

Case Resolution Directorate – Priorities and Exceptional Circumstances

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Introduction

The Case Resolution Directorate (CRD) was set up to deal with case records outstanding before the new asylum model (NAM) took over assessing asylum claims. These cases are called 'the legacy'. CRD aims to conclude these cases by July 2011. Each case will be considered on its merits and in line with existing policy and law. If the case is unmeritorious the Agency will remove the individual(s) from the United Kingdom.

The legacy is defined as all asylum cases that are incomplete and are not being processed by regional asylum teams. All new cases lodged after March 2007 are processed by these teams as are some that were lodged between March 2006 and March 2007. Further representations which amount to a fresh claim from an individual, who already has an unresolved asylum claim before March 2007, will be considered by CRD. This instruction applies only to cases which fall within this definition and sets out:

- [How CRD will prioritise the majority of legacy cases](#)
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How CRD will prioritise the majority of legacy cases

CRD caseworkers will be informed by their line managers which case to prioritise.

In exceptional circumstances, however, CRD caseworkers may expedite a case. The circumstances where it may be appropriate to do this are listed in Table 1. The exceptions listed in Table 1 apply to ALL cases and in order to fall within the exceptions listed in Table 1 a case need not be within one of the defined priorities.

You should be aware that claims of delay in considering a case will not in itself amount to an exceptional circumstance. In the recent case of R (FH; K; A; V; H; SW; HH; AM; SI; & ZW) v SSHD [2007] EWHC 1571 (Admin) where judgement was handed down on 5 July 2007, Collins J concluded as follows: *“claims such as these based on delay are unlikely, save in very exceptional circumstances, to succeed and are likely to be regarded as unarguable. It is only if the delay is so excessive as to be regarded as manifestly unreasonable and to fall outside any proper application of the policy or if the claimant is suffering some particular detriment which the Home Office has failed to alleviate that a claim might be entertained by the court.”*

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In what exceptional circumstances will CRD expedite a case

You should **not** expedite a case simply because the claimant or their representative asks you to do so but, if your assessment of the case circumstances leads you to conclude that this is the correct course of action, you should submit a written request to your senior caseworker (SCW) to do so.

You will need evidence to support the claimed exceptional circumstances. Evidence of exceptional circumstances does not mean that an automatic grant of Leave to remain should be made. You must assess the claim in the usual way.

Unless the circumstances in Table 1 apply, you should **not** expedite a case even if you receive an application for variation of Leave, further submissions on the case or a 'pre-action protocol – 'PAP' letter that threatens Judicial Review.

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Table 1: Exceptional circumstances.

Case Type	Explanation
Criminality	If there is evidence from the case records that the claimant has a criminal conviction then the file should be sent immediately to the Criminal Casework Teams in CRD (LCT2 and 5) for them to deal with quickly.
The case is subject to a court action	If you see a Court judgment that requires the BIA to take action on a specific case you should expedite it and make a decision quickly .
Suicide risk	<p>You should assess very carefully all threats of suicide or self-harm. You must take account of the UK's obligations under Articles 3 and 8 of the European Convention on Human Rights (ECHR) and your obligations under section 6 of the Human Rights Act 1998</p> <p>If medical evidence has been provided to indicate that the claimant is likely to commit suicide or to harm themselves, you should look at all the circumstances and consider what steps can be taken to minimise that risk. These steps may include expediting the case.</p> <p>A claim that a delay in reaching a decision will lead to a risk of suicide or self-harm will not always result in a grant of leave or warrant a decision being made. You should assess the case on its individual merits.</p> <p>You should also refer to existing guidance on dealing with cases where suicide is threatened.</p>
Undertaking previously given to the constituency MP or in a JR case	You should expedite a case if the Border and Immigration Agency (BIA) has given an undertaking to consider or to make a decision on a particular case and this has not been done and a Senior Caseworker agrees.
Medical treatment required abroad	<p>You should expedite a case if you have medical evidence that the claimant or dependants are suffering from a medical condition that is serious and :</p> <ul style="list-style-type: none"> • If not treated abroad would be life-threatening or have a significant impact on that person's quality of life or

	<ul style="list-style-type: none"> • The treatment is not readily available on the NHS in the UK or • The person requiring treatment is not entitled to it because of their immigration status. <p>You should also take into account other relevant factors such as the individual's age and whether the BIA is at fault for the delay in dealing with the case.</p> <p>Please note: if the applicant or their dependant has limited Leave in the UK and an in-time application for further Leave is outstanding, they will already be entitled to immediate specialist medical treatment on the NHS. In these circumstances do not expedite.</p>
Case is seriously mishandled (wrong decision / factually inaccurate)	<p>Where the BIA accepts that it has made an incorrect decision and that decision needs to be put right.</p> <p>Many applicants say that the BIA has made a mistake but you should only expedite cases where the BIA has accepted that an error has occurred.</p> <p>'Error' cases are not the same as 'mishandled' cases. You should not expedite mishandled cases unless the mishandling was serious and prolonged. An example of mishandling might be that the BIA has lost the file; lost the application; or failed to respond to correspondence.</p>
Outstanding asylum claim	You should expedite a case if an initial decision has not been made on the asylum claim
Case out of line with other linked cases.	Where the case has been handled in a way that is not consistent with linked cases. For example where we have granted further Leave to a family but not done this for some of the dependants listed.
Allowed appeal not implemented	If an allowed appeal has not been implemented six months after the determination you should send the file to the Appeals Implementation Unit (AIU) for the grant to be implemented. The casework should not be done in the Ministerial Correspondence Team (MCT)
Clear and immediate issues of vulnerability e.g. minor	You should expedite a case where issues of immediate vulnerability are raised. Examples of immediate vulnerability are a person subject to domestic violence or a child subject to abuse. You should try to make a decision quickly on the case.

	<p>You should only expedite these cases if specific issues of vulnerability are raised and there is evidence to support the claim. (for example a police CAD number)</p> <p>Further instructions will be issued on how to deal with 'vulnerable' cases quickly.</p>
<p>Seriously ill close relative abroad</p>	<ul style="list-style-type: none"> • Where the claimant has a close relative abroad who is seriously ill and there is nobody in the home country to care for the relative, and • You have seen medical evidence that the illness is serious and • You are satisfied that the ill person is a close relative of the claimant or is an adult dependant. <p>Close relatives are a parent, grandparent, child, grandchild, brother or sister.</p> <p>A serious illness might include a terminal illness, or a life-threatening condition, for example, a recent severe heart attack.</p> <p>An adult dependant may be someone with severe physical impairment who is over 18 years' old and has nobody available care for them.</p> <p>You must see supporting medical evidence in every case.</p>
<p>Death of a close relative</p>	<p>If the asylum claimant wishes to attend the funeral of a close relative.</p>

The list in the table above is not exhaustive, but we anticipate very few other circumstances where a case should be expedited.

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Responding to MPs' representations about cases

Even if you decide not to expedite a particular case, you should still respond to any MP's enquiries by:

- drawing attention to the current priorities that CRD is working to; and
- confirming that the case is included in the legacy and requires resolution; and
- Advising that the BIA cannot at this stage give an indication of when the case might be dealt with.

Although a standard reply letter will be available for this, the letter must also be tailored to address all of the points raised in the MP's letter containing the representations.

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Pre-Action Protocols (PAPs) and Judicial Reviews

Where a Pre-Action Protocol is received on file, caseworkers should seek advice from a SCW on handling.

Where a case has been through the Judicial Review process and it has been agreed that the Border and Immigration Agency will take some form of action, such as taking a decision, then the file will need to be progressed immediately upon receipt.

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Returning files that will not be expedited

If you take a file out of the queue to decide whether it should be expedited, and you decided that it should not, you should send the file to the new WIPs structure. This is to ensure that the case does not lose its position in the legacy queue.

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