

IDENTIFYING, HANDLING AND CONSIDERING ASYLUM CLAIMS MADE BY SUSPECTED WAR CRIMINALS AND PERPETRATORS OF CRIMES AGAINST HUMANITY, INCLUDING GENOCIDE

This section gives guidance to staff involved in decision making on how to determine whether there are serious reasons for considering that an asylum applicant has committed or been complicit in war crimes, crimes against humanity or genocide.

This section also gives guidance on what action should be taken by staff where an applicant has been identified as someone who have committed or been complicit in war crimes, crimes against humanity or genocide.

Throughout these instructions the term “war crimes” includes war crimes, crimes against humanity and genocide.

Please Note: Throughout these instructions the term “officers” applies to both Asylum Casework Directorate caseworkers and New Asylum Model Case Owners. The specific terms “caseworker” and “Case Owner” will only be used where the functions differ between the two.

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Background

The 1951 Convention relating to the Status of Refugees recognises that signatory states may identify persons applying for refugee status whose actions mean it would not be appropriate for them to enjoy the protection offered by the Convention.

These actions are specified within the provisions of Article 1F of the 1951 Convention. Any action committed by a person and which falls within the scope of the Article 1F exclusion clauses would result in them being excluded from international protection. The provision relating to involvement in war crimes is contained within Article 1F (a), the full text of which states,

“The provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

For further guidance on the application of Article 1F exclusion clauses see the **Asylum Policy Instruction on Articles 1F and 33(2) of the 1951 Refugee Convention (Exclusion API)**.

The rationale behind the exclusion clauses is given in paragraph 148 of the UNHCR Handbook on Procedures and Criteria for determining Refugee Status and which states that,

“At the time when the Convention was drafted, the memory of the trials of major war criminals was still very much alive, and there was agreement on the part of the States that war criminals should not be protected...”

In the 2002 White Paper “Secure Borders, Safe Haven”, the Government made a commitment that the United Kingdom should not provide a safe haven for war criminals or those who commit crimes against humanity.

In order to meet this commitment the Immigration and Nationality Directorate (IND) War Crimes Unit (WCU) was set up in March 2004 to focus on modern day war crimes.

The War Crimes Unit

The War Crimes Unit (WCU) works with colleagues throughout the Immigration and Nationality Directorate (IND) to assist in the identification of people who may have committed or been complicit in war crimes and to support action against them such as refusal of leave to enter, exclusion from refugee status and deprivation of citizenship. If such a person already has refugee status in the United Kingdom, it may be appropriate to initiate revocation action. For further guidance on the revocation of refugee status, see **Asylum Policy Instruction Cessation, Cancellation and Revocation of Refugee Status.**

The primary role of the WCU is that of an advisory and investigative body. The unit is mainly responsible for researching and analysing cases with a view to making recommendations to operational colleagues.

WCU does not have a caseworking capacity and can only make recommendations on the basis of its research on the likelihood of involvement in war crimes. It does not exist to make decisions on behalf of officers.

Conducting the Asylum Interview of a Suspected War Criminal

Forwarding cases to the War Crimes Unit

The asylum interview should be conducted as instructed in **Conducting Asylum Interviews.**

In some instances, evidence of war crimes may only come to light during the interview. Officers should be prepared to explore any new areas as they arise during the interview.

Post-Interview Analysis

Where it is considered that an applicant may have committed or been complicit in war crimes, Asylum Casework Directorate (ACD) caseworkers should write a comprehensive minute for the attention of a Senior Caseworker to indicate this. Senior Caseworkers will then refer the case using the War Crimes Referral Template to WCU by email. New Asylum Model Case Owners can refer cases direct to WCU, without referring to a Senior Caseworker, using the War Crimes Referral Template. The file should be minuted and in the case of the New Asylum Model the Case Management Plan should also be updated to indicate that the applicant is suspected of having committed or been complicit in War Crimes. Case files should not be sent to WCU at this point.

For further guidance on writing minutes, see **Minute Writing.**

Identification of Suspected War Criminals

Credibility Issues

If there is any evidence that an applicant may have committed or been complicit in war crimes, officers should refer the case to the War Crimes Unit for consideration. Although it may be that an applicant has mentioned involvement with a particular organisation or participation in a certain event in an effort to enhance their asylum claim, this will be for the War Crimes Unit to consider. WCU will be responsible for assessing whether the elements of the claim relating to war crimes are deemed to be credible.

Officers may see cases where an applicant's credibility is uncertain and where there are doubts over whether the case should be referred to the War Crimes Unit (WCU). In these instances, the officer must always err on the side of caution and forward the case to the WCU.

Where the applicant claims to have committed or been complicit in war crimes but the claim is not found to be credible the case can be decided by a caseworker in ACD or Case Owner in NAM. Any refusal of asylum should be drafted on the standard RFRL template ASL.0015 and the case should not be certified under section 55 of the Immigration, Asylum and Nationality Act 2006. Following consideration under Article 1A (2) and any credibility issues, the officer should clearly state that if the claim were considered to be credible, the individual would be excluded from Convention protection under Article 1F (a). For further guidance see section 2.3 of the **API on Articles 1F and 33(2) of the 1951 Refugee Convention**.

Forwarding cases to the War Crimes Unit

When referring a case to the War Crimes Unit, Asylum Casework Directorate (ACD) Senior Caseworkers and New Asylum Model Case Owners should prepare a copy of the War Crimes Referral Template. They should include a brief background of the basis of claim and as much information as possible in relation to the applicant having committed or been complicit in war crimes. It is particularly important that all details regarding the applicant's possible involvement with organisations involved in war crimes are included in the War Crimes Referral Template since assessment by War Crimes Unit (WCU) on whether or not the case merits further investigation will be based on this information. The completed referral template should then be sent to WCU by email.

Case Assessment by War Crimes Unit

Based upon the information provided by the officer, the War Crimes Unit (WCU) will make an initial assessment on whether the case merits further investigation. WCU aims to confirm whether or not they have an interest in a case within 48 hours of receiving an email referral post interview. If this deadline is missed, the onus is on the referring officer to contact WCU according to need. For instance, New Asylum Model cases are subject to stringent deadlines and should be treated as a matter of priority where possible in order to ensure that their targets are met.

Cases of no interest

Cases of interest

Determination of assessment

Cases of no interest

Where War Crimes Unit (WCU) considers that a case does not merit further investigation they will email the referring officer to indicate this.

Cases of interest

Where War Crimes Unit (WCU) considers that a case merits further investigation, they will request the case file and conduct further enquiries.

It may be that during their investigations they need further information from the applicant. If this is the case, WCU will return the case file to the referring officer with a request that the applicant is re-interviewed. WCU will also include a Case Research and Analysis Report (Case Report) providing guidance on lines of questioning and specific areas to concentrate on. When a Senior Caseworker or Case Owner receives such a request, they should arrange for an interviewing officer to conduct the interview and book a further interview via the Interview Booking Unit (IBU) or according to local practices. The interviewing officer must contact the named WCU analyst prior to the interview to discuss the issues raised in the Case Report. Following interview, the case file should promptly be returned to WCU so that they may conclude their enquiries.

Determination of assessment

Upon completion of their investigations, War Crimes Unit (WCU) will determine whether or not there are serious reasons for considering that the applicant has committed or been complicit in war crimes.

If WCU consider that there is insufficient evidence to suggest involvement in war crimes, they will return the case file to the referring officer for consideration of the asylum claim as normal.

However, if the WCU analyst thinks there are serious reasons for considering that the applicant has committed or been complicit in war crimes, they will draft a Case Research and Analysis Report (Case Report). This report will explain the reasons why WCU considers that there are serious reasons for considering that the applicant may have been involved in war crimes. WCU will return the case file, including the Case Report, to the referring officer.

Where WCU has returned a case file with a Case Report indicating involvement in war crimes to a Senior Caseworker in the Asylum Casework Directorate (ACD), the Senior Caseworker should determine the next course of action. If the file has been forwarded to a Case Owner in the New Asylum Model, the Case Owner should liaise with a Senior Caseworker to reach a decision as to whether exclusion action would be appropriate.

Within four weeks of receiving the Case Report, Senior Caseworkers must contact WCU by email to give them a progress report and to confirm the following: -

- That they are proceeding with exclusion, or
- That they are not proceeding with exclusion and explain the reasons why, or
- To request further input from WCU before deciding on the next course of action.

Where a Senior Caseworker concludes that there are serious reasons for considering that an applicant has committed or been complicit in war crimes, the applicant should be excluded from Convention protection by virtue of Article 1F(a). See *Excluding Suspected War Criminals from Convention Protection*.

Impact on Target Dates

If a case identified by War Crimes Unit (WCU) as a possible war criminal or as meriting further investigation is likely to miss any decision target date, it should be allowed to miss these targets due to the particular nature of these cases.

War Crimes Unit (WCU) should contact the originating Asylum Casework Directorate (ACD) unit or New Asylum Model Case Owner from which the case was referred and inform them that the case will miss its decision target date and the reasons for this. Case Owners should then update the Case Management Plan to demonstrate this.

Excluding Suspected War Criminals from Convention Protection

Excluding an applicant from Convention protection is a serious matter. As a consequence, such cases must always be seen by Senior Caseworkers regardless of whether the claim is being handled in the Asylum Casework Directorate or the New Asylum Model. In the Asylum Casework Directorate, this decision must be made by a Senior Caseworker. In the New Asylum Model, the Case Owner must liaise with a Senior Caseworker before deciding whether exclusion action is appropriate.

Where War Crimes Unit (WCU) has prepared a Case Research and Analysis Report (Case Report) that concludes that there are serious reasons for considering that an applicant has committed or been complicit in war crimes, it is for a Senior Caseworker to decide whether exclusion is appropriate having considered all the evidence supplied by WCU. Senior Caseworkers can seek further guidance or clarification from WCU on any issues or points raised in the Case Report.

Senior Caseworkers should note that when excluding an applicant under Article 1F the normal procedure is to consider the asylum claim in its totality. This means that the claim must be considered against the well-founded issue (Article 1A (2)) and the applicant's position under Article 1F. Where grounds exist for refusing a claim both under Article 1F and under Article 1A (2), Senior Caseworkers should do so using **both** grounds. The RFRL should first deal with the exclusion on 1F grounds and then go on to deal with exclusion under 1A; including any credibility issues. In the event that the certificate is not upheld at the appeal stage, the 'belt and braces' approach ensures that full reasons are provided for all aspects of the decision.

In considering whether Article 1F applies in a case where the person appears to have a well founded fear of persecution, there is to be no weighing up ("balancing") of the amount of persecution feared against the gravity of the Article 1F crime or act which it is considered has been committed. Having considered all relevant issues with care, Senior Caseworkers should use Article 1F to exclude the applicant from Convention protection in all instances where it is applicable. Where Article 1F applies, the person concerned cannot be a refugee. The

1951 Convention contains no requirement to treat the crime as being expired by virtue of already having been punished for it. The fact that a person has been convicted and punished for an offence does not mean that Article 1F does not apply.

Where Article 1F applies the claim should be certified under section 55 of the Immigration, Asylum and Nationality Act 2006. Section 55 of the Immigration, Asylum and nationality Act 2006 provides for cases that are excluded by virtue of Article 1F that the Secretary of State can issue a certificate and the Asylum and Immigration Tribunal (AIT) or the Special Immigration Appeals Commission (SIAC) must then begin substantive deliberations on any asylum appeal by considering the certificate. If the appellate authority agrees with the statements in the certificate, they must dismiss the asylum claim i.e. they must consider exclusion first and if they agree that the person is excluded they need not consider whether Article 1A of the Convention applies.

Senior Caseworkers should use the RFRL template ASL.3212. The template provides the framework for exclusion under 1F(a) as well as the other 1F categories, the certificate and formal exclusion of Humanitarian Protection. Also where appropriate refusal of asylum under Article 1A(2).

The reasons for exclusion should be based on the information provided in the Case Report prepared by the WCU. The RFRL should outline the international legal instruments (as mentioned in Section 2, Case Law of the WCU Case Report) being relied on. The draft RFRL should be copied to the WCU for comments. The evidence provided by WCU to support the recommendation should be downloaded, printed off and attached to the PF1. The name, telephone number and address of the War Crimes Unit analyst must not, however, be disclosed outside of IND.

Senior Caseworkers should use the RFRL template (ASL.3212) and follow the standard minute sheets. In all cases, Senior Caseworkers should remember to mark the case for "Assured Representation". Update CID using the flag icon to indicate that the applicant 'is of interest to WCU' or 'has been excluded because there are serious reasons for considering they have committed war crimes.

For further guidance on excluding from Convention protection see the **Asylum Policy Instruction on Articles 1F and 33(2) of the 1951 Refugee Convention (Exclusion API)**.

Consideration of Human Rights Issues when Excluding War Criminals from Convention Protection

Only Senior Caseworkers may handle cases where the applicant is being excluded from Convention protection. This applies to cases handled in both the Asylum Casework Directorate and the New Asylum Model. Senior Caseworkers should note that where there are serious reasons for considering that an applicant has participated in war crimes they will fall to be excluded from Humanitarian Protection as well as from the protection of the Refugee Convention. Since the 9 October 2006, the criteria for granting Humanitarian Protection has been contained within paragraph 339C of the Immigration Rules. A person is excluded from a grant of Humanitarian Protection under paragraph 339D where the Secretary of State is satisfied that:

- (i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;
- (ii) there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate instigated such acts;
- (iii) there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or
- (iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

So by virtue of (i) above the applicant will be excluded from Humanitarian Protection. However, even if an applicant is excluded from refugee status and Humanitarian Protection it may not be possible to remove the applicant at the current time. This situation is most likely to arise due to Human Rights considerations. These considerations must be addressed in a case involving an excluded person, just as in any other case. Article 3 of the ECHR is particularly important, in that it prevents removal of anyone if their removal would expose them to a real risk of torture or inhuman or degrading treatment or punishment. This applies irrespective of the crimes of they committed or danger they pose to the United Kingdom. For more information on the application of ECHR, see the **API on ECHR**.

Applicants who cannot be removed for Human Rights reasons

If it is considered that removal would constitute a breach of either Articles 2 and/or 3, e.g. applicant is at real risk of death or inhuman or degrading treatment or punishment, the Senior Caseworker should in consultation with WCU arrange for the case to be brought to the attention of Ministers. Applicants who fall to be excluded from the 1951 Convention and Humanitarian Protection will normally be placed on Discretionary Leave for a period of six months. All proposals to grant Discretionary Leave should be passed by Ministers.

When considering Article 8, Senior Caseworkers should note that persons involved in war crimes are excluded from Discretionary Leave unless it is not possible to remove them from the United Kingdom. Officers should also bear in mind that, since there is a proportionality test (the right to private and family life balanced against the interests of national security, public safety or the economic wellbeing of the country), the fact that a person fits into an exclusion category may well mean that their removal would not be a breach of Article 8. However, each case will be different and must be treated on its merits. If Senior Caseworkers consider that removal may be a breach of Article 8 they should bring the case to the attention of Ministers.

Individuals who have been granted a limited period of Discretionary Leave by agreement of Ministers will be subject to a review of their leave every six months until removal becomes a viable option. In order to be eligible to apply for settlement in the United Kingdom, they will need to have accrued ten years' continuous grants of limited leave.

For further guidance on granting a limited period of Discretionary Leave, see the **Asylum Policy Instruction on Discretionary Leave**.

Action Prior to Service of Exclusion

Prior to serving the exclusion decision, Senior Caseworkers should check with War Crimes Unit (WCU) to see if they have any further interest in the case. In some cases WCU may refer the case to the Metropolitan Police who may consider pursuing a criminal prosecution.

It should be noted, however, that United Kingdom jurisdiction over an offence committed abroad before September 2001 is limited.

WCU Case Reports and the evidence cited within them are disclosable at appeal (unless stated otherwise). Officers should ensure that all the evidence provided by WCU to support the recommendation is included in the PF1 bundle. The name, address and contact number of the War Crimes Unit analyst must not, however, be disclosed outside of IND.

Dealing with Dependants where a Main Applicant is Suspected of Involvement in War Crimes

Family members of applicants who have been excluded from Convention protection on grounds of involvement in war crimes will normally fall to be refused in-line with the main applicant.

However, some dependants may also apply for asylum in their own right, and such claims should be considered on their merits. They cannot be excluded from the protection of the Refugee Convention solely because of the actions of the main applicant. If the dependant's own asylum claim meets the requirements for inclusion under Article 1A, and they are not excluded from protection due to their own actions, they should be granted asylum.

Individuals may seek to remain as dependants of asylum seekers or refugees but appear to have committed an act which, had they been seeking asylum in their own right, would make them potential candidates for exclusion under Article 1F or 33(2). In such cases, consideration should be given to whether the conditions of Article 1F or 33(2) are met. If they are met, the application to enter or remain as dependants should be refused.

Individuals who seek to be dependants on other claims and have been excluded from the protection of the Refugee Convention as a result of their own actions should not be given leave in line with the main applicant.

Further guidance on dealing with the dependants of asylum applicants suspected of involvement in war crimes may be found in the **Asylum Policy Instruction on Articles 1F and 33(2) of the 1951 Refugee Convention (Exclusion API)**.

Appeal Rights

The rights of appeal against a decision to exclude from Convention protection are the same as those against refusal of asylum and are triggered by the accompanying immigration decision. The specific right of appeal to which an applicant is entitled depends on the specific immigration decision.

However, where the applicant is to be excluded from Convention protection by virtue of Article 1F(a) then section 55 of the Immigration, Asylum and Nationality Act 2006 will also apply and a certificate is to be issued. The appellate authority will deal first with the Secretary of State's certificate. If the certificate is upheld, the appeal must be dismissed to the extent that it relies on asylum grounds, though any ECHR considerations raised in the appeal will still have to be taken into account.

For further information see the **IDI chapter 12 on Appeal Rights**.

Applications for Further Leave Following Grants of Humanitarian Protection and Discretionary Leave

Although this guidance is specifically aimed at staff involved in asylum decision making, officers involved in considering applications for further leave following grants of Humanitarian Protection or Discretionary Leave should also refer to these instructions.

When considering applications for further leave, officers should thoroughly check through the file and compare with the information contained within whether or not an interview has been conducted. If an interview has not already been conducted, the officer should invite the applicant to attend an interview. If this has been done in the New Asylum Model, the Case Owner should update the Case Management Plan to this effect. For further information on applications for further leave following grants of Humanitarian Protection and Discretionary Leave, see **Considering Applications for further leave following ELTE –R, HP & DL (Active Reviews)**.

In addition, some applicants will apply for further leave after initially being granted Exceptional Leave to Remain (ELR) for a period of four years. For further information see **Considering Applications for Indefinite Leave to Remain from Applicants previously refused asylum but granted Four Years Exceptional Leave to Enter or Remain and who are suspected of involvement in War Crimes** (when available) and **Asylum Policy Unit Notice 01- 06 ELR Suspected War Criminals**.

War Crimes Referral Template

Instructions for use

1. Open the embedded template.
2. Complete all relevant sections as appropriate.
3. Save the document as WAR CRIMES REFERRAL HO Ref. No.
4. Attach the Word document to a blank email and send to War Crimes Unit.

WCU aims to respond to all email referrals within 24 hours for pre-interview referrals and 48 hours for post interview referrals. Should you wish to discuss your referral, particularly where it is urgent, speak to the duty officer.