

Criminality, Adverse Immigration History and Other Information – Migration Casework Actions

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1 Introduction

1.1 Audience & Purpose of Instruction

This instruction is principally intended for the sight of all UK Border Agency (UKBA) officers involved in *migration casework* (by which it is meant those making decisions on in-country non-asylum, non-nationality cases, previously referred to as Managed Migration cases). It is not intended to provide instruction for those making either nationality or asylum decisions.

The purpose of this instruction is to set out how to deal with cases (principally applications for leave) where there may be information material to the handling of the case indicating criminality, issues with an individual's identity, and/or issues of adverse immigration history.

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1.2 Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

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1.3 Summary

When information comes to light indicating criminality and/or other certain behaviours, it will usually not be appropriate to grant the applicant leave. Such information may come to light as the result of a valid application, as a result of an invalid application, or at any other point.

Depending upon the information identified, it may be necessary for specially trained caseworkers to consider and decide the case, or to take enforcement action where appropriate if no application has been made.

The specific nature of the information arising will determine whether the required action is to refer the case to another officer/unit/directorate for onward action, or to take specific actions within the originating unit.

The main categories of case where the applicant should not ordinarily be granted leave are:

This guidance was archived on 13 June 2017

- Where they are found to meet the criminality threshold currently applied by the Criminal Casework Directorate (CCD) for considering deportation;
- Where there are serious reasons for considering that they have committed or been involved in war crimes;
- Where there are serious reasons for considering that they are a member of a proscribed group, or have been guilty of acts contrary to the purposes and principles of the United Nations (e.g. terrorism or membership of a proscribed organisation);
- Where it is undesirable to permit the person concerned to remain in the UK in the light of their character, conduct or associations or the fact that they represent a threat to national security.
- Where the person is subject to a travel ban imposed by the UN or the EU.

If caseworkers are at any stage uncertain how to proceed in the light of any information arising in a case, they must seek advice from their senior caseworker in the first instance, or from Operational Policy and Process Improvement.

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2 Information Resources

2.1 Information Types and Sources

It is not possible to give an exhaustive list of information types and sources that may influence a decision to grant leave in migration applications, but the most common examples are below:

Information types may include:

- Information relating to criminality;
- Adverse immigration history;
- Identity (bio data and biographical).

Information sources may include:

- Disclosure/s by the applicant;
- CID information (and legacy systems in Warehouse, etc.)
- Fingerprint matches;
- CRS/VAFs/other biometrics;
- PNC;
- Internal UKBA security checks.

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2.2 Security of Information Systems – Key Points

There are strict, non-derogable security procedures which govern the accessing, sight, use, recording, disclosure and general handling of information from the Police National Computer (PNC) and other internal UKBA security checks.

Key points:

- Only registered users of the PNC process and other UKBA security systems may access, view, use, record and handle information from those systems. Registered users will know who they are, will know the rules and requirements of those systems, and (in the case of internal UKBA security systems) will have received training necessary to support security requirements;
- Any officer mishandling information from PNC or internal UKBA security checks may be held personally responsible for their actions, with the risk of dismissal and prosecution;
- Any officer who is unsure about whether they should or should not be accessing or otherwise interacting with information from these systems is unlikely to be a registered user. Anyone with doubts must protect themselves and the integrity of these systems and check with their head of unit.

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2.3 When to Access Information

It is important that actions and decisions are made on an informed basis. The resources mentioned at 2.1 must, where possible and proportionate, be checked at the earliest opportunity when case management begins, and before a final decision is taken.

2.3.1 PNC & Internal UKBA Security Checks

An automated process will be introduced through 2009, allowing the details of cases to be automatically sent to the Cross Check team, for PNC and internal UKBA security checks to be conducted. The results of checks producing hits will be automatically uploaded onto the CID Special Conditions field. Active special conditions will be alerted by the automatic appearance of the Special Condition screen when details of the individual (i.e. applicant, dependant and sponsor) are accessed.

These automatic checks are made at the time of application and – if a decision has not otherwise been made – after three months [although local variations to this may apply and will be notified on a local basis].

If a decision is to be made more than 3 months since the last cross-check, or if a material change of circumstances has arisen (such as the applicant changing their address), a further check must be requested before deciding an application.

2.3.2 PNC & Mistaken Identity

If an applicant claims that a conviction shown on a PNC check does not relate to them, this should be referred to a senior caseworker. Senior caseworkers should advise such an applicant to contact their local police station and ask the police officer to contact the appropriate senior caseworker. The senior caseworker should confirm the details of the conviction and the PNC ID reference number with the police. The police may then wish to compare photographs and/or fingerprints for identification purposes.

Once UKBA has the appropriate clarification from the police we will be able to assess whether our initial assessment of the applicant's eligibility was correct.

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2.4 Who to Check

Full checks (as listed at [2.1 Information Types and Sources](#), including internal UKBA security checks but excluding PNC checks) must be undertaken in respect of:

- Applicants;
- Dependants;
- Sponsors;
- Persons accompanying vulnerable applicants where the relationship is unclear (for instance, adults bringing children to an identity/biometric event where there is insufficient evidence of parental consent);
- Details provided in application forms and identity documents.

PNC Checks must be undertaken only in respect of:

- Applicants;
- Dependants;
- Non-British Sponsors;
- Persons accompanying vulnerable applicants where the relationship is unclear (for instance, adults bringing children to an identity/biometric event where there is insufficient evidence of parental consent).

PNC Checks may be authorised on British citizens only in very specific circumstances, (which are according to the standard operating procedures of that system):

- Sponsors who may pose a threat to others;
- Sponsors with involvement in criminal activity;
- Persons accompanying vulnerable applicants where the relationship is unclear (for instance, adults bringing children to an identity/biometric event where there is insufficient evidence of parental consent).

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2.5 Handling

Information sources accessed must be minuted on file notes and CID notes.

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3 Casework Actions

Unless specifically stated otherwise, the following considerations apply to the management of all cases, whether criminality/other adverse information comes to light as the result of an application (whether valid or not), or at any other point.

It is important that the information arising or being considered is new information, which was not known to the UKBA at the time of any previous decision. Action must not be taken on the basis of information already known to the Agency.

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3.1 Criminality

3.1.1 Criminal Casework Directorate Referrals

If information comes to light indicating that an individual has been convicted of a criminal offence, the case may be of interest to the Criminal Casework Directorate (CCD).

Actions:

- Hold any decision action – leave must not be granted if the individual is of interest to CCD;
- Review the CCD referral criteria
- Refer the case to CCD if appropriate (see the above referral document);
- If CCD accept the case, transfer ownership of the case to CCD;
- If CCD do not accept the case, refer/continue to process the case within the applicable migration casework unit.

3.1.2 Criminal Behaviour Below the CCD Threshold – Refusal Under Rule 322(5)

There may be circumstances where a person has been convicted of a criminal offence which, by its nature or circumstances, may suggest that the person's presence in the UK is not conducive to the public good, but where the person has received a sentence falling below the threshold set out in paragraph 3.1 above. In such circumstances it may be appropriate to refuse an application for FLR / ILR / DL / LOTR under paragraph 322(5) of the Immigration Rules.

Examples could include (but not limited to):

- Offences involving violence;
- Sexual offences;
- Offences against children; or
- Serious drug offences.

Where the case falls into this category it should be referred to an SEO senior caseworker. The SEO senior caseworker will then decide whether the case should be refused on these grounds, under paragraph 322(5) of the Immigration Rules. It is important to remember that the above list is not exhaustive and each case should be assessed on its individual merits. Matters which should be taken into account in all cases include:

- Type of offence;
- Length of sentence;
- Judge's sentencing remarks;
- Immigration history;

- Pattern of re-offending;
- ECHR.

If the intention is to refuse the application on the grounds of criminal behaviour then the Certificate of Conviction should be obtained from the sentencing Crown Court. The Judge's sentencing remarks should also be requested from the appropriate court reporting company. A list of the companies is attached.

In detailing the reasons for refusing the claim caseworkers must refer to the fact that the applicant has been convicted of a specific offence and it is because of this conviction the application is being refused. **Spent convictions** should not be taken into account (for more information see <https://www.askthe.police.uk/content/Q89.htm>).

Suggested standard wordings are:

"The United Kingdom Border Agency has reviewed the facts known about your case and it has been concluded that, following your conviction for A, B, C, your removal on the grounds of your character / conduct would be conducive to the public good.

The United Kingdom Border Agency regards as particularly serious those offences involving violence, sex, arson and drugs. Also taken into account is the sentencing Court's view of the seriousness of the offence, as reflected in the sentence imposed, the result of any appeal upon that sentence, as well as the effect of that type of crime on the wider community. The type of offence is an important consideration, together with the need to protect the public from serious crime and its effects. In addition to these factors the circumstances of the particular offence(s) are looked at."

In your case the sentencing judge commented as follows: "X, Y, Z"

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3.2 War Crimes

In all cases, case owners must check CID. If the CID Special Conditions screen shows a War Crimes flag, the War Crimes Team (WCT) has an interest. No further action must be taken without consulting WCT.

As part of the consideration of every case, caseworkers must look for any information that suggests the applicant may have been involved in war crimes, crimes against humanity or genocide.

If information comes to light giving serious grounds for considering that the applicant has committed or has otherwise been involved in war crimes or crimes against humanity, the case may be of interest to WCT.

Actions:

- Hold any decision action – leave must not be granted if the individual has committed war crimes or crimes against humanity;
- Review the applicable instructions;
- Refer the case to WCT if appropriate (see the "Suspected War Criminals instruction", linked above);

- If WCT does not have any interest in the case, continue to process the case within the applicable migration casework unit;
- If WCT expresses an interest in the case, take their advice on how to proceed.

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3.3 Security/Character/Behaviour/Travel Ban

Acts Contrary to the Purposes and Principles of the United Nations/Unacceptable Behaviours/Character, Conduct or Associations or threats to National Security/Subject to a Travel Ban

Refusal and/or other specific action may be appropriate in the following cases:

- Information comes to light giving serious grounds for considering that the applicant has committed or has otherwise been guilty of acts contrary to the purposes and principles of the United Nations (including terrorist offences or membership of a proscribed organisation);
- The applicant has displayed unacceptable behaviours;
- It is undesirable to permit the person concerned to remain in the UK in the light of their character, conduct or associations or the fact that they represent a threat to national security;
- The applicant is subject to a UN or EU travel ban.

If information comes to light giving serious grounds for considering that the applicant may fit into one of the categories above, the following actions must be followed:

- Hold any decision action – leave must not usually be granted if the individual has committed acts contrary to the purposes and principles of the United Nations, if the individual has displayed unacceptable behaviours, where it is undesirable to permit the person concerned to remain in the UK in the light of their character, conduct or associations or the fact that they represent a threat to national security, or where the person is subject to a travel ban;
- Review relevant instructions and guidance:
 - “Character, conduct and associations / threats to national security” at rule 322(5):
 - “Unacceptable behaviours” description at section 2.6 of the instruction:
 - “Acts contrary to the purposes and principles of the United Nations”, at section 2.4 of the above linked instruction;
 - Section 9 of the IDI:
- If relevant, refuse the application under Immigration Rule 322(5);
- Continue to process the case according to ordinary procedures.

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3.4 Attempted Deception/Previous Leave Obtained by Deception

If an application is made using deception, or if information comes to light to show that deception was practised at the time of a previous grant, refusal will normally be appropriate.

Actions:

- Hold any decision action – leave must not normally be granted if the individual obtained his original leave by practising deception which was unknown at that time to the UKBA and which was material to that grant, or is practising deception in his new application;
- Review the relevant IDI;
- If relevant, refuse the application under Immigration Rule 322(1A) or 322(2), according to the instructions in the IDI;
- Continue to process the case according to ordinary procedures;
- If information comes to light suggesting that a previous grant of refugee status/humanitarian leave/discretionary leave was obtained on the basis of deception unknown to UKBA, it may be possible to cancel the original grant. The cancellation instruction must be reviewed, and if appropriate the case forwarded to the relevant caseworking unit for further action (see [4.3 Asylum Cases](#)).

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3.5 Other Actions and Instructions

Information coming to light may have other less direct implications for the management and decisions to be made in a case, such as by affecting decisions made on previous asylum applications, or where the behaviours identified in an applicant have a bearing on their contact management in the event of a decision.

Key instructions include (but are not limited to):

- Reporting
- Detention
- Exclusion
- Rule 395C

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4 Other Considerations

4.1 Dependants

It may be the case that the main applicant applies for leave and qualifies, but that the criteria for refusal apply to a dependant on that application.

A case by case approach to handling the application/case must be employed in such circumstances, with the nature of the information raised and the facts of the case determining case management.

In most circumstances, the seriousness of the issue/s coming to light will mean it is right to halt action on all cases in order that appropriate action (including reference to other units/directorates) be taken in respect of one or more of the dependants, although there may be some exceptions to this.

If in any doubt on how to proceed, casework action on the principal applicant and all other all cases must be stopped and advice sought from a senior caseworker immediately.

Caseworkers should be aware that British Citizens are not classed as dependants in applications under the Immigration Rules or outside the Immigration Rules. British Citizens are not subject to immigration control. Therefore, the above guidance does not apply to them.

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4.2 Criminal Prosecution

Where a principal applicant is subject to criminal prosecution and successful prosecution could potentially bring them within one or more of the refusal criteria set out in section 3 above, then their application for leave, together with those of any dependants, should be kept on hold pending the outcome of that prosecution.

Where a dependant is subject to criminal prosecution and successful prosecution could potentially bring them within one or more of the refusal criteria set out in section 3 above, then their application for leave should be kept on hold pending the outcome of that prosecution, but the cases of the principal applicant and any other dependants should be considered in the normal way and leave should be granted if they are found to qualify.

Persons affected by any hold on consideration of their case must be informed that their application will not be decided until the criminal proceedings are resolved. Before any action is taken by UKBA caseworkers in relation to cases where there is a pending criminal prosecution, the case should be referred to an SEO senior caseworker.

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4.3 Asylum Cases

Information may arise requiring action in respect of a decision made by an asylum team. In such circumstances, migration caseworkers must liaise closely with case owners in the applicable asylum team, to ensure that any joint action is aligned.

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4.4 Northern Ireland

The PNC system may not provide a complete record of convictions in Northern Ireland. Accordingly, where an applicant is living/has lived in Northern Ireland, they must be asked to contact the Data Protection Unit of the Police Service of Northern Ireland themselves and complete a subject access form. A fee may be charged for this service.

The address is:

Data Protection Unit
Corporate Development
PSNI Headquarters
65 Knock Road
Belfast
BT5 9LD

Under no other circumstances must a subject access report be requested from an applicant.

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Glossary

Term	Meaning
CRS	Central Reference System – Contains details of UK visa applications.
PNC	Police National Computer – Contains details of certain offences and other particular encounters between the police and the subject of the offence/encounter.
VAF	Visa Application Form – Used by applicants in all visa applications.

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Change Record

Version	Authors	Date	Change Reference
1.0	MK	10/02/09	New instruction
1.1	MK	04/03/09	Links updated
2	GL	29/04/09	Links checked
3.0	JL	23/09/09	Children's duty paragraph added
4.0	GL	23/10/09	Further Update To Children's Duty

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