



Home Office

# Asylum Policy Instruction

## Assessing credibility and refugee status

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# Section 1: Introduction

## 1.1 Purpose of Instruction

This instruction provides guidance to caseworkers responsible for deciding asylum claims in accordance with the United Kingdom's obligations under the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol ('the Refugee Convention'), and the European Convention on Human Rights ('the ECHR').

The instruction provides specific guidance on:

- ▶ A structured approach to assessing credibility following investigation of the claimant's personal circumstances and reasons for the asylum claim (Sections 4 – 5);
- ▶ Assessing whether the claimant has a well-founded fear of persecution and qualifies for recognition as a refugee under the Refugee Convention (Sections 6 – 10).

It must be read with the guidance on [Conducting the Asylum Interview](#) and other detailed guidance on the consideration of protection needs, in particular [Further Submissions](#), [Gender Issues in the asylum claim](#), [Gender Identity Issues in the Asylum Claim](#), [Sexual Orientation Issues in the Asylum Claim](#).

If the claimant's fear is for reasons outside the Refugee Convention, there is separate guidance on eligibility for [Humanitarian Protection](#) (also known as subsidiary protection). If the claimant does not have protection needs, caseworkers must consider any human rights issues, as set out in the separate guidance on [Family Leave](#) and, outside the Immigration Rules, on [Discretionary Leave](#).

## 1.2 Background

Every asylum caseworker is part of the UK's tradition of providing a place of refuge to those in fear of persecution. Properly considering claims and making well reasoned decisions is one of the UK's fundamental responsibilities under the Refugee Convention.

The Convention defines a refugee as a person unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. The principal obligation for signatory states is not to return ('refoule') refugees to a territory where they risk persecution or serious harm. The consideration of asylum claims deserves the greatest care - 'anxious scrutiny' as the UK courts express it - so that just and fair decisions are made and protection granted to those who need it.

Those who seek protection are expected to co-operate with the process and disclose all relevant information, but caseworkers must provide a safe and open environment to facilitate disclosure. Claimants will not always know which aspects of their background are relevant to their asylum claim – and caseworkers need to investigate key issues through a sensitive, focused, and professional approach to the claimant's oral testimony and any written evidence against the background of country of origin information (COI).

## 1.3 Policy Intention behind assessing credibility and refugee status

The policy objective in considering asylum claims and assessing credibility is to ensure that:

- ▶ Asylum claims are correctly decided, in accordance with our international obligations under the Refugee Convention and the ECHR, in a timely and sensitive way and on an individual, objective and impartial basis.
- ▶ All claimants are treated with respect, dignity and fairness regardless of age, disability, ethnicity, nationality, race, gender, sexual orientation, religion or belief.
- ▶ Protection is granted to those who need it and refused where the claimant does not have a well-founded fear of persecution.
- ▶ Clearly unfounded cases are certified under section 94 of the Nationality, Immigration and Asylum Act 2002.
- ▶ While recognising that all asylum seekers are potentially vulnerable, ensuring that particularly vulnerable claimants are given help in accessing appropriate services, for example, where there are concerns over physical and mental health, experience of torture, trafficking, sexual or domestic violence or child protection concerns.

## 1.4 Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to ensure that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. In dealing with parents and children, caseworkers must see the family both as a unit and as individuals.

Although a child's best interests are not a factor in assessing whether the fear of persecution is well-founded, the way that caseworkers interact with children and decisions following the determination of refugee status must take account of the section 55 duty. The statutory guidance under section 55, "[Every Child Matters - Change for Children](#)", sets out the key principles to take into account in all activities.

Considering claims from those who are under eighteen must be conducted by caseworkers who have completed the requisite training and are qualified to interview and decide them. See the Asylum Instruction, [Processing an asylum application by a child](#).

Even if a separate claim is not being made, it is important not to lose sight of the child as an individual, as well as part of a family, to be vigilant and responsive to their protection and welfare needs and to consider how this could impact on the needs of the family as a whole.

Caseworkers have discretion to interview dependent children where the child is of an appropriate age, bearing in mind the need to consider the best interests of the child and avoid putting children through an interview unnecessarily. See the guidance on [Dependants and former Dependants](#).

The Asylum Instruction on [Processing Family Cases](#) sets out the policy, processes and procedures to be followed when considering an asylum claim from a family with at least one child under 18 years of age.

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# Section 2: Relevant legislation

## 2.1 The 1951 Refugee Convention

The [Refugee Convention](#) is the primary source of the framework of international refugee protection. As a post-Second World War instrument, the Convention was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations to give the Convention universal coverage. It has since been supplemented in the European Union ('the EU') and other regions by a subsidiary protection regime, as well as via the progressive development of international human rights law.

## 2.2 European Legislation

[The European Council Directive 2004/83/EC \('the Qualification Directive'\)](#) lays down provisions and criteria for interpreting the Refugee Convention to be adopted across the EU. It was transposed into UK law through [The Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#) and the [Immigration Rules](#).

[The Procedures Directive 2005/85/EC](#) sets minimum standards for Member States for granting and withdrawing refugee status and has been transposed into UK law via the [Asylum \(Procedures\) Regulations 2007](#) and [the Immigration Rules](#).

## 2.3 Immigration Rules

[Part 11 of the Immigration Rules](#) sets out the provisions for the consideration of asylum claims and reflects our obligations under the Directives.

## 2.4 Other relevant legislation

Section 8 of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) requires decision-makers to take into account the claimant's conduct when applying the benefit of the doubt to unsubstantiated material facts. It is essential to provide the claimant with an opportunity to explain the reasons for such behaviour. See [section 5.6.5](#) and [Annex A](#) for more details.

[Section 94](#) of the Nationality, Immigration and Asylum Act 2002 (as amended) provides a certification process which removes the right for an in country appeal on certain Asylum and/or Human Rights claims (s84(1)). The power may be used in cases where the claim is considered to be 'clearly unfounded'. See [Non-suspensive appeals certification under section 94 of the 2002 Act](#).

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# Section 3: Preliminary consideration

## 3.1 Points to consider

Before considering the claim, caseworkers must check the file and Home Office records to identify whether any of the following issues apply and if so, to refer to the relevant Asylum Instruction.

### Unaccompanied Asylum Seeking Children (UASC):

See [Processing Asylum Applications from children](#) AI for further guidance on UASC cases.

### Third Country Cases

See Third Country Unit (TCU) [Asylum Instructions](#) for further guidance and qualifying criteria for TCU cases.

### Multiple Applications

No asylum decision should be made unless the claimant has been fingerprinted to the requisite standard for IABS and Eurodac. Where there is evidence that the claimant previously claimed asylum in another identity, see the AI on [Multiple Applications](#). Fraudulent claims will make the claimant liable to prosecution under Section 24A of the [Immigration Act 1971](#).

### European Economic Area (EEA) Nationals

For guidance on claims from EEA Nationals see the AI on [Claims from EU nationals](#).

### Certification under the Nationality, Immigration and Asylum Act (NIA) Act 2002

Where an asylum or human rights claim is refused and is clearly unfounded, caseworkers must consider certification, either on the basis of an entitlement to reside in a country listed in section 94, or on a 'case-by-case' basis. For guidance see [Non-suspensive appeals certification under section 94 of the 2002 Act](#). Substantive interviews with claimants entitled to reside in the countries listed in section 94(4) may be conducted by all trained asylum caseworkers. Only caseworkers who have received NSA training are able to draft decisions on applications from those countries.

### Criminal charges, convictions and/or has a Deportation Order (DO)

Cases where criminal charges are being brought against the claimant should initially be referred to a senior caseworker. Most will normally be interviewed and processed in the usual way but cases where serious crimes of violence are involved should be immediately brought to the attention of senior management. Any case where there has been a custodial sentence and Criminal Casework (CC) has not already started deportation action must be referred to CC's workflow team for consideration. This applies to both EEA and non-EEA cases.

### Potential victims of trafficking (PVoT)

[Detailed guidance](#) is available where caseworkers consider that a claimant may be a PVoT. Home Office Competent Authority caseworkers are responsible for deciding whether someone referred to the National Referral Mechanism (NRM) is a victim of trafficking under the Council of Europe Convention on Action against Trafficking in Human Beings.

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# Section 4: Obtaining evidence

## 4.1 The burden of proof

The burden of substantiating a claim lies with the claimant, who must establish to the relatively low standard of proof required (see [section 5.2](#)) that they qualify for international protection.

[Paragraph 339I of the Immigration Rules](#) emphasises the burden on the claimant to provide evidence and the duty of the caseworker to assess the information put forward “in co-operation with the person”. Caseworkers must examine, investigate and research the available evidence and, if appropriate, invite submission of further evidence, although the caseworker may well be in a better position than the claimant to substantiate aspects of the account.

## 4.2 Evidence to be considered

Evidence includes - but is not limited to:

- ▶ Screening Interview (SIR)
- ▶ Statements made to an Immigration Officer prior to the claim being made, or information supplied when he/she applied for a visa
- ▶ Preliminary Information Form (PIF)
- ▶ Asylum interview (SEF - Statement of Evidence Form)
- ▶ Other evidence submitted by the claimant, e.g. written statements, newspaper or internet articles, witness statements from family or associates, police or medical reports, political party membership cards
- ▶ Country of origin information (COI)
- ▶ Files relating to previous applications by the claimant or his/her relatives
- ▶ Passports: where available, checked for entry/exit stamps, visas, to confirm the claimant's immigration status and history
- ▶ ‘Section 8’ type conduct prior to asylum claim being lodged (see [paragraph 5.6.5](#))
- ▶ Medical reports (including Rule 35 reports completed by detention centre doctors)
- ▶ Other expert evidence
- ▶ [Language analysis](#)

## 4.3 Taking evidence at interview

A pre-interview examination of the claim may lead to a view that it is likely to merit a grant of asylum, but all claimants will normally be expected to attend a substantive interview, except where an interview may be omitted in accordance with [paragraph 339NA](#) of the Immigration Rules. The claimant’s testimony is usually the most important evidence, often the only substantive evidence. Before undertaking an asylum interview, staff must be fully trained and familiar with the guidance in [Conducting the Asylum Interview](#).

In addition to the claimant’s statements and any other evidence submitted, the relevant [Country of Origin Information Service \(COIS\) reports](#), [Operational Guidance Notes \(OGNs\)](#) and [County Information and Guidance reports \(CIGs\)](#) must be consulted before and after the interview. Interviewers may also find it useful to take a break to consult COI if a previously



unknown religion, political group or other unfamiliar element is brought within the claim. This will enable a more focused probing of this additional material fact. After the interview and having reviewed all the evidence, it may be necessary to obtain further information from the claimant via a written questionnaire, or a further interview, or by inviting the submission of further evidence that may reasonably be obtained.

#### 4.4 Documentary evidence

When considering the weight to attach to any overseas documents, for example, official certificates or arrest warrants, it is for claimants to show that those documents can be relied on ([Tanveer Ahmed \[2002\] UKIAT 000439](#)). Caseworkers must assess whether a document is one on which reliance can be placed after looking at all the evidence in the round. In practice, this means that a document must be considered together with other evidence, oral and written, that goes towards establishing the particular material fact. It is not appropriate to attach little or no weight to a document without giving reasons based on the available evidence regarding its reliability.

For the avoidance of doubt, medical reports and other expert evidence produced in the UK do not fall within the Tanveer Ahmed principle.

If original documents are presented at interview, caseworkers must ask the claimant to explain their content and relevance and, if appropriate, request that translations are submitted within an agreed reasonable time so that they can be fully considered.

To assert that a document is a forgery shifts the burden of proof to the decision-maker. The fact that official documents in the country of origin are generally unreliable is not enough to establish that it is forged. If authenticity is crucial to the case, guidance may be sought from National Document Fraud Unit (NDFU), the relevant country officer in the Country Policy and Information Team (CPIT), or an immigration officer who has received specialist training. Referrals to CPIT should be made via a Senior Caseworker.

#### 4.5 Country of Origin Information (COI)

Decisions must be supported by reliable, relevant and referenced country of origin information (COI). Caseworkers must be familiar with the current CIG reports (or COIS reports) before an interview to ensure that the claimant is given an opportunity to explain any inconsistencies between their account and the COI. If existing products do not provide the COI required caseworkers should send an information request to CPIT.

For women's claims, in particular, the types of country of origin information that should be considered are:

- ▶ the position of women before the law,
- ▶ the political rights of women,
- ▶ the social and economic rights of women,
- ▶ the cultural and social mores of the country and consequences for non-adherence,
- ▶ the prevalence of harmful traditional practices,
- ▶ the incidence of reported violence against women, and the protection available to them.

Published Home Office COI products or the COI request service should normally be relied on. However, caseworkers will sometimes need to undertake further research via the CPIT Useful

Sources list, reliable news media, or from databases such as UNHCR's Refworld. If undertaking their own research, caseworkers must consider the relevance and reliability of the information, and try to corroborate the COI from other sources if possible. Any COI gathered through research undertaken by caseworkers must be fed back to CPIT.

The absence of COI about an event or incident may raise questions about whether it genuinely took place but it is not necessarily fatal to an account (see also [section 5.6.3](#)). Where further COI cannot be found, it may be possible, depending on the quality of other evidence, to accept the fact put forward by the claimant.

## 4.6 Medical evidence in support of the claim

Reports by appropriately qualified or experienced clinicians, whether compiled by a GP, specialist consultant or another medical professional (providing details of experience, qualifications, or relevant training), which support a person's claim to have been tortured or subjected to serious harm, will only be available in a minority of cases. When provided, they should be accorded weight depending on the degree to which they are consistent with those aspects of the claimant's account they are intended to support (see [Medical Evidence section below](#)).

A GP may also provide a letter detailing, for example, concerns about the health of their patient. Although the relevance or probative value of such letters may vary in relation to the asylum claim, letters from GPs and other medical professionals should be accorded due weight and must not be ignored.

If there is a need to check a doctor's registration and licence to practise with the General Medical Council the online medical register can be found at [www.gmc-uk.org/register](http://www.gmc-uk.org/register) or checked by telephone on 0161 923 6602.

## 4.7 Other expert evidence

Claimants may also submit other expert evidence, e.g. from ministers of religion with personal knowledge of the claimant, academic experts on the country of origin, language analysts or health professionals with country or thematic expertise. Such evidence should provide independent, unbiased opinions relevant to the material facts of an individual case and set out the writer's qualifications or experience. Reports of this nature should not be accepted uncritically, but they do not fall within the Tanveer Ahmed principle and the author's impartiality, qualifications or experience should not be called into question unless there is good reason to do so.

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# Section 5: Determining material facts and assessing credibility

A key element of the decision making process is to 'assess the validity of any evidence and the credibility of the claimant's statements' [UNHCR Handbook](#) (paragraph 195). Caseworkers must first identify what is actually relevant to the claim.

## 5.1 Identifying the material facts of a claim

A material fact goes to the core of a claim and is fundamental as to why an individual fears persecution. For example, someone who claims to have been detained and ill-treated because of their political or religious beliefs must show that they genuinely hold such beliefs and that they suffered detention and harm.

Examples of material facts can include a claimant's personal circumstances e.g. gender, nationality, ethnicity, membership of a political party, religious beliefs, sexual orientation, and past experiences of ill-treatment e.g. arrests, periods of detention and torture, locations and episodes of threats or violence at the hands of state or non-state agents.

This list is not exhaustive and the material facts will depend on the nature of the asylum claim. It is for the caseworker to distinguish the facts material to the claim and those which are not. For example, someone may have a record of political dissent and ill-treatment under a previous regime. While not irrelevant to the credibility of the claimant's beliefs, it is the experiences at the hands of the current regime which are the most relevant.

Assessing the credibility of past and present events is an important aspect of assessing a claim, because if a claimant has already been subjected to persecution or serious harm, or direct threats of persecution or serious harm, [paragraph 339K of the Immigration Rules](#) makes it clear that this will be a serious indication of a well founded fear of persecution or real risk of suffering serious harm, unless there is good reason to believe that such ill-treatment will not be repeated. But the assessment of future risk is not one which should be made at this stage.

Once the material facts of the case have been identified, it is then necessary to assess their credibility against the correct standard of proof. Material facts must not be considered in isolation; the evidence must be considered in the round, and the key issues assessed in context.

## 5.2 Assessing credibility: the low standard of proof

The level of proof needed to establish the material facts is a relatively low one – a reasonable degree of likelihood – and must be borne in mind throughout the process. It is low because of what is potentially at stake – the individual's life or liberty - and because asylum seekers are unlikely to be able to compile and carry dossiers of evidence out of the country of persecution.

'Reasonable degree of likelihood' is a long way below the criminal standard of 'beyond reasonable doubt', and it is less than the civil standard of 'the balance of probabilities' (i.e. 'more likely than not'). Other terms may be used: 'a reasonable likelihood' or, 'a real possibility', or 'real risk'; they all mean the same.

The question to be asked is whether, taken in the round, the caseworker accepts what he or she has been told and the other evidence provided. In practice, if the claimant provides evidence that, when considered in the round, indicates that the fact is 'reasonably likely', it can be accepted. A caseworker does not need to be 'certain', 'convinced', or even 'satisfied' of the truth of the account – that sets too high a standard of proof. It is enough that it can be 'accepted'.

For example, a claimant does not have to provide medical evidence of past torture for a claim that torture took place to be accepted, if other indicators enable its acceptance. Nor does the claimant have to provide independent evidence of personal participation in political activity if the account of political events is reasonably detailed, consistent, and plausible.

The rejection of one fact does not automatically lead to rejection of other material facts unless they are linked and it logically follows that those other facts should be rejected, or may be called into question. For example, a finding that a claimant's political beliefs are vague and limited or that he was not genuinely active in politics will call into question a claim to have been detained and tortured on that account. On the other hand, if it is not accepted that a claimant was tortured, it does not necessarily follow that the claimant was not politically active. Each material fact must be assessed, in the round, and then accepted or rejected.

Material facts must always be assessed in the context of the evidence as a whole and not in isolation. Caseworkers may, because of the weight of adverse evidence in other aspects of the claim, reject in the round a material fact which, when taken in isolation, could be credible; conversely, they can decide to accept an aspect of the claim which at first sight seemed unlikely to be true.

In reviewing material facts, the Court of Appeal judgment in [Karanakaran v Secretary of State for the Home Department \[2000\] EWCA Civ 11 \(25 January 2000\)](#) established that caseworkers should not ignore facts which were in doubt (or uncertain) but rather consider that everything capable of having a bearing on the case must be given the weight, great or little, due to it. This process in practice is summarised in [SM \(Section 8: Judge's process\) Iran \[2005\] UKAIT 00116 \(5 July 2005\)](#):

"It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence... Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and ... although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole".

### 5.3 The impact of lies on credibility

Distinguishing between truth and falsehood and whether to accept other aspects of the claimant's account once there is evidence of substantial (or even total) falsehood can be challenging. A claimant's testimony may include lies or exaggerations for a variety of reasons,

not all of which need reflect adversely on other areas. Depending on their relevance to the totality of the evidence, falsehoods will be troubling but do not mean that everything the claimant has said must be dismissed as unreliable. However, materially fraudulent asylum claims made, for example, in a false identity or nationality will render the claimant liable to prosecution under Section 24A of the Immigration Act 1971.

In [MA \(Somalia\) v Secretary of State for the Home Department \[2010\] UKSC 49 \(24 November 2010\)](#), the Supreme Court examined the impact of lies upon the credibility of a person's account. Although describing the role of the Tribunal, its remarks apply equally to the first-instance decision-maker:

“Where the appellant has given a totally incredible account of the relevant facts, the tribunal must decide what weight to give to the lie, as well as to all the other evidence in the case, including the general evidence. ....The AIT in the present case was rightly alive to the danger of falling into the trap of dismissing an appeal merely because the appellant had told lies.

.... “the significance of lies will vary from case to case. In some cases, the AIT may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, the AIT may conclude that they are of great significance.”

## 5.4 A structured approach to credibility assessment

The caseworker should focus first on the credibility of the claim rather than on the personal credibility of the claimant.

As is further elaborated on below (sections [5.5 – 5.6.5](#)), if after looking at all the evidence and keeping the relatively low standard of proof in mind, the claimant's statements and other evidence about the facts being established can be accepted if they are:

- ▶ of sufficient detail and specificity
- ▶ internally consistent and coherent (to a reasonable degree)
- ▶ consistent with specific and general COI
- ▶ consistent with other evidence (to a reasonable degree)
- ▶ plausible

All indicators must be applied, and the credibility of the account examined in the round (i.e. looking at the case as a whole and not just considering a fact in isolation) to determine whether the low standard of proof has been met and the facts accepted, rejected, or left as uncertain pending a decision on whether the [benefit of the doubt](#) should be given. It will be then that the claimant's personal credibility will be particularly relevant.

Each of the indicators set out in [sections 5.6.1 to 5.6.4](#) should be applied to the material facts, taking account of the individual underlying factors (see 5.5 below) which could make one or more of the indicators inapplicable or unreliable in an individual case.

## 5.5 Underlying factors

A true account is not always detailed or consistent in every detail. Caseworkers must take into account any personal factors which may explain why a claimant's testimony might be inconsistent with other evidence, lacking detail, or there has been late disclosure of evidence.



These factors may include (the list is not exhaustive): age; gender; variations in the capacity of human memory; physical and mental health; emotional trauma; lack of education; social status and cultural traditions; feelings of shame; painful memories, particularly those of a sexual nature.

For example, a 16 year old boy would not necessarily be able to provide details of his father's political activities and an illiterate farm worker would not necessarily be able to provide details of national political developments despite being a supporter of the political opposition.

Similarly, women may have less knowledge or information than men; their spouses or partners may not always share information about their work or political activity with them. The barriers to disclosing sexual violence include shame and avoidance of past horrors, and a claimant's oral testimony may not be a complete chronological narrative.

For example, the 16 year-old boy mentioned above claims his father was an activist in a political party (a material fact): he is able to provide some, but not a lot of detail about his father's activities. His evidence, however, is internally consistent. It is also consistent with the COI which indicates that much of the adult population or the ethnic group in the area he is from supports (or is regarded as supporting) that political party. When considering the available evidence in the round, it would be appropriate to acknowledge the likely effect of the child's age on his ability to provide detail and that, having considered the broader evidence in the round, the indicators allow for an acceptance of the fact to the standard of 'reasonable likelihood'.

## 5.6 Credibility indicators

### 5.6.1 Sufficiency of detail and specificity

The level and nature of information provided by the claimant should demonstrate a reasonable depth of personal experience and knowledge, allowing for any underlying factors.

For example, the more senior the claimant's position in a political party or the longer an active member, or the more the person was responsible for information about the party's activities and policies, the greater the expectation of information from the claimant about its leadership, publications or support in the media, its meetings or demonstrations, policies, and the party's (and the person's) experiences at the hands of the authorities. Vague and limited statements about the party wanting freedom and democracy against the background, for example, of a country where political parties are active and expressions of opposition views are routine (even if they can cause problems for the leadership and high-profile members) will not generally meet reasonable expectations of sufficiency of detail or personal experience.

Levels of detail and specificity are not only about requiring the claimant to provide objectively known facts and minutiae. They are also about establishing, for example, what has motivated the individual into a set of political or religious beliefs or realising a different sexual orientation.

However, an absence of detail cannot be held against the claimant if little or no opportunity was given at interview to provide it or to clarify information which goes to the core of the claim. See section 5.4 (levels of detail) in the guidance on [Asylum Interviews](#). At the other end of the

spectrum, an unexpectedly high level of detail and knowledge should not be dismissed solely on grounds that the information provided is available in the public domain and could have been studied in preparation for the interview.

## 5.6.2 Internal consistency

The claimant's oral testimony, written statements and any personal documents relating to the material facts of the claim should be coherent and reasonably consistent, taking into account any underlying factors. There should be no significant or inadequately explained gaps or contradictions. Any differences between statements made at screening, in any written statements and at interview should have been put to the claimant at interview, as should any conduct prior to the claim which may have a bearing on the claimant's general credibility (see ['benefit of the doubt'](#)). The evidence should also be generally consistent with any statements made by family members or witnesses.

A significant inconsistency or contradiction means an incompatibility between or within evidence provided or gathered on the same point. Caseworkers should distinguish major inconsistencies from minor ones and focus on those which matter, for example, if the claimant claims to have been detained in their home country but fingerprint evidence shows they were in fact elsewhere at the time.

Caseworkers must approach apparent inconsistencies with care when evidence has been taken through interpreters – the same name or word could be translated in different ways. For example, not all armed groups have formal ranks and the word for “commander” might be translated as “sergeant” “captain”, or “leader”; what matters is the level of responsibility exercised by the person. Interpreters may give slightly different spellings of a person's name or a place if there is no agreed way to translate words into the Latin alphabet.

Apparent inconsistencies on dates may also occur: dates in countries like Afghanistan and Iran may not correspond with the western calendar.

Where an asylum claim is made by someone already accepted under the National Referral Mechanism (NRM) as a victim of trafficking under the Council of Europe Convention on Action against Trafficking in Human Beings, that finding, and the facts material to that decision, should be accepted for the purposes of the asylum claim, unless there is clear evidence to the contrary.

## 5.6.3 External consistency

The claimant's testimony and other evidence should be consistent with information (COI) about events in the country of persecution and with any other available information or expert evidence (e.g. medical, social and cultural, language analysis, document verification reports etc). The greater the correlation between aspects of the account and external evidence, the greater the weight caseworkers should attribute to those aspects.

### 5.6.3.1 Country of origin information (COI)

At this stage the objective is to consider whether the material facts of the case are capable of belief to the low threshold applicable. The same COI evidence may be used at a later stage to



assess future risk, but consideration at this stage should be confined to the assessment of past and present events.

Where COI supports the claimant's account of a past or present event, and the account is internally consistent, consistent with information provided by family members, sufficient in detail and/or plausibility, the material fact may be accepted.

Where COI significantly and reliably contradicts the claimant's account, for example, where the published record of what occurred at a particular demonstration clearly does not coincide with the claimant's account and their claim to have been present or victimised is not credible, the material fact should be rejected, providing the claimant was given an opportunity at interview to explain any contradictions which were already apparent. Where, following research after the interview, the contradiction relates to a material fact upon which the claim could stand or fall (in relation to the assessment of future risk) the caseworker may decide to ask – by interview or a statement – for an explanation for the contradiction.

The absence of COI does not necessarily mean that an incident did not occur. That will depend on the nature and scale of the incident/issue, and the ability of the media or other organisations to report it, whether in the country concerned or internationally. Persecution experienced in the private sphere, such as domestic violence, or which may be considered "normal" in the country concerned, is less likely to be reported. If an unreported past or present event is material to the claim, a decision must be made as to its plausibility, with the benefit of the doubt accorded to the claimant, if other indicators also support it.

### 5.6.3.2 Medical evidence

Medical evidence should be evaluated according to its purpose alone; that is, to provide information about medical matters relating to the individual and / or the opinion of a medical professional on a relevant fact (for example whether the claimant is suffering from demonstrable physical or psychological signs and symptoms linked to their past ill-treatment or fear of future persecution). The absence of medical evidence does not undermine the credibility of an account of torture which is detailed, consistent and plausible, allowing for underlying personal factors.

For further guidance on the consideration of medical evidence, in particular reports produced by the Helen Bamber Foundation or Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture) see section 3 of the [AI on Medico-Legal Reports from the Foundations](#).

Medical evidence which potentially corroborates an account of torture should be given considerable weight but must still be considered within the sum of evidence to be taken into account. A report in support of an account of torture does not necessarily determine its credibility if the other evidence provides good reason to reject the claimant's account of when and how scars (for example) were caused. There is no requirement, in the event that a report of scarring is not accepted, to make findings or speculate as to other possible causes of the scarring.

Caseworkers must not rely on their own knowledge or uninformed research on medical matters to reach judgements of their own about the content of medical information or on medical matters generally. For example, it would be inappropriate to dismiss a claim regarding a medical condition simply because the claimant was unable to recall the name of their medication at interview or did not fully understand the purpose for which it had been prescribed.

The account given by the claimant to the medical professional should not be used as a basis for doubting credibility on other matters unless there is a serious inconsistency between the claimant's personal history compared with that given to the caseworker or to a lawyer recorded in a statement.

An example of an apparent inconsistency which should not be taken as an adverse credibility point is where the claimant says at interview that he was 'beaten' but where a physical examination of the feet by a medical professional elicits a history of 'falaka' (a form of corporal punishment in which the soles of the feet are repeatedly beaten). Another example is two accounts of rape: one of being raped four times by three men, and the other account, three times by four. Such discrepancies are more likely to reflect on the working of the human memory under stress than on the credibility of the account.

#### 5.6.4 Plausibility

The plausibility of an account is assessed on the basis of its apparent likelihood or truthfulness in the context of the general country information and/or the claimant's own evidence about what happened to him or her.

A key judgment is [MM \(DRC – plausibility\) Democratic Republic of Congo \[2005\] UKIAT 00019](#). In that case, the judge remarked that “It was the sheer improbability of one individual wresting himself from a guard, leaving his clothes in the guard's hand, then evading another five of them, vaulting a two-metre wall, with no one shooting at him, even to wound him, or shouting for others to come, which caused the Adjudicator to reject the story. She was fully entitled to do so, and to reach in consequence the overall credibility conclusion which she did.”

Caseworkers must not base implausibility findings on their own assumptions, conjecture, or speculative ideas of what ought to have happened, what they might think “someone genuinely fleeing for their life” should have done, what ought to have been possible or not possible, or how “a genuine refugee” would have behaved, or how they think a third party would have acted in the circumstances.

In [Y v Secretary of State \[2006\] EWCA Civ 1223](#), the Court of Appeal stated that in regarding an account as incredible the decision-maker must take care not to do so merely because it would not be plausible if it had happened in the UK. Again, underlying factors may well lead to behaviour and responses on the part of the claimant which run counter to what would be expected.

As to the actions of others, it is not inconceivable (for example) that a guard might allow a detainee to escape, or a sympathiser provide assistance, even at the risk of punishment. Again, it will be important to explore the details and context of the escape or release at interview.

Caseworkers should always have an open mind but they should not accept the wildly improbable, and some assertions will be so implausible that no reasonably well-informed person could be expected to give them any credence. [MM](#) held that the more improbable a story, the more cogent the evidence necessary to support it, even to the lower standard of proof.

Demeanour should never be used for the basis of a decision on plausibility, or otherwise to assess credibility. Whether a claimant appears tearful, nervous, stressed or calm and collected at interview is irrelevant. Some victims of violence can only recall stressful events in a detached and emotionless way; others will relive the experience in the re-telling and may become extremely distressed.

### 5.6.5 Benefit of the doubt

Having reviewed all the evidence in the round, and if there are material facts which remain in doubt, caseworkers should consider whether to apply the benefit of the doubt to those claimed facts.

The notion of the benefit of the doubt allows a finding to be made on whether to accept or reject a material fact or the facts as a whole and where the evidence in one or more areas is not sufficient to enable acceptance of those facts. Paragraph 339L of the Rules states that:

‘Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim;
- (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
- (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
- (v) the general credibility of the person has been established.’

If a claimant's account satisfies all five criteria, the caseworker should always give the benefit of the doubt. If the claimant only meets one or more, the caseworker should still consider whether to give the benefit of the doubt, bearing in mind the relatively low threshold applicable to asylum cases. Much may depend on the ‘general’ or personal credibility of the claimant.

General credibility findings should not be the starting point of the credibility assessment process (see [SM\(section 8:Judge's process\) Iran\[2005\] UKAIT](#)). For the purposes of paragraph 339L(v) a person's ‘general credibility’ is considered to be potentially damaged by

behaviour that falls within the scope of [section 8 of the Asylum and Immigration \(Treatment of Claimants, etc\) Act 2004](#), as specified in [Paragraph 339N of the Immigration Rules](#)).

Section 8 designates certain specified behaviours by the claimant to be taken into account as potentially damaging when assessing credibility. But there is a general requirement under section 8(1) to take into account as damaging to the claimant's credibility any behaviour that appears to have been intended to conceal information, mislead, or to obstruct the resolution of the claim. That applies to immigration-related conduct on the part of the claimant prior to making the asylum claim as well as during it.

Caseworkers must provide the claimant with an opportunity to explain their actions or inaction; failure to do so will result in the caseworker being unable to rely on the provision.

For example, a reasonable explanation for a delay in claiming asylum is a matter for the caseworker to determine, but depending on the individual facts of the case could include a genuine lack of knowledge about the asylum system, waiting to see if matters improved in the home country, fear of detention or other fears which may be held by the claimant (even if not objectively warranted). On the other hand, a claimant who is, in effect, expecting their statements to be taken on trust but who has abused that trust in their previous dealings with the UK immigration or other UK authorities will find it difficult to provide a satisfactory explanation for their conduct.

The behaviours specified in section 8 are not exhaustive or determinative; points in the claimant's favour may outweigh the points against. Section 8 prescribes types of behaviour that may potentially damage credibility but not the extent of the damage, which is for caseworkers to assess in each case.

In the case of [JT \(Cameroon\) v Secretary of State for the Home Department \[2008\] EWCA Civ 878 \(28 July 2008\)](#) the Court of Appeal stressed that the weight to be given to section 8 findings was entirely a matter for the fact finder. They went on to find that it may be appropriate in some cases to give no weight at all to section 8 findings, stating that:

“The section 8 factors shall be taken into account in assessing credibility and are capable of damaging it, but the section does not dictate that relevant damage to credibility inevitably results.” (paragraph 20).

Further information about the behaviours listed in section 8 is at [Annex A](#).

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# Section 6: Assessment of risk: general requirements

Once the facts surrounding past and present events have been established, consideration must be given to whether the criteria for refugee status or humanitarian protection apply to the claimant based on those facts. However well-founded a claimant's original reasons for fleeing their country of origin, they are only entitled to refugee or humanitarian protection where at the date of decision they have a well-founded fear of persecution or there is a real risk of harm in the future.

The following guidance relates to the general consideration of whether asylum should be granted in accordance with the requirements of [paragraph 334 of the Immigration Rules](#):

“An asylum claimant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;
- (iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- (v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.”

## 6.1 Requirement to be present in the UK

Under paragraph 334(i), asylum cannot be granted if the claimant is not in the UK or at a port of entry. If a claimant makes an asylum claim and then leaves the UK, there is no obligation to continue to consider the claim. See the Asylum Instruction on [Withdrawing asylum claims](#).

## 6.2 Definition of a refugee: inclusion and exclusion

Paragraph 334(ii) requires the claimant to be “a refugee as defined in regulation 2 of [the Refugee or Person in need of International Protection \(Qualification\) Regulations 2006](#)”. Regulation 2 defines a “refugee” as a person who falls within 1(A) of the Convention and to whom regulation 7 does not apply. The inclusory definition in Article 1A of the Refugee Convention means that a refugee is someone that 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. Detailed guidance on the assessment of refugee status in accordance with Article 1A of the Convention is in section 7.

Regulation 7 provides that a person is not a refugee if they fall within the scope of one of the three exclusion clauses - Articles 1D, 1E or 1F - of the Refugee Convention:

- ▶ Article 1D : those already receiving UN protection; in practice this means Palestinian refugees assisted by the United Nations Relief and Works Agency (UNRWA). See guidance in [UNRWA assisted Palestinians](#), and the [Operational Guidance Note on the Occupied Territories](#).
- ▶ Article 1E : those not in need of international protection because they already enjoy a status which corresponds to that of nationals of the country where they are resident. This will be a rare occurrence and caseworkers must consult [Asylum Policy](#) if they consider a claimant falls within 1E.
- ▶ Article 1F : this excludes from refugee status those are believed to have committed serious international crimes. Further guidance is in the Asylum Instruction [Exclusion: Article 1F of the Refugee Convention](#) and consider referral to the relevant team in section 3 of this guidance.

### 6.3 Danger to the security and community of the UK

Paragraph 334 (iii) and (iv) are not exclusion provisions. They empower the refusal of asylum, irrespective of whether the individual meets the refugee definition, where the individual is considered a danger to the UK's security or to the community as a result of serious criminality or extremist behaviours. They mirror the provisions of Article 33(2) of the [Refugee Convention](#) and Article 14 of the [Qualification Directive](#). See referrals to the relevant teams in section 3 of this guidance.

### 6.4 Dual nationality

Paragraph 334(v), taken with paragraph 339J(v) (if a person can reasonably be expected to avail himself of the protection of another country where he could assert citizenship), means that even though claimants may have a well-founded fear of persecution in one country of nationality, refugee status should not be recognised and asylum should not be granted if there is another country of nationality where they would not have a well-founded fear.

If the claimant has a well-founded fear of persecution in both countries of which they are a national, then they may qualify for asylum (or Humanitarian Protection). For further details on how to address such claims see the [Asylum Instruction on Nationality: doubtful, disputed and other cases](#).

Paragraph 334(v) does not apply, and asylum cannot be refused, on the sole grounds that there may be good reason to believe an individual may be re-admitted to a country of which he or she is not a national. A stateless person who does not establish a well-founded fear in the country of habitual residence will of course be removed to that country.



## 6.5 Stateless persons

Stateless persons may seek asylum and establish a well-founded fear of persecution in their countries of habitual residence in exactly the same way as nationals of those countries.

There is separate provision for granting leave where an individual is accepted as stateless, does not have protection needs, and is not re-admissible to another country. Applications must be made in writing. See guidance on [applications for leave to remain as a stateless person](#).

Any asylum claim accepted for substantive consideration takes priority over a stateless application, whether lodged before the application for stateless leave or disclosed in the course of consideration of that application. No consideration of stateless leave (on application by the individual) will take place until that individual's asylum claim has been finally determined or withdrawn.

## 6.6 Well-founded and future fear

To qualify as a refugee (or Humanitarian Protection) a claimant must demonstrate a well-founded fear of persecution (or real risk of serious harm). In assessing whether a fear is well-founded, caseworkers must be satisfied that:

- a) the claimant has manifested a subjective fear of persecution or an apprehension of some future harm, and
- b) objectively, there is a reasonable degree of likelihood (or a real risk) of the claimant's fear being well-founded on return to the country of origin.

The low threshold for the reality of the risk on return was decided in [Sivakumuran, R \(on the application of\) v Secretary of State for the Home Department \[1987\] UKHL 1 \(16 December 1987\)](#). The House of Lords accepted that even 'a 10 percent chance of being shot, tortured or otherwise persecuted' could be enough of a risk for a fear to be considered well-founded.

## 6.7 Refugees 'sur place' and activities in the UK

A refugee 'sur place' is defined in [Paragraph 339P of the Immigration Rules](#):

"A person may have a well founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin or country of return and/or activities which have been engaged in by a person since he left the country of origin or country of return, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country origin or the country of return."

This means that a person already in the UK can fall within the definition of a refugee 'sur place', usually when a change of circumstances occurs in their home country which gives rise to a well-founded fear of persecution. But people may also become refugees 'sur place' as a result of activities they have engaged in or beliefs they have come to hold since leaving their country of origin.



The taking of evidence and assessment of any UK-based evidence which may be submitted or requested should recognise that this evidence should be readily available and that failure to produce it where it is reasonable to expect it is likely to result in adverse credibility inferences being drawn.

Caseworkers must decide whether the person's actions or beliefs give rise to valid claims to refugee status, irrespective of whether they believe the individual's actions were genuine or engineered to provide grounds to fear persecution. In [Danian v SSHD \[1999\] EWCA Civ 3000](#) the Court of Appeal established that there can be no exclusion from the assessment of a well-founded fear in cases where there is suspicion, or even evidence, that the individual's actions since arrival in the UK were undertaken 'in bad faith' to generate or contribute to an asylum claim.

In reaching that judgment, the Court of Appeal added that:

"Any claimant will still have to establish that he has a well-founded fear of persecution. As has been frequently pointed out, someone who changes his position, or makes allegations inconsistent with the attitude that he adopted in his home country, may not find that burden easy to discharge. When the United Nations High Commissioner for Refugees acknowledged in the letter written in connexion with this case that Brooke LJ has set out, that a more stringent evaluation of the claimant's claim was likely in such a case, it was not formulating any new theory, but simply acknowledging reality."

Such cases will therefore call for careful enquiry and assessment, both as to whether the individual would hold and express their political, religious or other beliefs contrary to past behaviour in the country of origin, and as to whether their actions in the UK are in themselves likely to result in persecution irrespective of the motivation for them. In [BA \(Demonstrators in Britain – risk on return\) Iran CG \[2011\] UKUT 36 \(IAC\)](#), the Upper Tribunal identified five factors to consider when assessing risk on return to Iran, having regard to 'sur place' activities of a political nature, which may be applied to other nationalities. These may be summarised as follows:

- ▶ The nature and extent of 'sur place' activity, eg the individual's role in demonstrations, their purpose and the publicity attracted in the UK or abroad
- ▶ The risk or likelihood of identification by the regime, i.e. its capacity to identify the individual from publicity or its own monitoring of UK activity.
- ▶ Factors which could trigger inquiry/action on return:
  - ▶ whether the person is known to the regime as a committed opponent or someone with a significant political profile; or does he fall within a group which the regime regards with suspicion or as especially objectionable?
  - ▶ whether the person left the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated
- ▶ Consequences of identification, for example is there any known differentiation between demonstrators depending on the level of their political profile adverse to the regime?

- ▶ Identification risk on return, for example the matching of identification to that individual on return person, i.e. if a person is identified is that information systematically stored and used; are border posts known to be geared to the task?

## 6.8 Definition of persecution

Caseworkers must assess whether the harm feared would amount to persecution. Regulation 5(1) of the 2006 Regulations states:

‘In deciding whether a person is a refugee an act of persecution must be: sufficiently serious by its nature and 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 [European] Convention for the Protection of Human Rights and Fundamental Freedoms [the ECHR]; or 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).’

The basic human rights from which derogation cannot be made under the ECHR include Article 3 (prohibition of torture, inhuman or degrading treatment or punishment), Article 4(1) (prohibition of slavery), and Article 7 (no punishment without law). Article 2 (right to life) also falls in this category, except that derogation is permitted in one limited area - deaths resulting from lawful acts of war. Nor is any derogation permitted from Protocol 13 (abolition of the death penalty).

Not every claim of risk on return will necessarily be persecutory in nature, even if accepted as credible. An essential part of the decision making process is to consider whether a subjective fear amounts to treatment that falls within the definition of persecution. Regulation 5(2) of the Qualification Regulations states that an act of persecution may, for example, take the form of:

- ▶ an act of physical or mental violence, including an act of sexual violence;
- ▶ a legal, administrative, police, and/or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
- ▶ prosecution or punishment, which is disproportionate or discriminatory;
- ▶ denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- ▶ prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses. See the AI on [Military Service and Conscientious Objection](#).

This is not an exhaustive list, other forms of mistreatment which on their own or in accumulation with lesser prejudicial actions, severely violate the basic human rights listed above will also constitute persecution.

In some instances, the authorities of a country may need to take measures that restrict the exercise of certain freedoms (for example restrictions placed on citizens of a country during a time of war). Such restrictions may not in themselves constitute persecution. However, if they are applied in a discriminatory manner and have sufficiently serious consequences, they may amount to persecution. Measures may be directed against a certain section of the population that

includes the claimant. Such measures can be relied upon by a claimant in support of their claim – they need not have personally suffered the persecution to have a well founded fear of it.

## 6.9 Link to Refugee Convention

If there is a reasonable likelihood of persecution, those seeking recognition of refugee status must also show that it would be committed for one or more of the Convention reasons of race, religion, nationality, membership of a particular social group or political opinion, and that their own State authorities or the organisation controlling the State would be unable or unwilling to provide effective protection (see [Sufficiency of Protection](#) below). If no Convention reason can be identified, caseworkers must consider granting Humanitarian Protection – see the [Humanitarian Protection](#) AI for further guidance.

## 6.10 Prosecution

“A refugee is a victim - or potential victim - of injustice, not a fugitive from justice” ([UNHCR Handbook](#) paragraph 56). Those fleeing prosecution or punishment for a criminal offence are not normally refugees. Prosecution, however, can be considered persecution if it involves victimisation in its application by the authorities, for example if it is the vehicle or excuse for the persecution of an individual or if only certain ethnic or other groups are prosecuted for a particular offence and the consequences of that discrimination are sufficiently severe. A risk of being prosecuted under a discriminatory law can amount to persecution – for example if a State criminalises homosexuality. Punishment which is cruel, inhuman or degrading (including punishment which is out of all proportion to the offence committed) may also constitute persecution. (See also paragraphs 56-61 of the [UNHCR Handbook](#)).

## 6.11 Actors or agents of persecution

Regulation 3 of the 2006 Regulations states that persecution or serious harm can be committed by:

- the State [or by rogue state officials abusing their position of authority. Although the Regulations do not refer to rogue state officials, as a matter of policy caseworkers may regard them as potential actors of persecution]. See [State Persecution](#) and [Rogue State Actors](#).
- any party or organisation controlling the State or a substantial part of the territory of the State. See [Persecution by clans, parties or organisations controlling the state](#).
- any non-State actor, if it can be demonstrated that the State authorities, or the organisation (including international organisations) controlling the State, are unable or unwilling to provide protection against persecution or serious harm. See [Non-State actors](#).

## 6.12 State persecution

In this context, the word 'State' refers to the apparatus of governance or the means by which the government gives effect to its will. It includes central government (the executive, legislature, and judiciary), the machinery of central government (for example the civil service, armed forces, security and police forces), and state-controlled organisations.

State persecution can occur where the State legislates to discriminate against or prosecute a certain group (for example, laws which discriminate or criminalise on the grounds of gender or sexual orientation) or where State actors (for example, the police or army) act in accordance with a sanctioned persecutory scheme. For example, members of the armed forces or security forces which obey orders to persecute a certain group would be carrying out state persecution as 'actors of the state'.

### 6.13 'Rogue' state actors

There is a distinction between abuse which is authorised or tolerated by the State and abuse by 'rogue' officials which is not. For example, a policeman who rapes a woman for sexual gratification may not be acting in accordance with government policy but the State must take responsibility for the behaviour of its officials. A failure or reluctance to protect citizens from over-powerful local officials or to punish misdemeanours may in itself amount to State persecution.

In [Svazas \(\[2002\] EWCA Civ 74\)](#), the Court of Appeal found that "while the State cannot be asked to do more than its best to keep private individuals from persecuting others, it is responsible for what its own actors do unless it acts promptly and effectively to stop them." The more serious the ill treatment in terms of duration, repetition and brutality the more incumbent it is on the state to demonstrate it can provide adequate protection. Therefore, it is particularly important that when gathering evidence, caseworkers establish the level of authority and influence the persecutor is able to exercise, compared to that of the State.

### 6.14 Persecution by clans, parties or organisations controlling a State

Not every country has an effective central government and in some countries powerful clans, tribes or other organisations control large parts of the country. These dominant groups can inflict persecution on minority groups or individuals living within the same area, often through the use of armed militia.

### 6.15 Other non-State actors

Persecution usually relates to action by the authorities or dominant organisations running a country. However, it may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. An example of non-state persecution may amount to persecution in an otherwise secular country where sizeable sections of the population do not respect the religious beliefs of their neighbours. Another example is where gender-specific violence such as domestic violence, FGM or forced marriage is condoned by society, culturally accepted, or laws in place to prevent it are not enforced.

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# Section 7: Assessing Convention reasons

Only those with a well-founded fear of persecution on account of one or more Convention reasons (i.e. race, religion, nationality, and membership of a particular social group or political opinion) should be recognised as refugees. It affords protection in well-defined circumstances where a person faces a real risk of serious ill treatment on a discriminatory basis. These circumstances often overlap.

Nevertheless, the Refugee Convention is a living humanitarian instrument and the interpretation of what constitutes persecution or the identification of a particular social group (for example) is not fixed for all time. Where protection needs have been established, caseworkers should be wary of rejecting claims as non-Convention based, without careful examination of whether there is in fact a connection to a Convention ground and thus a valid claim to refugee status. This is most likely to be the case where membership of a particular social group could be established.

If a claimant is not a refugee and does not qualify for asylum, but there is a well-founded fear of persecution (or real risk of serious harm) for a non-Convention reason, caseworkers must consider granting Humanitarian Protection. For guidance, see the AI on [Humanitarian Protection](#).

## 7.1 Imputed Convention grounds

An individual may face persecution because of a Convention ground which is imputed to them by actors of persecution. Regulation 6(2) of the Qualification Regulations states:

“When assessing if a claimant has a well-founded fear of being persecuted it is immaterial whether he actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the claimant by the actor of persecution.”

In [RT Zimbabwe](#) the Supreme Court held that the Convention affords no less protection to the right to express, or not to express, political opinion openly than it does to the right to live openly as a homosexual (for example). The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights, including the right to hold an opinion or not to do so. The Court’s findings potentially affect every Convention ‘ground’.

## 7.2 Race

The term ‘race’ in its broadest sense includes all kinds of ethnic groups that are referred to as ‘races’. Regulation 6(1)(a) of the 2006 Regulations states that ‘The concept of race shall include, for example, considerations of colour, descent or membership of a particular ethnic group’.

Discrimination on racial grounds will amount to persecution if a person's human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights. The fact of belonging to a racial group will normally not be enough to substantiate a claim for protection, but there may be situations where membership will in itself be sufficient ground to fear persecution.

### 7.3 Religion

Regulation 6(1)(b) states that 'The concept of 'religion' shall include, for example, the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in public or private, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief'.

Persecution for reasons of religion may take various forms; for example, prohibition of membership of a religious community, prohibition of worship in private or public, prohibition of religious instruction, requirement to adhere to a religious dress code, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community.

The simple holding of beliefs which are not tolerated in the country of origin will normally not be enough to substantiate a claim to refugee status. Expression of religious faith is not limited to holding a belief, but encompasses the expression of that belief as a way of life. This may take the form of worship, teaching, practice, and observance. The issues to be decided are whether the claimant genuinely adheres to the religion to which he or she professes to belong, how that individual observes those beliefs in the private and public spheres, and whether that would place him/her at risk of persecution.

This assessment must include consideration of the principles set out by the Supreme Court in [HJ \(Iran\) and HT \(Cameroon\)](#) and [RT \(Zimbabwe\)](#). Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime or require an agnostic to pretend to be a religious believer to avoid persecution. Individuals cannot be expected to modify their beliefs, deny their religious faith (or lack of one) or feign belief in the 'approved' faith to avoid persecution.

### 7.4 Religious conversion

Many asylum claims are based on the fear of consequences of a conversion from the religion of their birth or upbringing to a different religion. In practice, it is a conversion from Islam to Christianity which is most often encountered, although other faiths may of course be at issue in other cases.

While there are countries where conversion to Christianity is generally viewed with disapproval or outright intolerance, this does not necessarily lead to persecution. Whether or not a convert



will be persecuted depends on the individual's circumstances and the attitudes and application of the laws within the country concerned.

The credibility of the conversion will need to be established to a reasonable degree of likelihood, taking account of all available evidence, primarily the claimant's own testimony as to his or her beliefs and experiences, the COI about religion in the country of origin, and any expert evidence (see [section 4](#) above), using the credibility indicators set out in [section 5](#). Bearing in mind the high degree of reliance on the person's testimony and the views of the Court of Appeal in [Danian v SSHD \[1999\] EWCA Civ 3000](#) (see section 6.7 on refugees 'sur place' above), it is likely that whether or not the [benefit of the doubt](#) should be given will need to be considered, taking into account the claimant's personal credibility.

At interview, the claimant should have been able to describe the personal experiences in the faith of his or her origin and of the encounters or contacts with Christianity (for example, the people who inspired, or the readings which attracted, and which contributed to the decision to accept and follow it, and how far this occurred in the home country or in the UK.

The interview should also enable an assessment of how, if at all, the individual's understanding and practice of Christianity began in the country of origin (for example, in a clandestine house church), compared with the particular Christian tradition (e.g. Baptist, Church of England, Orthodox, Pentecostal, Roman Catholic) the person now claims to follow in the UK.

What is being assessed is primarily whether the claimant has genuinely moved towards a firm decision to leave the faith of their upbringing and become a Christian. To be credible, something so potentially life-changing should not be perfunctory, vague, or ill-thought out. It is likely to include being baptised (a fundamental rite of initiation common to most Christian traditions), or being instructed and prepared for baptism. It should also include attending worship, being known to the church's leadership (normally the ordained ministers) and association with fellow-believers.

Although the person's understanding of the faith and of the particular Christian tradition the claimant has joined (if any) is relevant, caseworkers are not qualified to assess the accuracy or relevance of answers to more than the most basic knowledge questions (another reason for not overdoing that line of questioning at interview). But statements of belief or answers to specific questions which are so clearly wrong that no reasonably well-informed person could be expected to take them seriously will call into question the credibility of the conversion.

Caseworkers must then assess whether the claimant's beliefs and likely behaviour or practice of the faith, whether in the country of origin or the UK, would expose them to the threat of persecution in their home country. This assessment must include consideration of the principles set out by the Supreme Court in [HJ \(Iran\) and HT \(Cameroon\)](#) and [RT \(Zimbabwe\)](#).

## 7.5 Nationality

Regulation 6(1)(c) of the Qualification Regulations states that, 'The concept of nationality shall not be confined to citizenship but shall include, for example, membership of a group



determined by its cultural, ethnic or linguistic identity, common geographical or political origins, or its relationship with the population of another state.’

As a result the term ‘nationality’ may occasionally overlap with the term ‘race’. Persecution for reasons of nationality may consist of adverse actions and measures against a national (ethnic or linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to a well-founded fear of persecution.

The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and persecution or danger of persecution. It may not always be easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific ‘nationality’. However, in such a situation a grant of asylum might be appropriate on one or both Convention grounds.

A persecuted nationality or ethnic group does not necessarily have to be a minority. There will be cases where a person belonging to a majority group fears persecution by a dominant minority.

## 7.6 Membership of a particular social group (PSG)

A claim for asylum based on membership of a PSG may overlap with a claim based on other grounds. The question of whether a PSG exists and the extent to which members are discriminated against depends on the country in question. What constitutes a PSG in one country may not in another, and caseworkers must refer to the relevant COI published by CPIT.

### 7.6.1 Definition of a PSG

In most instances, a PSG will already be identified in case law relating to the country concerned. The gay community will, for example, form a PSG in most countries. See the AIs on [Gender Issues in the asylum claim](#), [Gender Identity Issues in the Asylum Claim](#), and [Sexual Orientation Issues in the Asylum Claim](#).

Caseworkers should nevertheless understand how a PSG is identified. Regulation 6(1)(d) states that:

- “A group shall be considered to form a particular social group where, for example:
- a) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
  - b) that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.”

This approach to identifying the existence of a social group reflects the one taken by the UK courts, most significantly in the House of Lords’ judgment in [Shah and Islam \[1999\] UKHL 20](#). Since then it has commonly been accepted that members of a particular social group share an

immutable (or innate) characteristic and that recognition of the group by the surrounding society will help identify it as a distinct entity.

In practice, the two features will generally go together. Groups with a common immutable characteristic which is externally obvious (for example being male/female) will usually have a distinct identity within their home societies. Even if an immutable characteristic shared by a group is not externally obvious (for example, being gay), the group will quickly become recognised as distinct within society if, for example, there is a recognisable gay community or the authorities take steps to ban activity.

The following principles emerge from the House of Lords judgments in [Shah and Islam \[1999\] UKHL 20](#) and in [K and Fornah \[2006\] UKHL46](#), the Court of Appeal judgements in [Ivanuskiene \[2001\] EWCA Civ 1271](#), [Skenderaj \[2002\] EWCA Civ 567](#) and [Montoya \[2002\] EWCA Civ 620](#) and the 2006 Regulations:

- a) Members of the group must possess a common immutable/innate characteristic that cannot be changed or a characteristic that is so fundamental to human identity that they should not be required to change it;
- b) Cohesiveness is not a requirement for the existence of the group. Members of the group do not have to know each other, work or live together or have anything in common other than an immutable characteristic which distinguishes them from the rest of society. Social groups can therefore be fairly broad; for example, women or gay men/lesbians in a particular country;
- c) It is not necessary to show that all members of the PSG are persecuted. That would be the same as saying, for instance, that every Christian in a particular country would have to be persecuted before asylum could be granted on grounds of religion - which of course is not the case;
- d) The group should have a distinct identity within the relevant country because it is perceived as being different by the surrounding society;
- e) The group must exist independently of the persecution it suffers – i.e. persecution cannot be the only factor which defines the group.

### 7.6.2 Innate/immutable characteristics

Characteristics which are beyond the power of an individual to change or which are so fundamental to individual identity or conscience that they ought not to be required to change, will include gender, sexual orientation, family membership, linguistic background or an indelible association with a particular group in the past.

Regulation 6(1) (e) explicitly states that “sexual orientation cannot be understood to include acts which are considered to be criminal in accordance with national law of the UK” (e.g. paedophilia).

### 7.6.3 Societal recognition

In addition to a common immutable characteristic, a PSG should have a distinct entity in the relevant country because it is perceived as being different by surrounding society.

Whether or not a group is perceived as being different by the surrounding society will depend on the country concerned. The case of *Shah and Islam* illuminated the extent to which women were discriminated against by male-dominated society. Women in that society were viewed as a very distinct and inferior group. These attitudes were so entrenched that the state authorities were unwilling to intervene even when husbands beat or threatened to kill their wives.

A PSG must exist independently of the persecution some of its members suffer. A random collection of people whose only shared experience is that of persecution does not form a PSG. But persecution may help to identify the group and may even result in the creation of a PSG. An example cited by the House of Lords in *Shah and Islam* is as follows:

“Left-handed men are not a social group. But, if they were persecuted because they were left-handed, they would no doubt quickly become recognisable in their society as a particular social group. Their persecution for being left-handed would create a public perception that they were a particular social group. But it would be the attribute of being left-handed and not the persecutory acts that would identify them as a particular social group.”

Caseworkers in doubt about whether a group has a distinct identity with a particular society should discuss the case with a SCW and if necessary with Asylum Policy.

#### 7.6.4 Persecution ‘for reasons of’ a claimant’s membership of a PSG

Claimants who fit the criteria outlined in [Definition of a particular social group](#) above are members of PSGs. If the State singles out a particular group by banning homosexuality and rounding up and flogging anyone who is suspected of being gay there can be little doubt that persecution is for reasons of membership of a PSG.

Where non-State actors are concerned, persecution would still be ‘for reasons of’ membership of a PSG if the actors of persecution were targeting a specific group because they were perceived as being different from surrounding society and thus deserving of ill treatment. For instance, in a society where traditional male attitudes are deeply entrenched, there may be expectations about the behaviour of women but not men (e.g. their clothing, who they associate with, the jobs they do etc.). If women were beaten or killed if they failed to observe those traditions and State protection was unavailable, the underlying reason for the persecution would be the gender of the victims and refugee status would be appropriate.

Persecution by non-state actors will not always be discriminatory. A gang may launch indiscriminate attacks against anybody in their neighbourhood, irrespective of (for example) ethnic background or sexual orientation. In these circumstances, the victims would have difficulty in showing they were persecuted for reasons of their membership of a social group, unless they could demonstrate that the State authorities discriminated against them in the protection afforded – i.e. they refused to protect certain groups, but were prepared to intervene to assist other more favoured groups.

In *Shah and Islam* the House of Lords recognised that the appellants, both of them women from Pakistan who were at risk of ill-treatment at the hands of violent husbands, were refugees for reasons of their membership of a particular social group (i.e. they were persecuted because they were ‘women in Pakistan’). The Lords held that women in Pakistan shared a common immutable characteristic of gender, they were discriminated against in matters of

fundamental human rights (thus marking them out as a distinct group within society) and the State refused to protect them because they were perceived as not being entitled to the same human rights as men. The Lords pointed out that “the distinctive feature of this case is that women in Pakistan are unprotected by the State...”

## 7.7 Political opinion

Regulation 6(1)(f) of the 2006 Regulations states that ‘The concept of political opinion shall include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon [by the claimant]’.

In [RT Zimbabwe](#) the Supreme Court held that the Convention affords no less protection to the right to express, or not to express, political opinion openly than it does to the right to live openly as a homosexual (for example). The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights (paragraph 25), including the right to hold an opinion or not to do so. The Supreme Court held that the HJ (Iran) principle applies to any person who has political beliefs and is obliged to conceal them in order to avoid persecution, irrespective of the strength of those views or the absence of them. There is no basis in principle for treating the right to hold and not to hold political beliefs differently from sexual orientation (or religious beliefs).

The expression of a political opinion or the absence of one, contrary to that of the authorities will not usually be enough to engage the protection of the Convention. A person must establish that they have a well-founded fear of persecution for reasons of their opinion, usually an openly expressed opinion directed against and not tolerated by the authorities of the country in question. However, it is not necessary for a political opinion to be openly expressed. There may be situations, envisaged in *RT Zimbabwe*, where the absence of an opinion is interpreted as opposition to the ruling party and be a cause for persecution on the principle of ‘those who are not for us are against us’.

### 7.7.1 Imputed political opinion

An example of this would be in a totalitarian or one party state to which any individual or group perceived by the State as a threat may be imputed a political agenda. For instance, Falun Gong in China is more a religious movement than a political group, but the authorities consider Falun Gong to be a threat and have imputed a political agenda to it. In 1999, the then President of China, Jiang Zemin, announced that the campaign against the Falun Gong was one of the “three major political struggles” that year - an example of how a political opinion can be imputed to someone who does not necessarily hold one. Similarly, a refusal to undertake military service on grounds of conscience or religion (for example, by Jehovah’s Witnesses) may be viewed by the state as a political statement which it cannot tolerate.

Persecution from non-state actors can also involve an imputed political opinion. An example would be a rebel group which opposes the government in a particular country and imputes a political opinion to individuals who work for the government. In some circumstances a person’s

neutrality might even lead to them having a political opinion imputed to them, and where the rebel group might perceive anyone who does not support them to be against them.

A rebel group's motives for targeting certain individuals might be political, but there may be other non-political motives as well. For example, a rebel group might attack individuals who do not support them because they perceive them to be supporters of the Government, but if they also extort money from victims to buy weapons, there is clearly also an economic motive. Just because motives are mixed does not mean the Convention cannot be engaged. Providing there is evidence to suggest that the persecutors have imputed a political opinion to their victim and this is one of the reasons for attacking them, asylum should still be granted if State authorities are unable or unwilling to offer effective protection.

Even if a rebel group has a broad political aim (for example, overthrowing the government), attacks on individuals might simply be retaliatory or criminal and not necessarily linked to an overriding political aim. In [Gomez v SSHD \[2000\] TH02257](#), the appellant, a law student from Colombia, provided legal advice to a local farmer who was the victim of extortion by a group of armed men (believed to be members of FARC). As a result of her actions, the appellant received threatening phone calls and was chased by armed men. The appellant claimed this was because the rebel group perceived her to be an opponent of its political aims.

In dismissing the appeal, the Tribunal found that it was highly unlikely that the rebel group would impute a political opinion to the actions of the appellant, because they knew she was only a law student who had become involved in the investigations into the extortion racket on an ad hoc basis. By the appellant's own admission, those who threatened her never, at any stage, said anything to her to convey that they viewed her as a political threat. The Tribunal concluded that the attacks were motivated by a desire by the rebels to protect the control they exerted over local farmers and were nothing more than criminal or retaliatory.

### 7.7.2 Actions which imply a political opinion

Even if a person does not openly voice a political opinion, their actions can sometimes suggest that they hold one. If a person commits an act which implies a political opinion but which is illegal in the country in question and is then prosecuted in accordance with the law, it is unlikely that they would be able to establish a well-founded fear of persecution unless the punishment is arbitrary or excessive or the law itself discriminates against the person due to a Convention reason.

A person who commits a violent terrorist act may claim to have done so for political reasons but is unlikely to qualify for the protection extended by Article 1A of the Convention. This is because they should be excluded from the Convention under Article 1F. For further guidance, see the AI on [Exclusion under Article 1F of the Refugee Convention](#).

### 7.7.3 Expression of political opinion in the UK

A claimant who claims to fear persecution because of a political opinion does not need to show that the authorities of their country of origin knew of their opinions before they left the country. They may have concealed political opinions in their home country because of the dangers of expressing it openly. If someone flees to the safety of the UK, where they express previously concealed political opinions, the caseworker must assess the consequences the claimant



would face if returned home. If the consequences of a claimant's actions in the UK give rise to a well-founded fear of persecution for a Convention reason, asylum should be granted. For further guidance, see the section on '[Refugees sur place](#)' above.

#### 7.7.4 Future expression of opinion

Where it can reasonably be assumed that due to the strength of his/her conviction a person's opinions will sooner or later find expression, or they may carry out political acts which are likely to bring them into conflict with the state and where there is a reasonable likelihood that this will result in persecution then the individual may be able to establish a claim to refugee status.

### 7.8 Gender

Gender-based harm such as rape, sexual assault, domestic violence, and the prospect of forced marriage, female genital mutilation or threats of honour crimes are unlikely to have documentary evidence associated with them. Greater reliance will therefore need to be placed on oral testimony and consideration of the [benefit of the doubt](#). The shame and trauma that a person has experienced as a result of gender-based violence may however result in their evidence being less than complete, coherent or consistent. It may also mean that they delay disclosure.

Caseworkers must consider whether issues arising from a claimant's gender may be relevant to their claim. For example, the experiences of men and women in their countries of origin can often differ, and activism and resistance may manifest themselves in different ways. Certain types of persecution and ill-treatment will be specific to and more commonly affect women. Social and cultural norms may affect the ability of a claimant to obtain effective protection. This may be particularly relevant when considering claims from women and LGBT claimants.

Even where gender is not a central issue, giving consideration to gender related aspects will ensure that all aspects of an asylum claim are fully and fairly considered. Caseworkers should refer to the AIs on [Conducting the Asylum Interview](#), [Potential Victims of Trafficking](#), [Gender Issues in the Asylum Claim](#), and [LGBT guidance](#)

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# Section 8: Sufficiency of protection and internal relocation

## 8.1 Sufficiency of protection

To qualify for asylum (or Humanitarian Protection), an individual not only needs to have a well-founded fear of persecution, they must also demonstrate that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. But the concept of 'sufficiency of protection' does not apply if the actor of persecution is the state itself or an organisation controlling the state.

Regulation 4(2) states that:

“Protection shall be regarded as generally provided when the actors mentioned [above] take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and [the claimant] has access to such protection.”

The standard of protection to be applied is not one that eliminates all risk to its citizens. It is sufficient that a country has a system of criminal law which makes attacks by non-State actors (or 'rogue' state actors) punishable and that there is a reasonable willingness and ability to enforce the law. A country which relies for its law and order functions on drug barons or armed militias may be less able to provide effective protection than one which can rely on those functions being performed by trained, resourced and accountable police or army personnel. But the question to be asked is a factual one, "Is protection afforded?"

Caseworkers must consider whether protection afforded by the authorities or organisations controlling all or a substantial part of the State is available to an individual regardless of their race, ethnicity, sexual orientation, disability, religion, class, age, gender, occupation or any other aspect of their identity. They must also take into account whether or not the claimant has sought protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so, or the reason for not doing so.

No country can offer 100% protection and certain levels of ill treatment may still occur even if a government acts to prevent it. However, seriously discriminatory or other offensive acts committed by the local populace may constitute persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

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## 8.2 Internal Relocation

Under [paragraph 339O of the Immigration Rules](#), the question to be asked is whether the claimant would face a well-founded fear of persecution or real risk of serious harm in the place of relocation, and whether it is reasonable to expect them to travel to, and stay in that place. This requires full consideration of the situation in the country of origin, means of travel, and proposed area of relocation in relation to the individual's personal circumstances.

Even where country information and guidance suggest that relocation is possible, it is the ability of the individual to relocate in practice which must be assessed. While it remains the responsibility of the claimant to establish a well founded fear of persecution or real risk of serious harm in the country of origin, caseworkers must demonstrate that internal relocation is reasonable/not unduly harsh, having regard to the individual circumstances of the claimant and the country of origin information.

This means taking account of the means of travel and communication, cultural traditions, religious beliefs and customs, ethnic or linguistic differences, health facilities, employment opportunities, supporting family or other ties (including childcare responsibilities and the effect of relocation upon dependent children), and the presence and ability of civil society (e.g. non-governmental organisations) to provide practical support.

In certain countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties. This may be the case for divorced women, unmarried women, widows or single/lone parents, especially in countries where women are expected to have male protection. If women face discrimination in a possible place of relocation and are unable to work or obtain assistance from the authorities, relocation would be unreasonable.

Where the fear is of members of her family, relocation is clearly not appropriate if the situation a woman would be placed in would be likely to leave her with no alternative but to seek her family's assistance and thus re-expose her to a well-founded fear of persecution or a real risk of serious harm. Caseworkers must consider whether the claimant, if unaccompanied, would be able to safely access the proposed relocation area. Gender specific risks include the risk of being subjected to sexual violence.

If the claimant has a well founded fear of persecution or real risk of serious harm in one part of the country of return and it is not reasonable to expect them to live in another part of that country, they should be granted asylum (or Humanitarian Protection) rather than another form of leave.

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# Section 9: Decisions

There are six possible outcomes of an asylum claim by an adult, and the instruction on [Implementing Substantive Decisions](#) must be followed, including when granting leave after an allowed appeal. A decision to grant leave cannot be backdated. For guidance on unaccompanied minor decisions, see the [Processing Asylum Applications from children](#) AI.

## **Grant asylum:**

Asylum will normally be granted for five years. In very exceptional cases, caseworkers should refer to section 2.2 in the AI on [Refugee Leave](#) (the application of Article 20 of the Qualification Directive). Claimants are not told the reasons for recognition as a refugee but the minute must briefly set out the reasons for accepting credibility and granting asylum.

## **Refuse asylum; grant Humanitarian Protection (HP):**

Leave will similarly be granted for five years. See AIs on [Humanitarian Protection](#) (including the application of Article 20 of the Directive), drafting an RFRL to explain why asylum was not granted.

## **Refuse asylum and HP; grant under the Article 8 Family/Private Life Rules:**

Where an Article 8 (family or private life only) claim is made out, leave under Appendix FM (family life) and paragraphs 276ADE(1) to 276DH (private life) of the Immigration Rules the Rules will normally be granted if they are not criminal cases. See [IDI: Appendix FM Section 1.0b Family Life \(as a Partner or Parent\) and Private Life: 10-Year Routes](#), and [Article 8 guidance for criminal cases](#). See [Implementing the Substantive Decision](#) AI for details on the periods of leave and consideration of recourse to public funds. A consideration minute must state the criteria under which leave has been granted and whether recourse to public funds has been granted.

## **Refuse Asylum and HP; grant Restricted Leave:**

All individuals excluded from the protection of the Refugee Convention by virtue of Article 1F but who cannot be immediately removed from the UK due to Article 3 of the ECHR will be dealt with under the [Restricted Leave policy](#) (RL).

## **Refuse asylum, HP, and Article 8; grant Discretionary Leave outside the Rules:**

See [Discretionary Leave](#) for the criteria and periods of leave. An RFRL must explain why asylum, HP or leave under the Family Rules was not granted, and briefly why DL has been granted. A minute must specify why DL has been granted for the particular period of leave.

## **Refuse asylum, HP, leave under Family Rules and DL:**

If an asylum or human rights claim is refused and is clearly unfounded, caseworkers must consider certification, either on the basis of an entitlement to reside in a country listed in section 94, or on a 'case-by-case' basis. See [Non-suspensive appeals certification under section 94 of the 2002 Act](#). Only caseworkers who have received NSA training are able to draft decisions on applications from the countries listed in section 94(4).

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# Annex A: Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Before considering the application of section 8 (s8), caseworkers must first read [section 5](#) on the assessment of credibility and paragraph [5.6.5 on the benefit of the doubt](#) in particular.

The first step for caseworkers is to consider whether s8 applies to a claimant's behaviour. If it does, it must be taken into account when considering whether general credibility has been established. The behaviours specified in s8 are not exhaustive or determinative. Credibility can be undermined in other ways.

If a claim is refused and s8 factors have been taken into consideration, the reasons for refusal letter must explain why the claimant's behaviour is considered as damaging to their general credibility. If the credibility of the account is accepted but s8 factors exist, the minute must show consideration of the relevant behaviours.

## General requirement

There is a general requirement under s8(1) to take into account as damaging to the claimant's credibility any behaviour that appears to have been intended to conceal information, mislead, or obstruct the resolution of the claim.

## Specified types of behaviour

As well as this general requirement, certain types of behaviour are also listed in s8 as behaviour which must always be treated as damaging to the claimant's credibility. These are:

- ▶ failure without reasonable explanation to produce a passport on request;
- ▶ production of a document that is not a valid passport as if it were. Note: there is no "reasonable explanation defence" in this instance;
- ▶ destruction, alteration or disposal of a passport, ticket or other travel document without reasonable explanation;
- ▶ failure without reasonable explanation to answer a question asked by a deciding authority;
- ▶ failure to take advantage of a reasonable opportunity to make an asylum or human rights claim while in a safe country;
- ▶ failure to make an asylum or human rights claim until notified of an immigration decision, unless the claim relies wholly on matters arising after the notification;
- ▶ failure to make an asylum or human rights claim before being arrested under an immigration provision, unless there was no reasonable opportunity to claim before the arrest or the claim relies wholly on matters arising after the arrest.

## What is a 'reasonable explanation'?

What is reasonable in one case may not be reasonable in another, but the following may be reasonable explanations:

- ▶ Situations where the claimant could not easily have disobeyed the instructions of an agent who facilitated immigration into the UK. This may be the case for some unaccompanied minors, the very elderly or for people with mental disabilities.
- ▶ Cases where an adult is severely traumatised or where cultural norms may make it difficult for a person to disobey instructions. See the AIs on [Asylum Interviews](#) for advice on dealing with victims of torture and [Gender Issues in the Asylum Claim](#).
- ▶ Situations where a person can show that a document was destroyed or disposed of as a direct result of force, threats or intimidation.
- ▶ Where the document has been lost or stolen and the individual can substantiate such a claim (usually with a police report of the loss/theft).
- ▶ Failure to claim in a safe country.

A claimant who has had a reasonable opportunity to make an asylum claim in a safe third country is expected to do so. A reasonable opportunity means that the claimant could have approached the authorities at the border or internally, as long as there is no reason to think that the claim would not have been received. A 'safe country' for the purpose of s8 is limited to the states listed in Part 2 of Schedule 3 to the 2004 Act, as amended to include Bulgaria and Romania (2006) and Switzerland (2010).

These are the states that currently participate in the Dublin II arrangements:

Austrian, Belgium, Bulgaria, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland.

If the country is not on the list s8 will not apply. That does not mean that caseworkers cannot take into account a failure to apply for protection elsewhere as damaging to credibility, but they are not obliged to do so. The UK is not considered a 'safe country' for the purposes of s8. Section 8(7) defines "safe country" as "a country to which Part 2 of Schedule 3 applies" and the UK is not listed in Schedule 3. It is not included because this is a list of safe countries other than the UK and the country of nationality. A delay in making an asylum claim in the UK should be considered under paragraph 339L of the rules.

### **Claims triggered by immigration decisions**

If the claim is made after the claimant is notified of an immigration decision, the deciding authority must regard the claimant's credibility as potentially damaged unless the claim relies wholly on matters arising after notification. An immigration decision in this case means one of:

- I. refusal of leave to enter the UK
- II. refusal to vary leave to enter or remain in the UK
- III. a decision to remove a person by way of directions under section 10(1)(a),(b), (ba) or (c) of the Immigration and Asylum Act 1999 or under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (illegal entrants, crewmen, family members and overstayers)
- IV. a decision to make a deportation order
- V. a decision to take action in relation to a person's extradition from the UK
- VI. a grant of leave to enter or remain in the UK

## Notification

If an asylum claim is made after the result of another application, s8 may apply. What matters is how and when the person was notified. Under the Immigration (Claimant's Credibility) Regulations 2004, notice may be given:

- I. orally (including orally by phone) or
- II. in writing by hand, by fax, by email or by post. For s8 purposes, there are no requirements as to the form in which a notice has to be written out.

Notice served upon a representative is to be taken to have been served on the claimant.

## Claims prompted by the claimant's arrest

A claimant's credibility may be treated as potentially damaged if the claim is made after the claimant's arrest under an immigration provision unless there was no reasonable opportunity to make the claim beforehand, or the claim relies wholly on matters arising after the arrest. The arrest must relate to immigration (or extradition) issues. The provisions are:

- a) sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971;
- b) paragraph 17 of Schedule 2 to the 1971 Act;
- c) section 14 of the 2004 Act; and
- d) the Extradition Acts 1989 and 2003

A claimant has had a reasonable opportunity to claim asylum before arrest if they could have approached the authorities at any time after their arrival. For example someone who is apprehended after getting out of a back of a lorry is less likely to have been able to make a claim than someone who passed through immigration control.

## Further representations (and fresh claims)

In cases where the original claim has been considered and the appeal rights exhausted, further submissions will have to meet the requirements of paragraph 353 to be considered a fresh claim (see the AI on [Further Submissions](#)). If they do, s8 will apply to the consideration of the fresh claim. However Section 8 does not apply to further representations that do not amount to a fresh claim.

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# Change Record

Version	Author(s)	Date	Change References
1.0	MO	07/03/2007	Reformatting
2.0	UU/SL	12/11/2007	Procedures Directive
3.0	JW	11/08/2008	Qualification Directive
4.0	APPU	30/10/2008	Update to branding
5.0	OPRU	30/06/2010	Revised and consolidated
6.0	OPRU	01/02/2012	Revised/remove 395c
7.0	OPRU	05/07/2012	Article 8/Discretionary Leave changes
8.0	OPRU	30/07/2012	RT Zimbabwe/Danian changes
9.0	IBPD	06/01/2015	Revision and re-naming of guidance as 'Assessing credibility and refugee status'

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