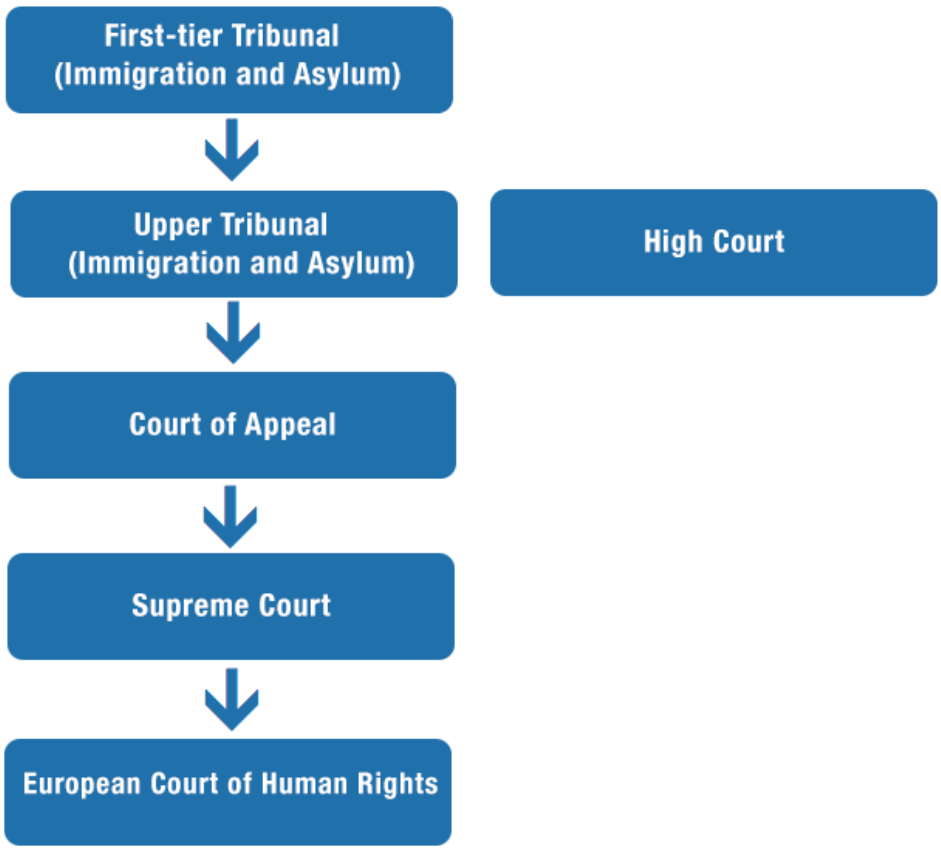
- Within the previous six months, an application for judicial review of removal directions has been brought AND
- the Home Office decides that the new application for judicial review is on the same or virtually identical grounds, or on the same evidence, as the previous application; or decides that the grounds raised in the new application could reasonably have been raised in the previous application.
- OR if the judicial review proceedings are brought during the three month removal window (see Removal section of the Toolkit). During the removal window period, an injunction will be required to stop removal.
- OR if you are due to be removed on a charter flight and bring judicial review proceedings against the removal. An injunction will be needed to stop the removal.

Other Courts

This section looks at the courts above the First-tier and Upper tribunals.

If you receive a refusal of your asylum or immigration application, and you have the right to appeal, you can appeal at the First-tier Tribunal. If your appeal is dismissed by the First-tier tribunal, you can apply for permission to appeal at the Upper Tribunal.

You need permission to appeal at all the courts explained on this page. It is very hard to succeed at this level without the help of a good lawyer.



Court of Appeal (England and Wales)

If you were granted permission to appeal at the Upper Tribunal and your case was then dismissed by the Upper Tribunal, you may be able to appeal to the Court of Appeal. This is very tricky without the help of a lawyer.

You will need permission to appeal at the Court of Appeal. You first apply for permission from the Upper Tribunal. See the Tribunal website for more information: https://www.gov.uk/upper-tribunal-immigration-asylum/the-tribunals-decision

If the Upper Tribunal refuse you permission to appeal to the Court of Appeal, you can apply for permission directly from the Court of Appeal. See the Tribunal website for more information.

Court of Appeal (Northern Ireland)

If you were granted permission to appeal at the Upper Tribunal in Northern Ireland and your case was then dismissed by the Upper Tribunal, you may be able to appeal to the Court of Appeal in Northern Ireland. This is very tricky without the help of a lawyer.

Cases refused by the Court of Appeal in Northern Ireland can be appealed at the UK Supreme Court.

Court of Session (Scotland)

The court is divided into the Outer House and the Inner House. The Outer House can hear judicial reviews. The Inner House is an appeal court, like the Court of Appeal in England, Wales and Northern Ireland.

If you were granted permission to appeal at the Upper Tribunal in Scotland, and your case was then dismissed by the Upper Tribunal, you may be able to appeal to the Court of Session. This is very tricky without the help of a lawyer.

You will need permission to appeal at the Court of Session. You first apply for permission from the Upper Tribunal. See the Tribunal website for more information: https://www.gov.uk/upper-tribunal-immigration-asylum#5

If the Upper Tribunal refuses you permission to appeal to the Court of Session, you can apply for permission directly from the Court of Session. See the Tribunal website for more information.

Cases decided by the Court of Session can be appealed at the UK Supreme Court.

Supreme Court

If your case is refused in the Court of Appeal (England, Wales or Northern Ireland) or Court of Session (Scotland), 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

Judicial reviews in asylum and immigration cases in England and Wales are usually heard at the Upper Tribunal. Judicial reviews in other areas of law in England and Wales are normally heard at the Administrative Court of the Queen's Bench Division, which is part of the High Court.

Judicial reviews in Scotland are heard at the Outer House of the Court of Session. Judicial reviews in Northern Ireland are heard at the High Court in Belfast.

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 the Home Office 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.

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. If you are considering applying to the European Court of Human Rights, you should read the court's guidance document: http://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf

Applying to the ECtHR successfully is extremely difficult. An application is only likely to succeed with a very good legal team. The process of taking your case to the ECtHR can take a long time. If you need an emergency measure to stop removal/deportation, you should apply for Rule 39 to be applied.

Rule 39

A Rule 39 application is an attempt to get the European Court of Human Rights 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 removal/deportation from the UK) would have to show that you are at real risk of serious, irreversible harm if the measure is not applied.

If you have been issued with removal directions or notice of removal/deportation, and you can argue that the Home Office 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.

Read the Court's Rule 39 Practice Directions here:
http://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf

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.

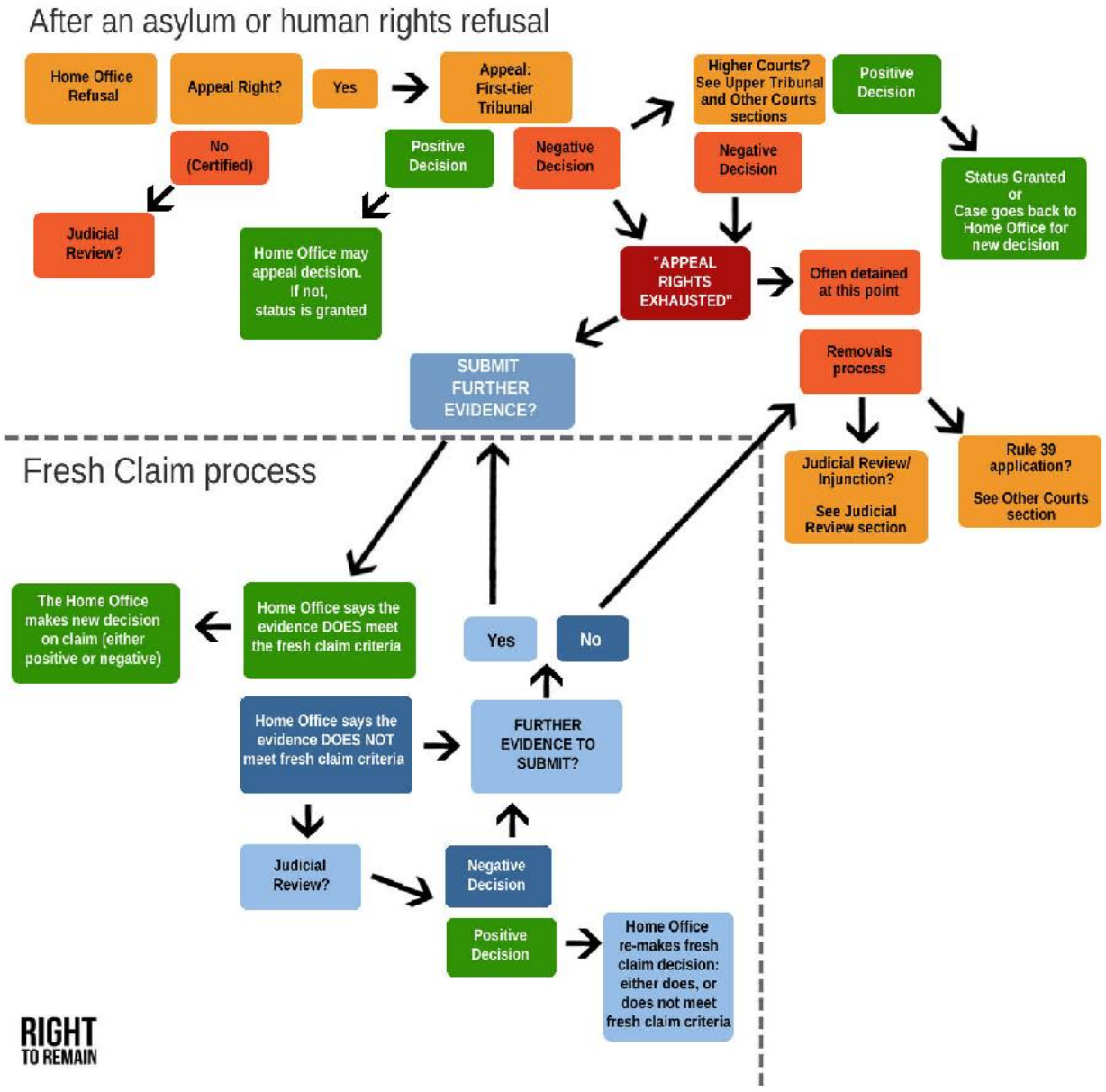
It is very unusual for the European Court of Justice to be involved in individual asylum and human rights cases. A UK court may ask the Court of Justice for clarification on how a particular aspect of European law is to be used.

Fresh claims

Further submissions/evidence can be given to the Home Office at any point after an asylum claim or human rights application is refused, but a fresh claim can only be made when you are “appeal rights exhausted”.

You or your lawyer give the Home Office the further submissions (new evidence/documentation) and the Home Office decides if it’s a fresh claim, using the legal test below.

Although the evidence you submit is not technically a “fresh claim” unless the Home Office says it is, people tend to use the term more widely than this. For example, gathering evidence to be submitted to be considered as a fresh claim is more easily phrased “preparing a fresh claim”.



The basis of a fresh claim might be new evidence about the original reason you claimed asylum; or it might be that your situation has changed since you claimed asylum and had an appeal heard and dismissed; the situation in your country may have changed; or subsequent case law (other people's cases) might have changed the way cases are dealt with or decided.

The evidence you submit to be considered as a fresh claim might be emphasising a point already made, or providing a new source of evidence for a fact that has previously been disputed. The evidence may be on an entirely new matter that hasn't been raised with the Home Office/courts before. To be considered as a fresh claim your new evidence must include new and relevant information.

Poor quality submissions to be considered as fresh claim are very likely to be rejected, and this can put you in a worse position than before. Read this page to make sure you put in the best evidence possible, but also read the rest of the Toolkit to decide if a fresh claim is the best option for you. There may be other routes to securing the right to remain that are more likely to succeed, and therefore you should focus on them, not preparing a fresh claim.

Legal test

When you submit evidence to be considered as a fresh asylum or human rights claim, the Home Office will use the following legal test from the immigration rules, to decide whether they will consider it a “fresh claim”:

Immigration Rules

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, the

Home Office could use that a reason to say it's not a fresh claim. If you've only just managed to get the evidence, you need to explain why you couldn't get it before. Remember you also need to explain how you got the evidence, especially if it's documentary evidence from your country, such as a birth certificate, arrest warrant or proof of political activity.

A fresh claim is not just arguing your case in a better way – there has to be evidence that is new to back up your arguments. “New” in this context doesn't necessarily mean it's just been created or it contains information that the Home Office or courts have never heard before, just that it hasn't been seen by the Home Office or courts in relation to your case.

2) “taken together with previously considered material”.

The Home Office will consider your further submissions alongside the evidence and statements you have submitted earlier in your case (and will use negative credibility findings - a decision that you weren't telling the truth - against you).

Your starting point for preparing a fresh claim should be, “what did the court say when my appeal was dismissed?”. If you did not have an appeal, your starting point will be your Reasons for Refusal Letter from the Home Office, and there is likely to be a lot of negative findings to counter in that!

If further submissions are all based on your evidence (with no objective evidence), and the Home Office/courts have found your testimony or evidence you have submitted to be incredible, this could be a reason for the Home Office to say your submissions do not meet the fresh claim test.

You may see reference, particularly in Home Office letters rejecting a fresh claim, to a case called “Devaseelan”, which established the principle that a judge's starting point should be the previous judge's determination. This is relevant to fresh claims: the Home Office, when considering your new evidence, will be looking at whether an immigration judge would agree with their decision that it is not a fresh claim (see below).

Previous findings of incredibility (not being believed) are not set in stone, however. For example, if the Home Office have decided that a document you submitted in your original asylum claim is not genuine, this is not necessarily fatal to your whole case. Your case and the evidence has to be considered “in the round” for assessing potential risk if you are removed.

Additionally, a fresh claim is an opportunity to reverse negative credibility findings. Often in asylum cases, not being believed on one issue can lead to the Home Office and the courts not believing you on other issues. If, through the evidence submitted for a fresh claim, you can prove you are credible on one issue, your entire case may be treated more positively.

3) “a realistic prospect of success”

You may have new evidence, but is it relevant to your situation? Is it material (central) to your case and the grounds on which you are seeking asylum or the right to remain based on a human rights argument?

For example, there may have been a big political change in your home country, but if your

claim is based on your sexuality, and the political change can't be seen to impact on that, it won't be considered a fresh claim.

The credibility issues mentioned above are a factor here. For example, you may have new evidence about the persecution of a subclan in Somalia. If the Home Office and courts do not believe you are a member of that subclan, however, that evidence is unlikely to give you a realistic prospect of success. You would need to provide evidence showing that the Home Office and the courts were wrong to doubt your clan identity.

Your submissions for a fresh claim may include good evidence from reputable sources about human rights abuses and persecution, and the Home Office/the courts may not dispute that this evidence is true. The problem can be that the Home Office does not believe these problems or events mean that *you* are at risk of persecution.

Fresh claim outcomes

Once you have submitted your new evidence to be considered as a fresh claim, the Home Office will consider your evidence, based on the legal test above. One of the following things will then happen (they are listed from most positive first, to least positive. The most positive outcome is also the least common outcome, and the least positive is the most common):

1) The Home Office decides that your evidence meets the fresh claim criteria and that the new evidence shows you are in need of protection/meet human rights claim rules you are granted refugee status; humanitarian protection; or other leave based on your human rights claim.

OR

2) The Home Office decides that your evidence meets the fresh claim criteria, they have considered your new claim, and have refused it: they have decided you are not in need of protection or leave to remain based on a human rights claim. If this happens, you will be given the right to appeal the refusal of your claim. This is a relatively positive outcome, as the court/Tribunal is more likely to look favourably on your evidence than the Home Office.

This outcome is what the phrase "notwithstanding its rejection" refers to in point (ii) of the fresh claim test above. The Home Office decision-makers should be looking at whether the evidence submitted creates a "realistic prospect of success" first and therefore meets the fresh claim test even if they have decided the claim itself will not lead to a grant of protection/status. It is this realistic prospect of success that generates the appeal right of the refusal.

Before making decisions 1 or 2, the Home Office may decide they need to interview you again.

Alternatively, the Home Office will just make a decision based on the evidence you have submitted and write to you to tell you they have granted you leave to remain, or that you did meet the fresh claim test but they have refused your new claim.

OR

3) The Home Office decides that your new evidence does not meet the fresh claim legal test. In these circumstances, you are not given the right of appeal.

Your options may include exploring other legal options to regularising your immigration status; preparing a further, better fresh claim, or possibly a judicial review of the Home Office decision that your evidence doesn't meet the legal test. Judicial reviews are very hard to do without legal representation. See *Judicial Reviews* section of the Toolkit.

The basis of a fresh claim

This is a guide to the kinds of situations that commonly mean people are in a position to make a fresh claim, not an exhaustive list.

New evidence is available supporting your original asylum claim

- For example, documents proving your political activity has only just arrived from your country of origin. Always keep the envelopes these arrived in and any proof of delivery/receipt.

- You have received 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 or police/court documents to prove this.

- There is new “objective” evidence (see below) relevant to your asylum claim. For example, you may have described a situation in your home country that wasn't believed by the Home Office and/or the courts. Is there a new human rights report or new, trusted journalism that backs up what you said?

- You may have new evidence because of your activity in the UK, since your asylum appeal was refused. This might be involvement in LGBT groups in the UK, or political activity. How can you evidence this activity? Remember, the Home Office position is likely to be that this activity is “self-serving” - that you are doing it to provide evidence for your asylum claim. Be prepared for that, and think about how you might address that in the letter/legal arguments you make that accompany the evidence.

Change of circumstances back home

- Has there been a change in the your country since you left?

- 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.

- A change in circumstances back home may provide evidence for a fresh claim based on your original grounds for claiming asylum (things have got worse), or you may have claimed asylum for one reason and the changes mean you are now at

risk for another reason.

Case law/legal developments

- This may be a change in country guidance case law.

- There could also be a reported judgment (in someone else's case) that the Home Office 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 the Home Office 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.

New claim on a new basis

- This could include previously undisclosed risk because of sexuality. Some people do not feel ready to tell the Home Office/the courts about their sexuality at first. Some people have not told anyone about their sexuality, and the time spent in the UK means they are more comfortable expressing this. The Home Office position is most commonly that they do not believe the person is gay, and that they should have disclosed sexuality at the beginning of the original asylum claim.

- Conversion to Christianity is another reason people may have a new claim for asylum. This might be because of time spent in the UK, where many asylum seekers have positive interactions with church groups providing material and emotional support. As the dominant religion in the UK, people previously devout in another faith may find Christianity an obvious and attractive way of continuing their faith having been displaced from their home country. The Home Office is likely to doubt the genuineness of the conversion. With both sexuality and conversion cases, you need to think about providing evidence about something that is perhaps not a tangible, concrete thing. However, any involvement with LGBT or church groups is a good place to start when thinking about evidence. The fact that the Home Office does not believe you, while relevant to how your claim is treated, is not actually the crucial point of whether or not you are at risk. If people back home perceive you as being gay, or Christian, this could put you at risk.

- There may be other, previously undisclosed, reasons you would be at risk. Many victims of trafficking do not disclose they have been trafficked, and often give a story to the Home Office and courts that they trafficker has told them to say.

- You may have entirely new family/private life grounds for a fresh claim on a human rights basis, particularly if you've been in the UK a long time. If there were human rights reasons for getting the right to remain at the beginning of your case, these should made at the same time as you claim asylum. But you may have new circumstances, such as a new relationship, a child, or a health condition. Read more about Article 8 human rights claims in the Toolkit Human Rights section.

Preparing your fresh claim

If you have a lawyer, they will be putting the fresh claim together and writing the legal arguments that accompany the evidence. However, they are likely to ask you to go away and gather evidence to submit. If you don't have a lawyer, you will need to prepare the fresh claim yourself. This is an area where support groups can be very helpful - see the action section below.

1. Read carefully all the documents you have from your asylum/human rights claim.

These should include:

- a copy of the form filled out by the Home Office in your screening interview;
- the transcript and audio recordings of your asylum interview;
- any witness statements and copies of any other evidence submitted to the Home Office and/or courts so far in your case;
- the Reasons for Refusal Letter from the Home Office;
- the first court determination (refusal) of your asylum appeal;
- and any other appeal determinations (court decisions) in your case

The judgment from your asylum appeal, when your appeal was dismissed, is particularly important as this should be the starting point of preparing your fresh claim.

If you do not have one or more of these documents, you can either ask the lawyer that was handling your case at that stage (if you had one), or you can request that the Home Office send you a copy of your file. This is called a subject access request and you should receive a response within 40 days. You have to pay a fee of £10. You can read more about subject access requests on the Home Office website: www.gov.uk/government/publications/requests-for-personal-data-uk-visas-and-immigration

Read the documents carefully.

Look at the parts of your story/claim that have been doubted or disbelieved. Can you find new evidence to back your story up, or to challenge a statement of the Home Office or the courts?

Think about what the key points of the refusal/appeal dismissal are. For example, there is no point spending a lot of time finding evidence for one part of your story that is disbelieved, if the Home Office/courts say something like “Even if that were true, you would not be at risk because ...”. Or, if the court accepts that your home region is not safe for you but say that you could internally relocate somewhere else in the country. Do you really need to provide more evidence that your home area isn't safe? No, unless that finding could now be challenged because of a change in the situation at home or if Home

Office guidance or subsequent case law says it's safe. Instead, the focus of your fresh claim would likely to be proving that you couldn't internally relocate.

What is the crucial area of dispute? Figure out what is the most important part of your story (what is “material” to your case) that demonstrates you need protection/human rights status, but that is not accepted by the Home Office/court.

Remember your starting point is the judge's decision in your appeal refusal. You are arguing that, with this new evidence, they would make a different decision.

2. Gather your new evidence.

The evidence you need will depend on the basis of your fresh claim.

If your fresh claim is based on your new circumstances giving rise to a human rights claim, read Article 8 and Rights of the Child sections of the Toolkit for ideas of who to ask for supporting statements and other evidence.

Remember that in an asylum fresh claim, you need to prove that you, individually and specifically, are at risk. It is not enough to prove that there is a risk of persecution/human rights abuses in your country in general.

You may need to look for “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. This is especially important if your credibility has been questioned in your original asylum case by the Home Office and the courts.

See the list of sources for country of origin information in the *After a Refusa*l section of the Toolkit, and on the country information page of the Right to Remain website: www.righttoremain.org.uk/coi/

If you are using recent case law as a basis of a fresh claim, you may find it helpful to read our tutorial on 'Understanding Case Law', which has a specific section on country guidance cases: www.righttoremain.org.uk/legal/understanding-case-law/

3. Write a letter to explain the further evidence you are submitting

- Explain that these are your further submissions
- Explain what the new evidence is
- Explain how you obtained the new evidence
- Explain why it should be believed, and how your claim now amounts to a fresh claim.

There is a Further Submissions form on the Home Office website but you do not have to use it: http://bit.ly/fc_form

You may find the form helpful for structuring your arguments, and making sure you address the fresh claim criteria. Be aware that this is a Home Office form which begins with information to persuade you to return to your country of origin. Note - the form refers to “changes in your country of claim”. This, confusingly, means your country of origin/residence that you are saying you cannot return to, not the country in which you have claimed asylum (the UK).

Make a copy of the letter or form, and the evidence you are submitting, for your own records.

4. Submit your evidence

In most cases, you have to submit further submissions for a fresh claim in person. If you cannot attend in person, for example because you are in detention or if you are seriously ill or have a serious disability, speak to the Home Office to try and arrange an alternative.

See below for the procedure for submitting your further submissions.

Make sure you get a receipt showing the date you handed in your further submissions .

ACTION SECTION

Preparing fresh claims are an area where you might be doing a lot or all of the work yourself, if you don't have a lawyer. It's an area where friends/supporters can help out a lot, for example:

- getting previous documents. See point (1) of 'preparing your fresh claim'. If a previous lawyer is refusing to hand over documents, a friend/supporter might be able to negotiate their release, or if necessary make a complaint on your behalf to the lawyer's regulator or the Legal Ombudsman. They may also be able to help you make a Subject Access Request to the Home Office, to get your file from them.
- going through previous documents, particularly your appeal judgment. This is particularly helpful if you cannot read English easily, or do not understand the legal terminology being used. You use these documents as the starting point of your fresh claim. See point (1) of 'preparing your fresh claim'.
- finding evidence. This may be supporting statements or letters, or objective evidence. See point (2) of 'preparing your fresh claim'.
- can a good lawyer be found to take up the case?. You may have struggled to find a lawyer to help you with your fresh claim. However, if you and your supporters have managed to find good evidence that makes your case stronger, a lawyer may now be persuaded to take up your case, and write the legal arguments to submit with the evidence.

Submission procedure

In January 2015, the Home Office announced that anyone wishing to submit further submissions will be required to make an appointment to do so, in person, at the Further Submissions Unit (FSU) in Liverpool.

To make an appointment, you need to telephone the Further Submissions Unit on 0151 213 2411. The Home Office states that it will aim to make appointments within 10 working days of the initial telephone contact.

Your further submissions/fresh claim appointment will be held at the Further Submissions Unit, The Capital Building, 6 Union Street, Liverpool L3 9AF. Do not turn up without making an appointment by telephone first.

The Home Office's internal guidance on further submissions states that you should take the following with you to your appointment:

- a completed Further Submissions form detailing the additional information you would like the Home Office to consider [remember, you do not need to use the specified form]
- supporting documents, including, where available, any Reasons For Refusal Letters (RFRLs) or appeal determinations
- your Application Registration Card (ARC) if still in possession of this
- passport (yours and your dependents', if they aren't already with the Home Office)
- 4 unseparated passport sized photographs (of you and any dependents)
- evidence of accommodation (if not asylum accommodation)

There have been incidents of people being detained when they go to submit their further submissions. It is not yet known how common this is, or if this is part of a deliberate Home Office strategy. In some of these cases, the person has been held at the Further Submissions Unit while their further submissions were looked at and rejected, and then they have been taken to a detention centre.

Exceptions to submitting in person

There are exceptions to having to submit your fresh claim in person:

- **inability to travel.** If you have a "disability or severe illness and are physically unable to travel" you need to contact the Further Submission Unit and discuss submitting by post. You will need to provide medical evidence that "clearly indicates a disability or severe illness that results in [you] being physically unable to travel to Liverpool".
- **Ongoing judicial review.** If you have an ongoing judicial review challenging a

removal or enforcement decision, or if you have been granted permission to proceed with a judicial review, you can submit by post.

- **If you are detained** you need to ask your Home Office caseworker how you can submit further submissions (or ask your lawyer to do this for you, if you have one)
- If you are serving a criminal sentence in **prison**. In this situation, you submit further submissions by post or fax to the Criminal Casework team.
- If you are in the **Family Returns Process** you may be able to submit your submissions at your usual reporting event. You need to discuss this with your Home Office caseworker.
- If your submissions are based only on **Article 8 family/private life** (and not a protection claim), you can submit by post. See the link to guidance notes at the Fresh Claims page of the online Toolkit on how/where to apply. Read Toolkit section on Article 8 for more information on these applications.

Fresh claims and forced removal

The immigration rules say that *"An applicant who has made further submissions [to be considered as a fresh claim]* ***shall not be removed before the Secretary of State has considered the submissions*** *under paragraph 353 [the fresh claim legal test] or otherwise."*

But submitting further evidence does not mean you are safe. The Home Office may issue the letter saying your further submissions are not considered to be a fresh claim at the same time as detaining you and/or informing you they intend to remove you. They may also attempt removal if you cannot prove you have submitted a fresh claim – so make sure you have evidence of receipt by the Home Office.

If you have already been told you are going to be removed, and then you submit further evidence, the Home Office will typically consider and refuse the further evidence very quickly (as not being a fresh claim) and say that they still intend to remove you.

Immigration Detention

If you do not have the right to remain, you are liable to being held in immigration detention. This can happen at any time, but there are several points in the asylum and immigration process when you are more likely to be detained (see below).

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 ex-offender who has completed their custodial sentence they may continue to be detained in prison.

The Home Office uses the term Immigration Removal Centre but as many people are held in detention for long periods of time with no prospect of removal/deportation, this term can be misleading. We use the term detention centre in this Toolkit instead.

People in detention cannot leave and have very limited freedom of movement within the centres. There is no time-limit on adult detention in the UK - you can be detained indefinitely. When the Immigration Act 2016 comes into force in July 2016, the detention of pregnant women will be limited to 72 hours, unless extended by ministerial approval.

You can find a list of the detention centres and short-term holding centres in the UK here: http://righttoremain.org.uk/resources/detention.html You will also find links for helpful organisations if you or someone you know is detained.

When can you be detained?

If you do not have the right to remain in the UK, you are liable to be detained at any time, but there are some points in the asylum and immigration process when it is more likely to happen:

- when you first enter the UK
- when you claim asylum, if the Home Office categorise your case as a Dublin safe third country case, or as a non-suspensive appeals case. This will happen after your screening interview.
- if you have claimed asylum, been refused and you are “appeal rights exhausted”. This means after you have been refused and either have appealed to the First-tier Tribunal and lost your appeal; or if you did not take the opportunity to appeal; or if you did not have the right to appeal. Remember - this is a Home Office term and you may in fact have legal options/further appeals available to you.
- if you do not have any immigration status or applications pending and you are picked up by an immigration enforcement team.

It is common for someone at risk of detention to be picked up when they go for their

regular reporting/signing event at the Home Office.

People are also picked up from their homes (sometimes in dawn raids), during immigration raids on businesses, and stop-and-searches at train and bus stations.

Who shouldn't be detained, according to the Home Office's own policy?

The Home Office's **"Adults at Risk in Immigration Detention"** policy, which was brought into force in September 2016, sets out the conditions or experiences which will indicate that a person may be "particularly vulnerable to harm in detention":

- suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression, depending on the nature and seriousness of the condition)
- having been a victim of torture
- having been a victim of sexual or gender based violence, including female genital mutilation
- having been a victim of human trafficking or modern slavery
- suffering from post traumatic stress disorder (which may or may not be related to one of the above experiences)
- being pregnant
- suffering from a serious physical disability
- suffering from other serious physical health conditions or illnesses
- being aged 70 or over
- being a transsexual or intersex person.

However, someone falling under one of these categories does not necessarily mean, according to the Home Office's point of view, that they will not be detained.

The Adults at Risk policy states that although there is the presumption that detention will not be appropriate if a person is considered to be "at risk", *"detention will only become appropriate at the point at which immigration control considerations outweigh that presumption. Within this context it will remain appropriate to detain individuals at risk if it is necessary in order to remove them."*

The policy has not been long in place, so it remains difficult to assess how it is being applied. However, there are already legal challenges to the policy underway, such as to the definition of torture used within the policy.

In addition to the categories of *adults* at risk listed above, **unaccompanied minors** should also not be detained, apart from in exceptional circumstances (though sometimes children are wrongly detained by the Home Office, because the Home Office classify them as adults).

Be prepared in case you are detained

ACTION SECTION – Be prepared

If you are at risk of being detained, there are some things that you can and should do to be prepared.

- You should have a list of **emergency contacts**, and someone else should have a copy. These might include your lawyer's number (and your case reference number the lawyer uses in letters to you), any close friends or family, people you have spoken to about caring for children in case of detention, doctors or hospitals if you have a medical condition.

ACTION SECTION – Be prepared

- **Have copies of your documents.** If you are detained, it may become impossible for you to access your documents if they are in your home. This means that vital evidence that a lawyer or a friend/supporter needs can't be reached. You should have a copy of all your documents, not just your lawyer. Give a copy of these documents to someone you trust.

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

- **Your phone will probably be taken off you** when you are detained. Keep your important numbers written down. 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. If you have a smart phone, the sim card is unlikely to work in the detention centre device.

Signing support and *detention action plans*

Most people who have applied for asylum or other immigration status and have not had a positive decision have to regularly report at their local Home Office 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 lawyer and/or support group if they have one.

In some areas, local support groups have set up systems to help with this. The person going to report 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.

A system like this can save valuable time: friends/supporters can start finding out exactly where the person is, what has happened, and what can be done to help straight away.

A signing support system also means that the person going to sign knows people are looking out for them, and that there is a plan in place if things go wrong and they are detained. This can reduce the psychological burden of reporting/signing at the Home Office.

Some starters on setting up a signing/detention support system for your group

(1) Make sure you know when everyone in the group goes to sign

(2) Where are people signing?

(3) Where they will be detained locally, before they are sent to a longer-term detention centre?

(4) Have basic information about the stage that group members' cases are at. Remember, you don't need to know everything about someone's case, and you should only ask for information if the person is comfortable sharing it.

(5) It may help to have a basic form that you use with information on such as name, date of birth, emergency contact details including lawyer if there is one, family, health problems etc. Their Home Office reference number may be important for contacting the lawyer/the Home Office. On this form, you can indicate issues that need to be thought about if someone is detained – are there children who need emergency child-care? Is medication needed?

(6) Create a simple consent form for every group member to sign, giving permission for the group (or a named representative of the group) to speak to the person's lawyer, or MP, or to enter their asylum accommodation, for example.

(7) How does the group find out that somebody's been detained? You might want to think about a buddy system (with back-up in case the buddy is away), a telephone tree or email system.

Have an action plan

- Agree in advance with individuals what they want to happen if they are detained.
- Ring their lawyer (if they have one).
- Try and find out about legal aid advice in the detention centre they are taken to.
- If they can't get legal advice, can your group help them apply for bail?
- Once you know which detention centre they are in, arrange visiting for family, friends, support group members. If it's too far away, get in touch with the local visitors' group (see below). You may want to think about fundraising to pay for travel to the detention centre.
- Are there any family members, professionals involved in the case that need contacting?
- Are there other actions to take? Legal support? Fundraising for legal fees? Contacting the local MP?

Legal options in detention

Legal aid contracted firms

In general, there is no legal aid for immigration matters that are not asylum, apart from some cases involving domestic violence or trafficking. Read more at the Toolkit page *Your Legal Case*. If you have a non-asylum immigration case, you will not be able to get legal aid advice on your substantive case, though you may be able to get legal aid to challenge your detention.

At detention centres in England, legal aid advice is provided by a few contracted legal firms at each centre. You can find out which firm covers the detention centre that you or someone you know is detained by searching the website for Bail for Immigration Detainees: www.biduk.org. You can also ask at the detention centre which firms are currently contracted.

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, the Office of the Immigration Services Commissioner or the Legal Ombudsman.

Detention far from where you live

Nearly all removals/deportations take place from London airports. If you apply for asylum or other immigration status and live in Scotland, Wales or Northern Ireland and you are detained, you will very likely be moved to a detention centre in England prior to

removal/deportation.

This makes it very difficult for your Scottish, Welsh or Northern Irish lawyers to continue to advise you. This is also a problem if you live in England and you are moved to a detention centre a long way from where your English lawyer's office is located.

If you claimed asylum or other immigration status and lived in Scotland or Northern Ireland, there is the additional problem of restricted legal aid in England if you are moved to a detention centre there.

In theory, if your lawyer has already starting working on an aspect of your case (for example, a fresh claim), they can continue to work on it even if you are moved across to England/far away in England. It will be very difficult for them to work effectively on your case, however, if they cannot visit you in detention.

Similarly, while only certain firms have contracts to take on new cases in detention, 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.

ACTION SECTION – Legal help

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. Read more at the Toolkit section *Your Legal Case*
- supporters/friends providing *legal support* that does not involve giving legal advice. Read more at the Toolkit section *Your Legal Case*
- fundraise for a private solicitor

If you are detained

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 the Home Office.

Communication

It can be difficult to keep in touch with people if you are detained.

At some detention centres the mobile phone signal is very poor. If you have your mobile

phone and sim cards taken off you and you are given a detention centre device, 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.

You should have access to the internet in detention, but you may have limited time to use the computers. Certain sites such as Facebook and Skype 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 people in detention), which some people find very comforting.

ACTION SECTION: VISITING

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: gov.uk/immigration-removal-centre/overview

There are also visitor groups (co-ordinated groups of people, usually volunteers, who regularly visit people in detention to provide company and emotional support) set up for each detention centres and some prisons. The Association of Visitors to Immigration Detainees (AVID) has a list of their members on its website: aviddetention.org.uk

If someone you know has been detained, you might want to arrange visits to see them. The isolation of detention can make it very difficult to keep your spirits up. Keeping engaged and communicating is essential not just for wellbeing but also for continuing with the legal process.

If a member of your group has been detained, you might want to think about fundraising to pay travel costs so group members can visit the person in detention. Detention centres are often difficult to reach by public transport, so sharing lifts in a car/petrol costs may be the easiest way of visiting.

Some groups also organise letter writing sessions, where everyone gets together to write to someone they know (or even someone they don't) in detention. If a member of your group has been detained, you might want to take photos of the group getting together to take this action and send the photos to the person in detention, so they know people are thinking about them.

Getting out of detention

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".

The Home Office 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.

Whether or not your removal/deportation is “imminent” may depend on whether emergency travel documents can be issued for you allowing you to be admitted back into your country. You may wish to contact the organisation Bail Immigration for Detainees (BID) about this, and see the Home Office information about whether you are likely to be issued with a travel document quickly or at all (see the BID website)

Temporary Admission, CIO bail and bail

If you have been detained, you can apply to your Home Office caseowner for temporary admission (also called temporary release). This has less conditions than bail, but is not often granted.

You can also apply to the Chief Immigration Officer (CIO), via the detention centre you are in, for CIO bail. This is different from the bail you apply for from an immigration judge. CIO bail usually requires sureties (see below) to offer at least £5000 each, and so is not often granted.

If these applications are refused, you can apply for bail to be heard at a bail hearing, in front of an immigration judge. **You can apply for bail if you have been detained for 7 days or more.**

If your application for bail has been refused by the First-tier Tribunal, the Tribunal will automatically **refuse any further applications for bail made within 28 days of the last refusal** – unless you can demonstrate there has been a material change in your circumstances. You will have to convince the Tribunal of this change in writing, when you make your application.

> If you cannot find a lawyer to help you with these applications, you can apply for bail yourself. Bail Immigration for Detainees (BID) have produced a handbook which can help with this: biduk.org/information-detainees

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 people 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 the Home Office 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.

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. Section 4 accommodation is also used as emergency bail accommodation for people released from detention, whether you are an asylum-seeker or not. There are often long delays in processing applications for Section 4 addresses

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.

Bail 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. This role is called a "cautioner" in Scotland.

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 (this process will change when the relevant section of the 2016 Immigration Act comes into foce). The amount for surety may be a significant amount – it can be 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.

Note - 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, you need to consider whether it is safe for you to be a surety for someone else.

Good sureties are close friends or colleagues, rather than family members, or supporters who do not know the person in detention well, but this is not always possible.

The Immigration Bail Observation Project Scotland has produced a useful leaflet and guide about being a cautioner, the bail procedure and providing bail addresses. While written for people supporting those in Scotland, the information is also useful for those supporting someone trying to get immigration bail elsewhere in the UK too.

Leaflet: http://sdv.org.uk/wp-content/uploads/2016/10/Being-a-cautioner-leaflet.pdf

Guide: http://sdv.org.uk/wp-content/uploads/2016/10/Guide-for-Cautioners-Final.pdf

Bail hearings

Bail hearings take place in front of a judge at court (in the Tribunal), but you are likely to stay in your detention centre and only join the proceedings via 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 the Home Office (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 lawyer (if you have one) the day before the hearing.

There are often problems with bail hearings such as procedural irregularities, lack of legal representation and interpretation problems.

You may want a friend or supporter to attend the bail hearing with you as an observer. If your bail hearing is taking place via video-link, your friend would sit in the Tribunal with the judge, while you give evidence by video from detention. It is unlikely you will be able to see them or speak to them.

Medical cases, torture survivors and Rule 35 Detention Centre

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

Many people in detention 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 a lawyer and/or contact the organisation Medical Justice: medicaljustice.org.uk.

To be released from detention as a survivor of torture, you will need to provide independent evidence of this.

Removal/deportation

Forced removal, sometimes called “administrative removal” is when the Home Office enforces your removal from the UK if you don't have any leave to remain: if your application for leave to remain (including an asylum claim) has been refused, or you did have some form of leave to remain/a visa but it has now expired.

Deportation, legally speaking in the UK, is the enforced removal of someone "for the public good", usually after serving a criminal sentence in the UK.

Removals and deportations are usually carried out either on a commercial airline (one person being removed/deported, usually escorted by security guards, and the other passengers are the public travelling for holiday or business) or by private charter flight (usually lots of people being removed/deported to the same country at the same time).

Removals

You are at risk of removal if you do not have any leave to remain in the UK and haven't applied for any; if your asylum or immigration application is refused; or the leave you had has expired.

For information on deportation following a criminal sentence, see the section below.

Since 2015, the Home Office has been able to inform someone they are liable to removal, and then remove that person at any given point during a **three month removal window**.

This is a change to the former legal obligation of issuing "removal directions" which would specify the date, time and flight number of the removal. Although the Home Office may still in some cases issue "courtesy letters" containing this information, there is no legal obligation to do so (apart from those cases where the removal window cannot be used, such as family cases and people with independent evidence that they are an "Adult at Risk" in terms of detention policy).

The Home Office must give you notice that you are liable to removal, and cannot lawfully remove you during this notice period. During this notice period, you may be able to legally challenge the removal (see below). Once that notice period is over, the three month removal window begins and you can be removed, without notice, at any point during it.

The general notice period is **seven calendar days** if you are not detained, or just **72 hours if you are detained**. The 72 hours must include at least two working days.

In cases of charter flight removals, the notice period is **five working days** even if you are detained.

These notice periods do not apply in port cases, where leave to enter is refused and

removal will take place within seven days (in non-asylum applications, where a visa may have been applied for but entry is refused). The notice period for Dublin/third country removals is five working days. See Dublin section.

Challenging a removal

You should not be removed from the UK 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

You should not be removed from the UK if you have **an appeal pending in the UK** (either you have a hearing coming up, or if you have had a hearing but the decision has not yet been made). Remember not everyone has the right to appeal in the UK. See Appeals section.

You should not be removed from the UK if you have **submitted a fresh claim and a decision has not yet been made on whether it is a fresh claim or not**. You should keep proof of submitting a fresh claim. See Fresh Claims section.

You should not be removed from the UK if you have an **injunction** preventing that removal. See Judicial Reviews section.

There are also other cases where **judicial review proceedings** may suspend removal.

Home Office guidance brought in in November 2016 states that if judicial review proceedings are brought *within the three month removal window*, this will not be enough to suspend removal, and an injunction will be required. (Read more in the Judicial Reviews section).

You should also not be removed from the UK if it would breach the UK's obligations under the Refugee Convention, or the European Convention on Human Rights, or EEA treaty rights.

There may be other reasons you can challenge your removal, such as if other legal proceedings are ongoing in other areas of law (e.g. family law), or if the proper procedure for removal has not been followed.

Deportation after a criminal sentence

If a deportation order has been made against you, you will be issued with **notice of deportation arrangements**, and this should be in keeping with the removal notice periods above.

To prevent your deportation, you need to prove that it would breach your rights under the Refugee Convention or the Human Rights Convention.

The immigration rules are now weighted very much in favour of deporting a person after a criminal sentence.

The rules state that if you were sentenced for **more than twelve months**, your deportation is "conducive to the public good and in the public interest". The rules also say that your deportation is "conducive to the public good and in the public interest" if your offending "caused serious harm" as determined by the Home Office, or you are a "persistent offender who shows a particular disregard for the law" (irrespective of how long you were sentenced for).

If you are liable to deportation, your spouse or civil partner and/or your child (if they are under 18) are also liable to be deported unless they have settled status in the UK in their own right, or have been living apart from you.

If you were sentenced to **more than four years,** the Home Office guidance says you will need to have "very compelling circumstances" in order for a deportation order not to be made or to be revoked. Remember, however, that a court may have a different (more generous) interpretation of what counts as those circumstances than the Home Office.

If you have been sentenced for **less than four years but more than twelve months**, or your offending is deemed to fall into the "causing serious harm" category described above, the immigration rules say that deportation would be proportionate except if deportation would be in breach of your Article 8 rights to family and private life AND:

(1) you have a **child under the age of 18** in the UK,

- you have a "genuine and subsisting parental relationship" with your child;
- your child is a British citizen or has lived in the UK for at least seven years immediately prior to the decision to deport you;
- it would be "unduly harsh" for your child to live in the country to which you will be deported, and
- it would be "unduly harsh" for your child to remain in the UK without you.

OR

(2) you have a "genuine and subsisting relationship" with a **partner** who is in the UK and is a **British Citizen or settled in the UK**, and

- the relationship was formed at a time when you were in the UK lawfully and your immigration status was "not precarious"; and
- it would be unduly harsh for your partner to live in the country to which you are being deported, because of compelling circumstances over and above very significant difficulties which would be faced by you and your partner in continuing your family life together outside the UK and which could not be overcome or would entail very serious hardship for you and your partner; and

- it would be unduly harsh for your partner to remain in the UK without you.

You **also** need to show that you have been lawfully resident in the UK for most of your life; and you are "socially and culturally integrated in the UK"; and there would be "very significant obstacles" to integration into the country to which you are being deported.

The Home Office guidance says that you must provide “original, independent and verifiable documentary evidence” of all of these factors. See Rights of the Child section of the Toolkit for ideas on how you evidence some of these factors.

Remember that the Home Office is likely to take a very restricted view on who meets the circumstances above. A judge in court may not agree.

The Home Office cannot dictate in the immigration rules exactly what Article 8 means and what would be a disproportionate breach for every case. A judge may find that even if you don't meet the requirements of the immigration rules, you would suffer a disproportionate breach of your Article 8 rights if you were deported.

See below for legal challenges to deportations.

Appealing the decision to deport you

There is no longer an automatic right to appeal a decision to deport you.

You may have grounds, however, for a claim that does have the right of appeal if refused - a human rights claim based on Article 8 family life in the UK, for example).

Generally, there is no legal aid available if you have the right to appeal while in the UK, unless the appeal is based on refugee grounds or Article 3 human rights grounds.

Read more in BID's factsheets on appealing deportations:
http://www.biduk.org/pages/6

Asylum or human rights claim

If at the time of a decision to deport you, there are asylum or human rights grounds that mean you need to stay in the UK and you have not already informed the Home Office of these or made an application, you need to do so now.

Read the Asylum, Human Rights and Rights of the Child sections of this Toolkit to see if these may be relevant to you, and how to apply.

Around the time of the decision to deport you, you will have been issued with a “**one-stop notice”**. On this form, you can state any reasons you have not already told the Home

Office why you need to stay in the UK. You need to make sure you send the form back by the date specified on the one-stop notice. If you miss the deadline, attach your reasons for why you are sending it late - but it is important for your case to try and send it back in time.

If you do not mention asylum and human rights reasons you need to stay in the UK on the one-stop notice, and then make an asylum or human rights application, the Home Office may certify your application, meaning you have no right to appeal a refusal.

If this happens to you, you may have the option of a judicial review.

Judicial review

If you do not have the right to appeal the deportation decision, and you have not yet made a human rights or asylum application that you need to make, you may have the option of applying for a judicial review (including an injunction to stop your deportation) particularly if your deportation is going to happen very soon.

Judicial reviews are very complicated, however, and very hard to do without a lawyer. Read more in the *Judicial Review* section of the Toolkit.

See next page for the Action Section....

ACTION SECTION

- **Airline campaigning**

This is a last-minute action if someone has been issued with a courtesy letter that specifies the date/time of the removal/deportation flight.

Taking action for the right to remain cannot just be about stopping a flight – if contacting the airline successfully stops the flight, this may buy some time for other actions to be taken and for legal avenues to be pursued.

Read more here in the *Airline Campaigning* section of the Toolkit:
http://righttoremain.org.uk/toolkit/airline.html

- **Contact your MP**

This action is more likely to succeed if you are already in contact with your MP about your case. Your MP may be able to contact the Home Office directly (asking to speak to or meet with the Home Secretary or Immigration Minister specifically if necessary) and ask them to cancel the removal/deportation while important legal actions are taken.

Read more in the *Politicians* section of the Toolkit:
http://righttoremain.org.uk/toolkit/politicians.html

- **Prepare yourself for return**

It is hard to allow yourself the space and the time to think about what will happen if you are removed/deported. It is hard for both the person facing removal/deportation, and supporters, 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. Read more in the *Preparing for Return* section of the Toolkit:

http://righttoremain.org.uk/toolkit/return.html

Re-entry bans

It is very difficult to gain re-entry to the UK after a forced removal/deportation.

The immigration rules include general grounds for refusing to allow someone's entry to the UK. See ‘Entering the UK’ section of the Toolkit for more information on these general grounds.

In addition to this, **re-entry bans** are applied to certain categories of people who breached immigration law in certain ways in a previous attempt to enter or stay in the UK.

These breaches are:

- overstaying (beyond the period of a time-limited visa)
- breaching a condition attached to your previous leave;
- having entered the UK unlawfully;
- having used deception in an application for entry clearance, leave to enter or remain, or in order to obtain documents from the Home Office (whether successful or not).

Generally, entry to the UK will be refused if you fall into these categories, **unless**:

- you overstayed for less than 30 days and you left the UK voluntarily at your own expense. (The immigration rules state that if you overstayed for more than 30 days, unless specific exceptions apply you will be subject to a 12 month re-entry ban).
- you left the UK **voluntarily** at your **own expense more than 12 months ago**
- you left the UK **voluntarily**, but at the expense of the state more than **two years ago** IF you left the UK no more than 6 months after the date on which you were given notice of liability for removal, or no more than 6 months after the date on which you no longer had a pending appeal or administrative review (whichever is the later)
- you left the UK **voluntarily**, but at the expense of the state more than **five years ago**
- you were removed or deported from the UK more than **10 years ago**.

Where more than one breach of these has occurred, only the breach which leads to the longest period of absence from the UK will be considered.

There are other situations in which re-entry bans may not be applied, for example, if you left the UK voluntarily before 1 October 2008, or you were a victim of trafficking. If a re-entry ban is applied to you, and this would breach your human rights (for example, to be with family in the UK), you may be able to challenge it on human rights grounds.

Remember that even if one of these exemptions applies to your situation, you may still be refused leave to enter the UK. This is because the Immigration Rules allows for a discretionary refusal of an application if the Home Office decides you have "previously contrived in a significant way to frustrate the intentions" of the immigration rules.

Deportation cases

The immigration rules state that entry to the UK is to be refused if:

- you are currently subject to a **deportation order**, or

- you were convicted of an offence and sentenced to more than **four years** imprisonment (prior to being deported).

If you were sentenced to *less* than four years, but *more* than **12 months**, entry is to be refused unless **more than 10 years has passed** since the end of the sentence.

If you were sentenced to *less* than 12 months, entry is to be refused unless more than **five years** has passed since the end of the sentence.

The immigration rules state that "only be in exceptional circumstances" would "the public interest in maintaining refusal [to enter the UK] be outweighed by compelling factors" if you are trying to challenge a re-entry ban after a deportation.

Thinking about return

It is hard to allow yourself the space and the time to think about what will happen if you are removed/deported. It is hard for both the person facing removal/deportation, and supporters, 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 despite your best efforts, and those of your friends, supporters, community and lawyer, you may not succeed in establishing your right to remain in the UK.

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 removed/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 removed” 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.

Coping mechanisms

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 removal/deportation or are part of a support group, have you thought about what you would do if your friend is removed/deported? It is common to experience an emotional low after the highly pressured action period – how will you get through this? It is useful to have support networks in place, such as a group meeting to talk through the experience, what you learned and how you felt. There are many more people who need your solidarity as they go through the asylum and immigration system – what support mechanisms can you create to look after yourself emotionally, and the people you are supporting, through what may be a long, hard experience?

After an unsuccessful outcome, 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 new solidarity activity 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: fighting for the right to remain is a long struggle. It can be beneficial to share what you've learned and how you felt by writing about it – other individuals and groups might like to hear your experiences – and it may be useful to raise public awareness about the injustices of the asylum and immigration system.

Practical preparations

There is a directory of human rights/refugee organisations working in different countries who may be able to give advice about keeping safe or rebuilding your life on return. Are there any in the country to which you are facing return that you or a supporter can contact 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.

Will you need some money in the currency of your home country, on arrival at the airport? In some countries, people have to bribe immigration officials to be able to leave the airport.

After removal/deportation: keeping in touch

It may be hard to keep in touch with someone after they have been deported. But if you can keep in touch, do! As well as the importance of finding out how a friend is, knowing what happens after someone is removed/deported can help for fighting future struggles.

- 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 removed/deported.
- f you hear from a friend who has been removed/deported, you may want to share this news with people who supported them (always check with the person first that they are happy for their news to be passed on).
- People can find it very hard to find work or ways to support themselves after they have been removed/deported. Some groups hold fundraisers for friends who have been removed/deported, and send the money to their friend to help them through this difficult period.

Glossary: definition of terms

Adjournment

The formal postponement of a court hearing.

Advocate

The Scottish equivalent of what is called a 'barrister' in England, Wales and Northern Ireland.

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 follow a criminal conviction.

Administrative review

If your immigration application is refused and you do not have the right to appeal the decision, you may be able to apply for administrative review. This is where you apply to the Home Office to review the decision it has made.

Administrative review can also be applied for in some circumstances even if you are granted leave to remain, but are not happy with the length of leave given or the conditions imposed.

Not everyone will have the right to ask for an administrative review. People applying for visitor visas, for example, do not have the right to review. Nor do family members applying for the right to stay under the Family Migration immigration rules.

See After a Refusal section of the Toolkit.

Allowed

If your appeal is successful, it has been 'allowed'.

AM

A member of the Welsh Assembly. Wales is part of the United Kingdom, and elects MPs to the UK parliament, but also has a Welsh Assembly. This has powers in areas such as health, education and justice, but not immigration and asylum.

See Politicians section.

Appeal

An appeal, in the context of an asylum and immigration case, is a challenge to a court, about a decision made by the Home Office or a lower court. In an appeal you (or your lawyer) 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. The Home Office may also appeal a decision, for example if you are successful in an appeal.

Many immigration decisions no longer carry a right of appeal (such as family visa applications), and the Immigration Act 2014 gives the Secretary of State the power to certify deportation appeals so as to permit them only to be brought from abroad.
See Appeals section.

Appeal rights exhausted

In an asylum claim, the Home Office 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, or did not take the opportunity to appeal.. There may still be legal options for pursing your application, however (see After a Refusal section. The Home Office 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.

Appellant

The person appealing a decision in court. If you are appealing the Home Office's decision to refuse your asylum or human rights case, you are the appellant. The Home Office is the respondent. If you won an appeal and the Home Office get permission to appeal that, the Home Office is the appellant and you are the respondent.

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.
See Human Rights section.

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 the Home Office 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 remove/deport you without disproportionately breaching your Article 8 rights.
See Human Rights section.

Article 15c

Article 15c of 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.

Article 15c refers to 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 is different from the individualised, specific threat to *you* covered in the Refugee Convention. Article 15c covers situations where civilians are at serious risk simply by being present in a very dangerous situation of armed conflict where indiscriminate violence is widespread.

Very few situations have been ruled to reach this high criterion, but if they have then Humanitarian Protection may be granted.

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).

See Toolkit section on Article 31.

Asylum

In this context, international protection against persecution you would face in your country of origin/residence. If you are seeking asylum in the UK, you are seeking protection under the Refugee Convention.

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 Home Office. 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. Asylum seekers are not entitled to mainstream benefits, unless they have additional care needs or are a young person looked after by social services.

Bail

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

See Toolkit section on detention and bail.

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 of cases, 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 Home Office uses ‘case owner’ to refer to an official 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 ‘legacy’ 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.

Initially, most positive decisions in cases dealt with under legacy resulted in Indefinite Leave to Remain, based on length of time in the UK. Many cases decided towards the end of the legacy period were granted Discretionary Leave to Remain, rather than Indefinite Leave to Remain, though there have been legal challenges to this. Asylum risk has not been considered in these cases (whether granted Indefinite Leave to Remain or Discretionary Leave to Remain).

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 lawyer may be a 'caseworker'. They will not necessarily have qualified as a solicitor, but will have qualified as an immigration caseworker under the OISC 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 Home Office have the power to certify cases which they consider 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 the Home Office 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.

The Home Office (through the Home Secretary) also has the power to certify deportation appeals so as to permit them only to be brought from abroad. The power is introduced by section 17 of the Immigration Act 2014.

Charter flight

Private flights used to remove/deport people in large numbers. There will only be people being forcibly removed/deported, and security staff on the flight. The Home Office 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 removed/deported on a charter flight, the flight number on your removal directions or notice of deportation arrangements 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.

Counsel

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

Country guidance case

These are asylum appeals chosen by the immigration/asylum 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.

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 dismissed 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.

Curtail

To shorten or reduce. In the context of leave to remain, the Home Office may curtail your leave if they think you are no longer eligible for that leave or if they have decided you obtained the leave through deception. Your current leave to remain may also be curtailed if you apply for a different kind of leave to remain. You may, for example, have leave to remain in the UK, as a student, for three years. If you applied for asylum within that time, the Home Office may curtail your student leave – effectively cancelling it.

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 popular usage, people often use the term 'deportation' to refer to both deportations and administrative removals.

Deportation Order

The legal document issued by the Home Office 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

The Home Office changed the name of detention centres – where people subject to immigration control can be held – to 'immigration removal centres'. As many people in detention are held for long periods of time without a prospect of removal, it is not an accurate term, and Right to Remain continues to use the term detention centre. Short-term holding facilities are also detention centres. You can find a directory of detention centres here.

Determination

Decision made by a court. For example, the First-tier Tribunal may make a determination that the Home Office was wrong to refuse your asylum claim.

Discrepancies

The Home Office 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. For example, you say 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 time-limited type of leave to remain granted by the Home Office in certain circumstances. For example, in human rights applications on medical grounds, some victims of trafficking, and people excluded from Refugee Status or Humanitarian Protection but who are at risk of an Article 3 breach if they were returned to their home country.

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.

Dismissal

The rejection of a legal proceeding. For example, if you appeal a negative Home Office decision at the tribunal (court) and the judge does not overturn the decision, your appeal has been 'dismissed' and you have lost your case in court.

Dispersal

If you claim asylum and have nowhere to live and ask the Home Office to provide you with accommodation, you do not have any choice about where in the UK you are housed. You can be to dispersed to anywhere in the UK, apart from London and the south-east of England.

EEA

The European Economic Area (EEA) includes the EU countries (see below) and also Iceland, Liechtenstein and Norway.

Entry clearance

Entry clearance is the technical description for obtaining a UK visa. An Entry Clearance Officer (ECO) makes the decision on your visa application. Note - even if you are successful in obtaining a visa, you may still find yourself refused entry to the UK.

Escort staff

The private security guards that carry out enforcement operations (detention and removal) for the Home Office.

EU

The European Union (EU) is an economic and political union of 28 countries. It operates an internal (or single) market which allows free movement of goods, capital, services and people between member states. The EU countries are: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

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 the Home Office while their deportation is considered. Because the people to which it refers are no longer prisoners, as they have completed their criminal sentence, Right to Remain uses the term 'foreign national ex-offenders' instead.

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. You submit evidence as further submissions, the Home Office decide whether they consider it to meet the test in rule 353. See Fresh Claim section.

Further submissions

Further submissions can be given to the Home Office at any point after an asylum claim or human rights application is refused, but a fresh claim is only when you are 'appeal rights exhausted'. You may hear further submissions referred to as ‘further representations’ or ‘further evidence’. See Fresh Claim section.

Health surcharge

The government has introduced an 'immigration health surcharge' (IHS) as part of some applications for leave to enter/remain in the UK. All applicants for entry clearance (visas) for more than six months, and people already in the UK applying for time-limited leave to remain are required to pay the charge to cover National Health Service (NHS) healthcare in the UK. Read more here.

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. Most immigration and asylum judicial reviews in England and Wales are now heard in the Upper Tribunal.

Home Office

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

Until March 2013, the UK Border Agency (UKBA) was the department of the Home Office that processed asylum and immigration applications. UKBA has now been dissolved, and the three main departments responsible for asylum and immigration matters (currently) are UK Visas and Immigration; Immigration Enforcement; and UK Border Force.

HOPO

Home Office Presenting Officer. The Home Office employee who will argue against your case in a bail or appeal hearing.

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.

Immigration Rules

These are published by the Home Office and set out the rules which immigration applications have to follow to be successful. They are frequently amended. They can be found on the Home Office website.

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 family migration visas. 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). There is a route to British citizenship after the granting of ILR.

The government is bringing in measures that will make it harder to secure ILR, such as the £35,000 income requirement for people wishing to move from Tier 2 to settlement (ILR). Read more about this here .

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 of a judicial review 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 removal/deportation allowing time for your judicial review of the Home Office's refusal of your fresh claim to be heard.

See 'Judicial review - injunction' section of the Toolkit.

Instruct

You may 'instruct', or authorise, a lawyer to take on your case. You give that lawyer 'instructions' which may your version of events, details about your case, or your view on how you want your case to proceed. A lawyer may 'instruct' a barrister to represent you at court.

Internal relocation

When considering your asylum application, the Home Office and the courts will consider whether there is somewhere else in your country you could go and be safe. This is frequently argued by the Home Office– they may accept that you would be in your home region of Afghanistan, for example, but argue that you would be safe if you relocated to the capital, Kabul. 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'.

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 the Home Office). 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.

See Judicial Review section of the Toolkit.

Lawyer

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

Leave to remain

Legal permission to stay in the UK, either through a time-limited visa such as a visit visa, student visa or spouse visa, or with settled status such as Indefinite Leave to Remain. Leave to remain may also be described as having 'papers', or 'status'. People without leave to remain in the UK can be described as 'undocumented' or 'irregular'. People without leave to remain should never be described as 'illegal', as this is both inaccurate and harmful language.

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 lawyer 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.

See Your Legal Case section.

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.

See Your Legal Case section.

Legal Aid Agency

Since April 2013, the body responsible for legal aid in England and Wales.

Legal Ombudsman

The Legal Ombudsman is an independent and impartial scheme set up to help resolve legal service disputes. If you wish to make a complaint about your lawyer, you may be able to do this through the Legal Ombudsman. See their website here.

Letter before claim

If you are wanting to apply for a judicial review, you should first send a 'letter before claim' to the Home Office. This is also called a 'pre-action letter' and it informs the Home Office that you intend to apply for a judicial review unless they take certain action (specified in the letter).

See Judicial Reviews section.

McKenzie friend

Usually an English-speaking friend, relative or volunteer who can assist you in a court hearing if you do not have a lawyer. If it is a volunteer, it is usually someone who is not qualified to give legal advice, but may have experience of the legal system. 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.

You should tell the clerk at the Tribunal/hearing centre that you have someone with you to assist you. You should also ask the judge at the start of the hearing for permission to have assistance from such your McKenzie friend. The judge may ask what relevant experience (if any) the person concerned has, whether he or she has any interest in the case and that he or she understands the role and the duty of confidentiality that arises if consent is given.

MLA

A Member of the Legislative Assembly in Northern Ireland. Northern Ireland is part of the United Kingdom, and elects MPs to the UK parliament, but also has a Legislative Assembly. This has powers in areas such as health, education and justice, but not immigration and asylum.

See Politicians section.

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

Face-to-face 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.

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.

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.

Non-suspensive appeals

Non-suspensive appeals means there is no right to appeal within the UK (the asylum claim is 'certified' under Section 94 of the Nationality, Immigration and Asylum Act 2002). The term 'non-suspensive' refers to the fact the Home Office do not have to suspend your removal/deportation until you have had the chance to appeal a refusal, unlike other asylum cases. See also 'certified'.

Notice of Deportation Arrangements

The document issued by the Home Office 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.

One-stop notice

A notice issued by the Home Office to someone who has claimed asylum, made a human rights claim or another type of application to remain in the UK, or to someone whom the Home Office has made a decision to deport. The notice requires you to inform the Home Office of all the reasons why you wish to stay in the UK and why you shouldn't be removed/deported. If you have been served with this notice, you have an **ongoing duty** to keep the Home Office informed of changes in your circumstances which give rise to new grounds for remaining in, or not being required to leave, the United Kingdom. You may also hear this referred to as a Section 120 notice.

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.

Particular Social Group (PSG)

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.

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.

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'.

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 the Home Office will use when deciding on asylum claims comes from the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (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.

Points Based System

The points-based 5 tier visa system is the main immigration route for people from outside the European Economic Area (EEA) wanting to come to the UK to work, study, invest or train.

See the Home Office website for more on the points-based system work visas and student visas. You can find a points-based calculator on on the UK visas and immigration website.

Pre-action Letter

See 'letter before claim'.

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.

Qualification Regulations

The Refugee Convention is international law. It is translated into EU law as the Qualification Directive. This is part of UK law (though this is likely to change once the UK leaves the EU) under rules known as the Qualification Regulations - these are the rules the Home Office should use when considering an asylum claim.

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.

Refugee Status

If the Home Office decide you have a need for protection, and your claim falls under the grounds for protection in the Refugee Convention, you will be granted refugee status. Refugee status currently means five years leave to remain in the UK. You will have the right to work and claim benefits, access to mainstream housing, and the possibility of applying for family reunion and a travel document. After five years, you can apply for indefinite leave to remain (ILR), known as settled status, and after a year of ILR you can apply for British citizenship.

Removal Directions

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

Renewal

If you are applying for permission to appeal or for judicial review, and permission is refused on the papers – you do not go to court but a judge looks at your documents and makes a decision – you may be able to apply to 'renew' the decision. This means you are asking the court to reconsider their decision – in an oral hearing rather than on the papers – to not grant you permission for a judicial review/appeal of your case.

Reporting

Most people who have applied for asylum or other immigration status and have not had a positive decision have to regularly report at their local Home Office reporting centre or a police station. This might be every week, fortnight or month, or even every day in some circumstances. 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. See Detention section of the Toolkit.

Reserve the decision

In a court hearing, the judge may say they are 'reserving' their decision. This means you will not be told then-and-there what their decision is, and they will write to you at a later date.

Respondent

The opposite side to the 'appellant' in a court hearing. If you are appealing the Home Office's decision to refuse your asylum or human rights case, you are the appellant. The Home Offfice is the respondent. If you won an appeal and the Home Office get permission to appeal that, the Home Office are the appellant and you are the respondent.

Right of appeal

The legal right to ask for a decision in your case to be changed and to have an independent court consider this.

Rolled-up hearings

If you are applying for permission to appeal to one of the higher courts, you may have a permission hearing (or your application for permission may be decided on the papers/documents alone). If you have a permission hearing, it may be decided in advance that there will be a 'rolled-up' hearing. This means that there will be the permission hearing and if permission is granted, the substantive hearing will follow straight after.

Rule 35

Detention Centre rule 35 requires detention centre doctors to report to the Home Office '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.

'Safe country' list

See 'White list'.

Screening interview

This is the initial interview you will have after claiming asylum. In this interview, the Home Office 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.

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 Home Office 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 probably not have looked at your case personally. Similarly, appeals against a Home Office 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 Home Office 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.

For more information, see the Asylum Support Appeals Project factsheet.

Section 31 defence

Article 31 of the Refugee Convention is part of UK law as Section 31 of the 1999 Immigration and Asylum Act. See Article 31 entry.

Section 55

Section 55 is the statutory duty (required by law) to safeguard and promote the welfare of children set out in section 55 of the Borders, Citizenship and Immigration Act 2009, which must be considered by government departments when making decisions about children and in particular, British children. This includes when the Home Office makes immigration decisions that will affect a child (the decision does not have to be *about* the child).

This consideration is usually referred to as "best interests", referring to Article 3(1) of the United Nations Convention on the Rights of the Child 1989, which the UK has signed. Read more.

Section 94 certification

Section 94 of the Nationality, Immigration and Asylum Act 2002. If your asylum and/or human rights claim is certified as "clearly unfounded" under section 94, you cannot appeal whilst in the UK. A case will be certified as clearly unfounded if the Home Office is 'satisfied that the claim cannot, on any legitimate view, succeed'.

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.

For more information, see the Asylum Support Appeals Project factsheet.

Section 96 certification

If your asylum/humanitarian application or human rights application is refused, and you would normally have the right of appeal, the Home Office may still certify your case under Section 96 of the Nationality, Immigration and Asylum Act 2002. This is on the basis that your claim/application was based on something that could have been raised in a previous appeal, for a previous decision. You will not have the right to appeal the most recent decision if your claim is certified under Section 96.

Section 120 notice

See 'one stop notice' entry.

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.

Signing

See 'reporting' entry.

Skeleton arguments

In appeals or judicial reviews, the outline of arguments from each party commenting on the facts and the law from their perspective. They are submitted in advance so that everyone is warned of what points are going to be raised. Each party will then explain their arguments orally in more detail at the hearing.

Solicitor

A solicitor is a lawyer who traditionally deals with any legal matter including conducting proceedings in court. In immigration cases/asylum, 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, humanitarian protection, or refugee status.

Stayed removal/deportation or case

A removal/deportation or judgment on a case that has been halted, pending a further decision. A removal/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.

Subject Access Request

If you do not have one or more of these documents, you can either ask the lawyer that was handling your case at that stage (if you had one), or you can request that the Home Office send you a copy of your file. This is called a subject access request and you should receive a response within 40 days. Read more.

Subsitence ("subs") only

If you apply for asylum support but you can stay with friends, family, or community members long-term, you can ask the Home Office to just provide you with money for basic living expenses. This is known as 'subsistence only' or 'subs only' asylum support. If you apply for this kind of support, you will not be dispersed as you will be accommodated by your friend/family/community member.

Substantive interview

In an asylum case, your substantive interview (also called your asylum interview) is held after your screening interview. This is when you describe to the Home Office 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).

Surinder Singh

A way of bringing non-EEA family members to live with you in the UK, using EU free movement law. See Surinder Singh section of the Toolkit.

Temporary admission

Temporary admission 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 to the Home Office for temporary admission, also known as temporary release, from detention. This has less conditions than bail, but is not often granted.

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 the Home Office. There is a First-tier and an Upper Tribunal.

Upper 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 Tribunal if you think the First-tier Tribunal made an error in the way they applied the law in deciding your case. The Upper Tribunal also now hears most judicial reviews in asylum and immigration cases in England and Wales.

UKBA

The UK Border Agency. Until March 2013, the UK Government Home Office department responsible for handling all applications regarding immigration, nationality and asylum, as detention and removals/deportations (although they subcontracted 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). Now dissolved - see entry on 'Home Office'

Unaccompanied asylum-seeking child (UASC) or unaccompanied minor

An unaccompanied asylum-seeking child is a child who is applying for asylum in their own right and is separated from both parents and is not being cared for in the UK by an adult who in law or by custom has responsibility to do so. For more information on unaccompanied minors, see the Migrant Children's Projectwebsite.

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.

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.

White list

The Nationality, Immigration and Asylum Act 2002 (section 94) created a list of 'safe countries' from which asylum claims would be dealt with in a different way. This list is sometimes known as the 'white list'. Applicants from these countries whose asylum claims are refused can usually only appeal from outside the UK.

For more information on the countries on the 'White list', see here.

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.

Zambrano

In the Zambrano case of 2011, the European Court of Justice ruled that the parents of a dependent child who is an EU national must be granted the right to work and the right of residence in the EU Member State of which the child is a national. Currently in the UK, Zambrano can only be used when a British citizen child is cared for by a non-EEA national parent or carer, there is no British or UK-settled parent to care for the child, and removal of the non-EEA national parent/carer would result in the child being unable to live in the UK or another EEA state.

See Rights of the child section of the Toolkit.