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Interviewing

1. Introduction

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention outlines the method by which we should assess any claim for asylum. In Part 2, Section B (paragraphs 195-215) it is suggested that examination of the claim will usually require at least one interview to bring the claimant's story to light.

2. Interviewing

Most asylum claimants are given a substantive interview. It may not be necessary to interview where a claimant obviously qualifies for refugee status, but we normally interview before refusing an asylum claim substantively (although this may not always be necessary or possible - see 2.1 bullet 6 and 15 below). Where a claimant fails to attend an interview after being required to do so, paragraph 339M of the Immigration Rules (HC395 as amended) allows a decision to be made on the claim on the basis of the evidence available to the Secretary of State. (see the *API* on *Non-compliance* for further guidance)

The policy guidance in this instruction refers to asylum interviews in general. Sometimes particular procedures may be introduced which are not in line with this instruction such as the recording trial undertaken at Oakington, and a piloting of new interviewing procedures due to start in Solihull in November 2006 (see [Annex A](#) for further details).

Claimants should be given every opportunity at interview to put forward the basis of their claim and to explain any apparent discrepancies. The interview should also be used to satisfy ourselves about the claimant's nationality if we are not certain of it. It is important that, by the end of the interview, we have done as much as we can to satisfy ourselves that the claimant is or is not the nationality they claim to be.

2.1. Key points

Specific guidance for the consideration of claims from children, including the interviewing of children, is available in the *Children API*. ***Information on processing applications from children is available in section 10 of Chapter 5 of the APM "Special Types of Cases"***

- Particular care should be taken when interviewing alleged victims of torture or members of other vulnerable groups (see paragraph 15 of this instruction).
- All caseworkers who conduct asylum interviews should be familiar with the Interviewing Protocol.
- Wherever possible, we will comply with any request for an interviewer or interpreter of a particular gender where specifically requested by the claimant or their representative (see paragraph 4 of this instruction). See also the *API* on *Gender issues in the asylum claim*.

- Following the decision of the Court of Appeal in the case of *Dirshe*, where a claimant is not entitled to a publicly funded representative or interpreter at interview or does not have sufficient resources to provide their own interpreter or representative at interview, the UK Border Agency will, on request by the claimant, record the interview using a suitable electronic recording system.
- We will normally interview principal claimants. However this does not necessarily apply where a dependant switches to become a principal asylum claimant after the original claimant of whom they were previously a dependant has been refused and is appeal rights exhausted (ARE). Each case will still need to be considered on its individual merits. However where removal directions have been set, a decision may be taken on the claim without interview, provided no significant new evidence is raised by the claimant to indicate that their removal would breach the UK's obligations under the Refugee Convention and the ECHR; and sufficient information is available for a fair and robust decision to be made. In all other cases an interview will be required except children under 12. For *Swap Claims* see also *section 5g of the API on Certification*.
- We will also exercise discretion when dealing with further representations that we have accepted as a fresh claim. If we can reach a decision based on the information supplied we would not interview. However if we required further information we would interview.
- We reserve the right to interview dependants if relevant to the account of the main claimant. We might, for example, need to conduct such an interview in order to test ethnicity where the main claimant relies on their spouse's or civil partner's ethnicity to seek asylum.

2.2. Purpose of the interview

- The purpose of the asylum interview is to establish the facts of an asylum claim. Whilst an asylum claimant might have submitted information to the Home Office previously, the asylum interview will be the principal opportunity for a claimant to set out their claim and for the caseworker to examine any details they consider necessary.
- The asylum interview is essentially a fact finding exercise and the interviewing officer will probe any answers given and investigate unsupported statements. If there is reason to doubt a certain element of a claim it is important that the claimant has the chance to address the points of contention, and that the interviewing officer has sufficient information to address such issues in the reasons for refusal letter if it is decided to refuse the claim. In particular, it is good practice to invite the claimant to explain any behaviour that may damage credibility under section 8 of the 2004 Act. See the **API** on *Assessing the Claim*.

- Caseworkers should ensure that if any discrepancies arise between what is on the SEF and on other papers and what is said by the claimant at interview these discrepancies are thoroughly probed at the interview. An explanation should be sought for any discrepancies in the account given by the claimant. We should also explore discrepancies between what is in the papers and is said at interview and known country information.
- Where information already provided is complete and not in dispute, there will be no need to ask questions about it during the interview. However, this does not prevent the interviewing officer from going over details already provided if this is considered appropriate, such as for reasons of clarity or to examine credibility.
- The claimant should also have the chance to explain any human rights issues that may present a barrier to removal from the UK. Although claimants may present human rights claims in terms of particular articles under the European Convention on Human Rights, we cannot expect them to understand the terminology of the ECHR. The interviewing officer must be alert to the fact that the claimant may make a human rights claim without explicitly mentioning the ECHR at all. However, it is for the claimant to make the claim. As long as the interview provides a reasonable opportunity for the claimant to put forward reasons for remaining in the UK that may not relate to the asylum claim, this will usually be sufficient.
- Claimants will normally be interviewed once in connection with their asylum claim, however the Home Office maintains the discretion to conduct a second interview where appropriate. It may be appropriate to conduct a further interview where we feel that there are further issues which need to be considered before a full decision can be made on the merits of the claim or where the original interview took place some time ago and there may have been changes in the country situation or Article 8 issues that need to be explored. A representative has no right to insist that a second interview be conducted in a particular case.

3. The Interviewing Protocol

The Protocol Governing the Conduct of Substantive Interviews and the Roles of Interviewing Officers, Representatives and their Interpreters (commonly referred to as the "Interviewing Protocol") is a document which has been agreed with NGOs and should be followed in all UK Border Agency interviews.

The Protocol explains the basis upon which representatives and interpreters attend substantive interviews of adults conducted by the UK Border Agency. It sets out the standard of service that the UK Border Agency aims to provide at interviews and also what the UK Border Agency expects of representatives and interpreters.

4. **Gender-specific interviewing officers and interpreters**

If the representatives or the claimant requests a gender specific interviewing officer or interpreter we should as far as possible accommodate the request. This will be subject to operational requirements as it will not always be possible to provide a same sex officer.

See the API on Gender Issues in the Asylum Claim.

5. **Representatives**

The conduct of representatives is covered specifically in the Interviewing Protocol.

We do not consider that it is necessary for an asylum claimant to be legally represented at the asylum interview, as it is a non-adversarial fact-finding exercise. However we will not object to the presence of an accredited representative without specific reason.

Where a representative is present in the interview, their role is to ensure that the claimant understands the interview process and has the opportunity to provide all relevant information. Representatives are usually not expected to intervene during the interview, other than to draw the interviewing officer's attention to a problem with the standard of interpretation or to request clarification of a question or comment made by the interviewing officer.

6. **Tape Recording**

If an asylum claimant is not entitled to a publicly funded representative or interpreter at the substantive asylum interview or is unable to provide their own representative / interpreter at interview, then the UK Border Agency is obliged to allow the recording of the interview at the claimant's request. The process followed is detailed in *Asylum Process Notice 13/2005 on Tape Recording of Asylum Interviews*.

Representatives are **not** permitted to bring any form of **tape recording** equipment into the asylum interview. If a recording is to be made this will be done using recording equipment installed in the interviewing room by the UK Border Agency and recorded on to dual tapes also provided by the UK Border Agency.

7. **Friends or other companions**

Where a claimant wishes to bring a friend or other companion to their interview to provide emotional or medical support they may do so at the discretion of the interviewing officer. No request will be unreasonably turned down. Supporters are admitted on condition that they are there to provide medical or emotional support and will not interfere in any way with the interview process.

Female asylum seekers, particularly those who have undergone sexual assault or rape, may not feel comfortable recounting their experiences in front of male relatives or children. Wherever possible, women should be

interviewed separately. For further guidance on interviewing victims of sexual abuse, see the *API on Gender Issues in the Asylum Claim*.

8. Interpreters

Interpreters employed by the Home Office are required to translate accurately and impartially what is said at interviews. UK Border Agency interpreters are not expected to enter into any discussion regarding the merits of the claim, although they may intervene to ask for clarification, to point out that a party may not have understood something, or to alert the parties to a possible missed cultural inference.

The Central Interpreters Unit can provide further details about the role of the Home Office interpreter at the asylum interview.

Claimants or their representatives may provide their own interpreter in addition to the official one but the claimant's or representative's interpreter may not act in place of the official UK Border Agency interpreter even if a UK Border Agency interpreter is not available.

9. Interviewing in foreign languages

Interviews are not normally carried out in a foreign language or sign language.

10. Failure to comply with interview arrangements

If a claimant fails to attend for interview without a reasonable explanation the claim can be considered for refusal under non-compliance procedures. In accordance with the guidance on non-compliance all evidence already provided by the claimant must be taken into account when reaching the decision. See the *API on non-compliance* for details of where this is appropriate.

11. Interview notes

Except in the case of the pilot being conducted at Oakington where separate procedures are followed, all substantive asylum interviews are carried out in accordance with and recorded on the current SEF (Interview) form. The content of the interview is recorded verbatim in writing.

12. Section 8 of the Immigration and Asylum (Treatment of Claimants, etc) Act 2004

Section 8 provides that certain types of behaviour on the part of an asylum or human rights claimants must be regarded as damaging to the claimant's credibility. See the *API on Assessing the claim* for further information on section 8 and the types of behaviour concerned.

13. Curtailment warnings

If a claimant has existing limited leave that was granted for non-protection reasons, they may be liable to have that leave curtailed if their asylum/HR claim is refused.

The curtailment warning is included on the SEF (Interview) form. See the **API on curtailment** for further information.

14. Verbal/documentary deception, illegal entry and No Evidence of Lawful Entry cases

Any claimant who is suspected of having entered the United Kingdom illegally by using verbal or documentary deception may be liable to be given an illegal entry interview under caution.

Any claimant who is suspected of having entered the United Kingdom without an immigration document, or of having deliberately destroyed or disposed of that document may be liable to be charged under Section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

15. Interviewees requiring particular care

15.1. Children

There are special rules about interviews with children. These are set out in the *Children API*. For processes in dealing with children see the part of the *Asylum Process Manual dealing with Children. (Section 10 Chapter 5)*

15.2. Victims of torture

Victims of torture may face particular difficulties in recounting their experiences, both because of the nature of the experiences to be recounted and because of their previous experience of officials. See the guidance on interviewing victims of torture in the APM.

15.3. Traumatized victims

Guidance is available in the APM on conducting interviews with particularly traumatized victims.

15.4. Mentally disturbed claimants

Guidance is available in the APM on conducting interviews with mentally disturbed claimants.

15.5. Claimants who threaten to commit suicide

Advice on dealing with claimants who threaten to commit suicide or harm themselves is available in Chapter 1 Section 10 of the IDIs.

15.6. Other medical cases

Guidance is available in the APM on handling claims where the claimant is able to provide particularly compelling medical reasons why it would not be appropriate for them to be interviewed.

15.7. Cases where interviewing is considered unsafe

In certain circumstances, it might be considered unsafe to interview a claimant. Examples might be where a claimant is suffering from a contagious disease which could be considered a threat to the interviewing officer or where the claimant has a history of physical violence. Where there are grounds to believe that a claimant might prove a danger to Home Office staff, it will be appropriate to defer or cancel an interview. Where an interview appears unfeasible, the claim may be pursued through written representations.

Enquiries: Further enquiries should normally be made in writing via a Senior Caseworker to Policy Group D, Asylum Policy Unit.

Annex A: Solihull Pilot on Early and Interactive Legal Advice

We will be piloting a new approach to improve asylum decisions through early and interactive advice and representation in Solihull. This is a joint proposal from the New Asylum Model (NAM) Quality Team and the Legal Services Commission.

Pre-Interview Legal Advice and Funded Evidence Gathering

Legal representatives and case owners will work together to ensure that the key issues in the case are identified before the asylum interview and those which are not in dispute and do not require specific evidence are quickly dispatched, allowing the representative to concentrate on evidence gathering only for material issues which remain in dispute. Where a material issue is in dispute and specialist evidence could genuinely assist the decision-maker to make a just decision, the flexibility criteria will ensure that agreed delays to the usual one month time limits are possible.

Ordinary v. Complex Cases

- An ordinary case is one where the genuinely useful evidence is confined to the applicant's statements and general country of origin or other objective evidence already in the public domain. Such cases (whether grants or refusals), fall to be decided within one month of application.
- Complex cases are defined as those which fall within the flexibility criteria and which may not be able to be decided within one month, especially where specific evidence gathering is required.

Ordinary Timelines

For ordinary cases the indicative time limits and process shall be as follows.

- Day one: Application and Screening
- Day two: Dispersal
- Day four (the third day after arrival in the dispersal area even where screening and dispersal has been delayed): Initial appointment with designated legal representative.
- Day ten (or earlier where possible): Representative submits witness statement and supporting evidence.
- Days ten – fifteen: The case owner and the legal representative agree on matters which are not to be considered in dispute, ensuring that the asylum interview can be focussed and that no further, specific evidence is required.
- Day fifteen: The substantive asylum interview.
- Days fifteen – twenty: Legal representative submits any further evidence if agreed with case owner to be necessary.

- Day twenty: The decision is served.

The Flexibility Criteria

The flexibility criteria define, without being exhaustive, those occasions when a fair and sustainable decision may not be able reasonably to be made within one month. The criteria set out circumstances where the time limits may (but not necessarily will) have to operate flexibly by agreement to ensure that applicants and their legal representatives have the time which is required to provide specific evidence on material issues in dispute and so that the case owner can make just decisions with all available evidence. A case may fall within the flexibility criteria at any stage of the process, although it is expected that the majority of such cases will come to the attention of the legal representative after day four and before day ten.

The legal representative will be expected to submit a witness statement and any general supporting evidence no later than day ten and will alert the case owner to the possible need to adopt the flexibility criteria as soon as possible after their interview with the claimant but not later than day 10. Instances may arise where the need to adopt the flexibility criteria only becomes apparent at some time during or post the asylum interview. In these cases there will be provision to allow for flexibility according to the criteria below, if necessary. Every effort will be made to reach the day 20 deadline if possible.

Where a factual issue is material to the decision and is one which *can be established by specific objective evidence*, the case owner, having received the witness statement and general supporting evidence, and in discussion with the legal representative, will decide whether the issue is one which can be accepted without specific evidential proof over and above that already submitted. If this is not the case and the matter remains in dispute, the case owner and the legal representative will jointly ensure that all possible steps are taken to obtain the specific evidence required to decide the particular factual issue within the twenty day limit if possible or a reasonable time thereafter, which shall be agreed between the parties.

Flexibility may apply to the following categories of case:

- Where there is an allegation of torture or other trauma which is material to the decision and which expert medical evidence could reasonably resolve;
- Where there are gaps in publicly available objective evidence on issues which are material to the decision and for which expert country evidence can reasonably be obtained;
- Where specific documents are presented the validity of which is material to the decision and which can reasonably be verified by a relevant expert;

- Where the language or dialect spoken by the applicant is material to the decision and this can reasonably be verified by a relevant expert;
- Where the nationality, ethnicity or clan of an applicant is material to the decision and this can reasonably be verified by a relevant expert;
- Where the age of the applicant is material to the decision and this can reasonably be verified by a relevant expert;
- Where a factual claim is material to status determination and a witness to that alleged claim will be available to give evidence within a reasonable time;
- Where the applicant's mental capacity to give evidence is in dispute and the matter could reasonably be resolved by expert medical evidence;
- Where further objective evidence may resolve an issue identified as being in dispute and can be obtained within a reasonable time;
- Where the interests of justice and the need to make sustainable decisions otherwise require flexibility.

Agreeing the Issues

In both ordinary and complex cases, the case owner and legal representative will be required to discuss the material issues in the application before the asylum interview and to come to an agreement in relation to the following categories of issue:

1. Those material issues which the case owner is willing to accept without further proof after submission of the witness statement and general supporting evidence and which need not be the subject of further proof or argument;
2. Those issues which remain in dispute, which could not be resolved by further objective evidence;
3. Those issues which remain in dispute but which could potentially be resolved by further objective evidence (not including expert evidence).
4. Those issues identified as falling within the flexibility criteria.

The Pro-Forma

Discussions relating to both the applicability of the flexibility criteria and to the agreement of issues considered not to be in dispute will be recorded on a pro-forma which is then attached to the file and included in the appeal bundles of both the applicant and the Home Office in the case of any appeal. While not binding on the parties the pro-forma provides evidence of the discussions which led to the particular evidence gathering that did or did not take place in the particular case.

The Interactive Asylum Interview

The asylum interview should represent the last opportunity to clarify issues in dispute in the majority of cases. To assist with this process, although the case owner will control the interview they will invite the legal representative to participate in the interview with a view to jointly ensuring that, in the vast majority of cases, all factual issues are put into account and that the whole case has been presented before the end of the interview.

Roles of the Parties

As the decision-maker, the case owner will lead the interview. However the case owner may request the legal representative to begin the questioning; only questioning the applicant him/herself when an issue of difficulty arises or needs clarification. Alternatively, the case owner may wish to conduct the majority of the questioning him/herself. The legal representative may request the case owner to ask follow up questions where an issue does not appear to have been adequately explored and the case owner may request the legal representative to take over questioning if it appears this would assist either the applicant or the case owner to understand and deal with the issues effectively. Normal professional standards will apply to the representative so that any line of questioning should not lead the applicant.

At all times the emphasis should be on assisting the applicant to put forward the factual basis of the claim in as much detail as possible. The legal representative may wish to make representation on legal points at the end of the interview and these will be taken into account by the case owner. The central role of the applicant and the establishment of the facts must always be in the forefront of the minds of all parties.

The emphasis of this interactive process is on establishing the facts. Breaks, delays and adjournments should be permissible whenever these are necessary in the interests of justice and would assist sustainable decision-making.

Departing from Agreed Issues

There are two circumstances where a departure from the agreed issues would be appropriate. Firstly, where the applicant's responses to questions cast doubt on an issue which had previously been considered settled and the issue is a material one. Secondly, where the applicant raises new material claims which have not been presented before. In both these circumstances the case owner and the legal representative have a shared duty to assist the applicant to put forward the issue and to ensure that relevant follow up questions are put to the applicant. An agreement should be reached by the end of the interview on any further amendments to the pro-forma which records the issues agreed to be in dispute or otherwise.

The Record of Proceedings

To ensure a truly interactive interview, it will not be possible for either party to take verbatim notes. For this reason interviews will be tape (or digitally) recorded. The parties can also agree to a summary written record of the proceedings forming the basis of the decision. A transcript of the recording will not usually be necessary before the decision unless a matter arising during the interview is in dispute and requires clarification and such issues should generally have been raised during the interview itself.

Post-Interview Evidence and Representations

It is open to the parties to agree a timetable for further submissions or evidence either in relation to issues already identified or in relation to those which arose for the first time or were re-opened during the interview itself. As with all aspects of this process, the objective of post-interview submissions is to ensure that all relevant evidence has been put into account by mutual agreement before the decision is made...

The Mutual Complaints Procedure

It is expected that there will be occasions when either the case owner or the legal representative considers the other party to be acting unreasonably. A mutual complaints procedure will therefore be established during the pilot. The procedure will seek to address those issues, generally relating to the implementation of the flexibility criteria, which could be most usefully resolved through a complaints procedure rather than in the formal appeals process.

The mutual complaints procedure will be jointly overseen by the Legal Services Commission and the NAM Quality Team and will deal with circumstances where either a legal representative or a case owner is not applying the flexibility criteria fairly, such as:

- failing to mitigate delay in obtaining third party reports or other evidence;
- seeking flexibility to submit evidence on issues which are not material to the claim;

- seeking flexibility to submit evidence on issues which are not susceptible of proof;
- seeking flexibility to submit evidence from individuals or organisations which are not qualified to provide specialist evidence on the issue in dispute;
- otherwise unreasonably seeking flexibility;
- insisting on proof of matters which cannot reasonably be proved by evidence;
- insisting on evidence which would establish the issue in dispute beyond the standard of proof of reasonable likelihood;
- insisting on unreasonable time limits to obtain third party reports or other evidence;
- insisting on evidence on issues which are not material to the claim;
- otherwise unreasonably denying flexibility.

Within the confines of the above circumstances the aggrieved party should first complain to the team leader, in the case of the case owner or to the managing partner of the participating firm in the case the legal representative.

Where this does not resolve the situation the aggrieved party may escalate the issue to the joint complaints mechanism, co-chaired by the Legal Services Commission and the NAM Quality Team. The complaint shall be addressed to the complaints mechanism in writing setting out how the flexibility criteria are allegedly not being applied fairly. The Legal Services Commission and the NAM Quality Team will adjudicate on the matter within 24 hours of receiving the complaint and will make a recommendation to the case owner and the legal representative with a view to resolving the issue before the matter proceeds to the appeal process. Any legal challenges should be notified to the NAM Quality team.

Unrepresented Applicants

Proposition and Assumptions

During the pilot of this proposition every applicant who qualifies for publicly funded representation at the decision stage will receive it and it is not envisaged that there will be any unrepresented applicants other than those who fail the existing sufficient benefits test (expected to be a tiny minority).

Pilot Implementation

When faced with an unrepresented applicant, case owners will need to make an assessment whether or not the applicant's case is one which requires specific evidence gathering. If the applicant is unrepresented as a result of failing the sufficient benefits test the case owner will proceed to interview and decide the case in the normal way, asking for relevant evidence to be produced if this is necessary for a just determination to be made. If the applicant is unrepresented for any other reason the case owner will refer the matter to the Legal Services Commission Rota Administrator for allocation to a representative.

In situations where the case requires specific evidence gathering to ensure a fair and sustainable decision and the applicant remains unrepresented for any other reason not dealt with above, the case owner can commission such expert or other reports as are necessary to make the decision correctly him or herself and shall follow the guidance in the flexibility criteria in as much as is necessary to ensure the availability of all relevant evidence before the decision is made, despite the absence of a legal representative.

Evaluation

The six month pilot of this proposal will be subject to a rigorous evaluation procedure. This will be overseen by an Evaluation Working Group which will meet on a monthly basis throughout the period of the test and draw up a final report at the end of the six month test.