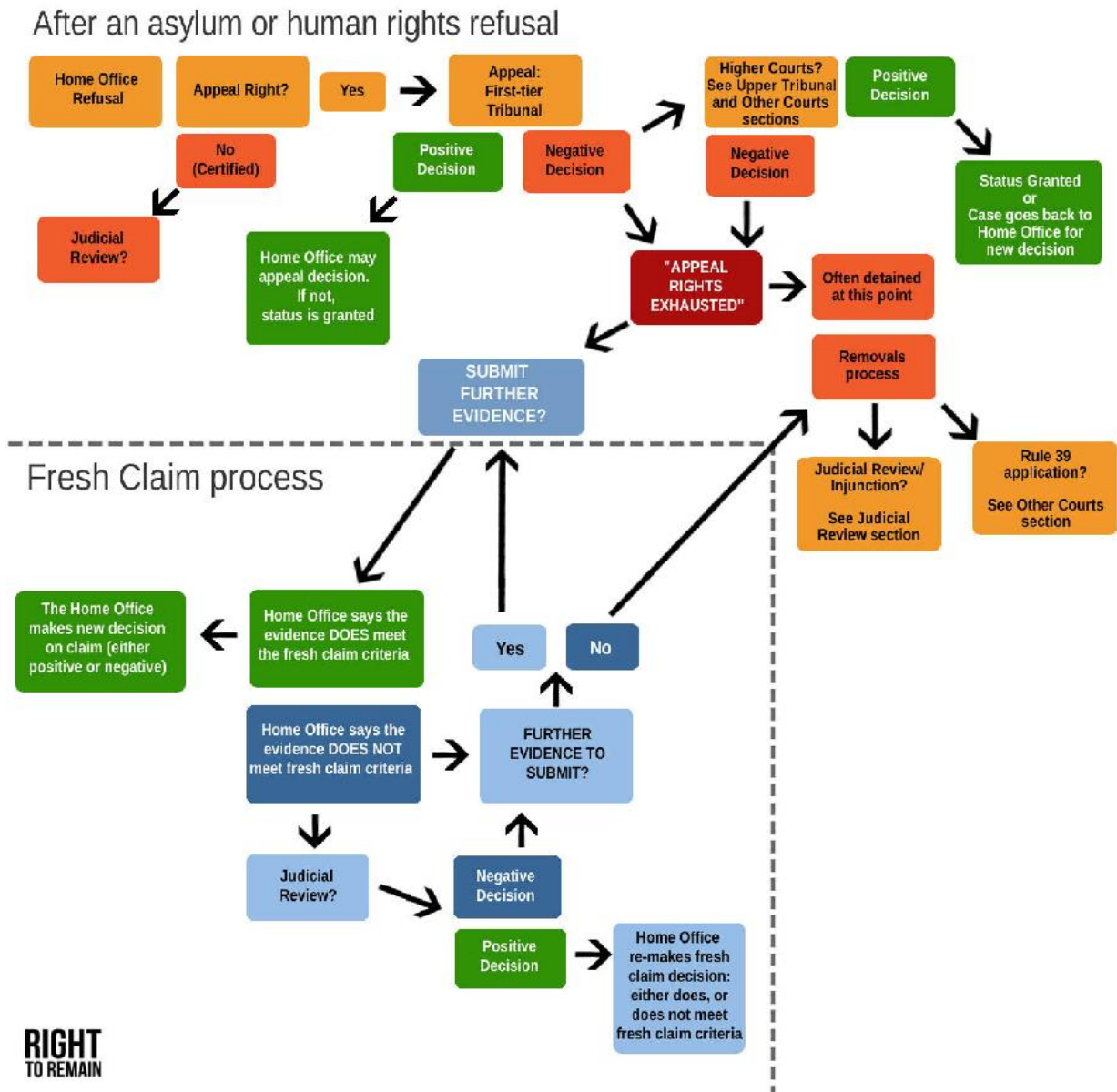


# Fresh claims

Further submissions/evidence can be given to the Home Office at any point after an asylum claim or human rights application is refused, but a fresh claim can only be made when you are “appeal rights exhausted”.

You or your lawyer give the Home Office the further submissions (new evidence/documentation) and the Home Office decides if it’s a fresh claim, using the legal test below.

Although the evidence you submit is not technically a “fresh claim” unless the Home Office says it is, people tend to use the term more widely than this. For example, gathering evidence to be submitted to be considered as a fresh claim is more easily phrased “preparing a fresh claim”.



The basis of a fresh claim might be new evidence about the original reason you claimed asylum; or it might be that your situation has changed since you claimed asylum and had an appeal heard and dismissed; the situation in your country may have changed; or subsequent case law (other people's cases) might have changed the way cases are dealt with or decided.

The evidence you submit to be considered as a fresh claim might be emphasising a point already made, or providing a new source of evidence for a fact that has previously been disputed. The evidence may be on an entirely new matter that hasn't been raised with the Home Office/courts before. To be considered as a fresh claim your new evidence must include new and relevant information.

Poor quality submissions to be considered as fresh claim are very likely to be rejected, and this can put you in a worse position than before. Read this page to make sure you put in the best evidence possible, but also read the rest of the Toolkit to decide if a fresh claim is the best option for you. There may be other routes to securing the right to remain that are more likely to succeed, and therefore you should focus on them, not preparing a fresh claim.

## Legal test

When you submit evidence to be considered as a fresh asylum or human rights claim, the Home Office will use the following legal test from the immigration rules, to decide whether they will consider it a "fresh claim":

### Immigration Rules

353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim.

The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered.

The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

The key points are:

#### **1) "significantly different from the material that has previously been considered".**

If it's material that hasn't been considered before, why hasn't it been considered? If you've had access to the evidence all along and haven't submitted it without a good reason, the

Home Office could use that as a reason to say it's not a fresh claim. If you've only just managed to get the evidence, you need to explain why you couldn't get it before. Remember you also need to explain how you got the evidence, especially if it's documentary evidence from your country, such as a birth certificate, arrest warrant or proof of political activity.

A fresh claim is not just arguing your case in a better way – there has to be evidence that is new to back up your arguments. “New” in this context doesn't necessarily mean it's just been created or it contains information that the Home Office or courts have never heard before, just that it hasn't been seen by the Home Office or courts in relation to your case.

## **2) “taken together with previously considered material”.**

The Home Office will consider your further submissions alongside the evidence and statements you have submitted earlier in your case (and will use negative credibility findings - a decision that you weren't telling the truth - against you).

Your starting point for preparing a fresh claim should be, “what did the court say when my appeal was dismissed?”. If you did not have an appeal, your starting point will be your Reasons for Refusal Letter from the Home Office, and there is likely to be a lot of negative findings to counter in that!

If further submissions are all based on your evidence (with no objective evidence), and the Home Office/courts have found your testimony or evidence you have submitted to be incredible, this could be a reason for the Home Office to say your submissions do not meet the fresh claim test.

You may see reference, particularly in Home Office letters rejecting a fresh claim, to a case called “Devaseelan”, which established the principle that a judge's starting point should be the previous judge's determination. This is relevant to fresh claims: the Home Office, when considering your new evidence, will be looking at whether an immigration judge would agree with their decision that it is not a fresh claim (see below).

Previous findings of incredibility (not being believed) are not set in stone, however. For example, if the Home Office have decided that a document you submitted in your original asylum claim is not genuine, this is not necessarily fatal to your whole case. Your case and the evidence has to be considered “in the round” for assessing potential risk if you are removed.

Additionally, a fresh claim is an opportunity to reverse negative credibility findings. Often in asylum cases, not being believed on one issue can lead to the Home Office and the courts not believing you on other issues. If, through the evidence submitted for a fresh claim, you can prove you are credible on one issue, your entire case may be treated more positively.

## **3) “a realistic prospect of success”**

You may have new evidence, but is it relevant to your situation? Is it material (central) to your case and the grounds on which you are seeking asylum or the right to remain based on a human rights argument?

For example, there may have been a big political change in your home country, but if your

claim is based on your sexuality, and the political change can't be seen to impact on that, it won't be considered a fresh claim.

The credibility issues mentioned above are a factor here. For example, you may have new evidence about the persecution of a subclan in Somalia. If the Home Office and courts do not believe you are a member of that subclan, however, that evidence is unlikely to give you a realistic prospect of success. You would need to provide evidence showing that the Home Office and the courts were wrong to doubt your clan identity.

Your submissions for a fresh claim may include good evidence from reputable sources about human rights abuses and persecution, and the Home Office/the courts may not dispute that this evidence is true. The problem can be that the Home Office does not believe these problems or events mean that *you* are at risk of persecution.

## **Fresh claim outcomes**

Once you have submitted your new evidence to be considered as a fresh claim, the Home Office will consider your evidence, based on the legal test above. One of the following things will then happen (they are listed from most positive first, to least positive. The most positive outcome is also the least common outcome, and the least positive is the most common):

1) The Home Office decides that your evidence meets the fresh claim criteria and that the new evidence shows you are in need of protection/meet human rights claim rules you are granted refugee status; humanitarian protection; or other leave based on your human rights claim.

OR

2) The Home Office decides that your evidence meets the fresh claim criteria, they have considered your new claim, and have refused it: they have decided you are not in need of protection or leave to remain based on a human rights claim. If this happens, you will be given the right to appeal the refusal of your claim. This is a relatively positive outcome, as the court/Tribunal is more likely to look favourably on your evidence than the Home Office.

This outcome is what the phrase "notwithstanding its rejection" refers to in point (ii) of the fresh claim test above. The Home Office decision-makers should be looking at whether the evidence submitted creates a "realistic prospect of success" first and therefore meets the fresh claim test even if they have decided the claim itself will not lead to a grant of protection/status. It is this realistic prospect of success that generates the appeal right of the refusal.

Before making decisions 1 or 2, the Home Office may decide they need to interview you again.

Alternatively, the Home Office will just make a decision based on the evidence you have submitted and write to you to tell you they have granted you leave to remain, or that you did meet the fresh claim test but they have refused your new claim.

OR

3) The Home Office decides that your new evidence does not meet the fresh claim legal test. In these circumstances, you are not given the right of appeal.

Your options may include exploring other legal options to regularising your immigration status; preparing a further, better fresh claim, or possibly a judicial review of the Home Office decision that your evidence doesn't meet the legal test. Judicial reviews are very hard to do without legal representation. See *Judicial Reviews* section of the Toolkit.

## **The basis of a fresh claim**

This is a guide to the kinds of situations that commonly mean people are in a position to make a fresh claim, not an exhaustive list.

### **New evidence is available supporting your original asylum claim**

- For example, documents proving your political activity has only just arrived from your country of origin. Always keep the envelopes these arrived in and any proof of delivery/receipt.
- You have received news from back home. Have you recently received information that the people who persecuted you are still looking for you? People may have come round to your house, or maybe a family member or friend has recently been targeted. It may be possible to get a witness statement or police/court documents to prove this.
- There is new “objective” evidence (see below) relevant to your asylum claim. For example, you may have described a situation in your home country that wasn't believed by the Home Office and/or the courts. Is there a new human rights report or new, trusted journalism that backs up what you said?
- You may have new evidence because of your activity in the UK, since your asylum appeal was refused. This might be involvement in LGBT groups in the UK, or political activity. How can you evidence this activity? Remember, the Home Office position is likely to be that this activity is “self-serving” - that you are doing it to provide evidence for your asylum claim. Be prepared for that, and think about how you might address that in the letter/legal arguments you make that accompany the evidence.

### **Change of circumstances back home**

- Has there been a change in the your country since you left?
- These developments must be relevant to your case. How would a change of government or a new law put you at risk if you were returned there?
- A change of circumstances might be reflected in new country guidance case law. Case law can be slow to catch up with political developments, however, so you may need to rely on other evidence.
- A change in circumstances back home may provide evidence for a fresh claim based on your original grounds for claiming asylum (things have got worse), or you may have claimed asylum for one reason and the changes mean you are now at

risk for another reason.

## **Case law/legal developments**

- This may be a change in country guidance case law.
- There could also be a reported judgment (in someone else's case) that the Home Office was wrongly applying a policy, or that the procedure for determining asylum should be done in a certain way.
- If you can show that your case was refused because the Home Office was using a certain policy, or certain procedures were used, that have now been found to be unlawful, your fresh claim may ask for your case to be reconsidered on this basis.

## **New claim on a new basis**

- This could include previously undisclosed risk because of sexuality. Some people do not feel ready to tell the Home Office/the courts about their sexuality at first. Some people have not told anyone about their sexuality, and the time spent in the UK means they are more comfortable expressing this. The Home Office position is most commonly that they do not believe the person is gay, and that they should have disclosed sexuality at the beginning of the original asylum claim.
- Conversion to Christianity is another reason people may have a new claim for asylum. This might be because of time spent in the UK, where many asylum seekers have positive interactions with church groups providing material and emotional support. As the dominant religion in the UK, people previously devout in another faith may find Christianity an obvious and attractive way of continuing their faith having been displaced from their home country. The Home Office is likely to doubt the genuineness of the conversion. With both sexuality and conversion cases, you need to think about providing evidence about something that is perhaps not a tangible, concrete thing. However, any involvement with LGBT or church groups is a good place to start when thinking about evidence. The fact that the Home Office does not believe you, while relevant to how your claim is treated, is not actually the crucial point of whether or not you are at risk. If people back home perceive you as being gay, or Christian, this could put you at risk.
- There may be other, previously undisclosed, reasons you would be at risk. Many victims of trafficking do not disclose they have been trafficked, and often give a story to the Home Office and courts that they trafficker has told them to say.
- You may have entirely new family/private life grounds for a fresh claim on a human rights basis, particularly if you've been in the UK a long time. If there were human rights reasons for getting the right to remain at the beginning of your case, these should be made at the same time as you claim asylum. But you may have new circumstances, such as a new relationship, a child, or a health condition. Read more about Article 8 human rights claims in the Toolkit Human Rights section.

## Preparing your fresh claim

If you have a lawyer, they will be putting the fresh claim together and writing the legal arguments that accompany the evidence. However, they are likely to ask you to go away and gather evidence to submit. If you don't have a lawyer, you will need to prepare the fresh claim yourself. This is an area where support groups can be very helpful - see the action section below.

### **1. Read carefully all the documents you have from your asylum/human rights claim.**

These should include:

- a copy of the form filled out by the Home Office in your screening interview;
- the transcript and audio recordings of your asylum interview;
- any witness statements and copies of any other evidence submitted to the Home Office and/or courts so far in your case;
- the Reasons for Refusal Letter from the Home Office;
- the first court determination (refusal) of your asylum appeal;
- and any other appeal determinations (court decisions) in your case

The judgment from your asylum appeal, when your appeal was dismissed, is particularly important as this should be the starting point of preparing your fresh claim.

If you do not have one or more of these documents, you can either ask the lawyer that was handling your case at that stage (if you had one), or you can request that the Home Office send you a copy of your file. This is called a subject access request and you should receive a response within 40 days. You have to pay a fee of £10. You can read more about subject access requests on the Home Office website:

[www.gov.uk/government/publications/requests-for-personal-data-uk-visas-and-immigration](http://www.gov.uk/government/publications/requests-for-personal-data-uk-visas-and-immigration)

### **Read the documents carefully.**

Look at the parts of your story/claim that have been doubted or disbelieved. Can you find new evidence to back your story up, or to challenge a statement of the Home Office or the courts?

Think about what the key points of the refusal/appeal dismissal are. For example, there is no point spending a lot of time finding evidence for one part of your story that is disbelieved, if the Home Office/courts say something like "Even if that were true, you would not be at risk because ...". Or, if the court accepts that your home region is not safe for you but say that you could internally relocate somewhere else in the country. Do you really need to provide more evidence that your home area isn't safe? No, unless that finding could now be challenged because of a change in the situation at home or if Home

Office guidance or subsequent case law says it's safe. Instead, the focus of your fresh claim would likely be proving that you couldn't internally relocate.

What is the crucial area of dispute? Figure out what is the most important part of your story (what is "material" to your case) that demonstrates you need protection/human rights status, but that is not accepted by the Home Office/court.

Remember your starting point is the judge's decision in your appeal refusal. You are arguing that, with this new evidence, they would make a different decision.

## **2. Gather your new evidence.**

The evidence you need will depend on the basis of your fresh claim.

If your fresh claim is based on your new circumstances giving rise to a human rights claim, read Article 8 and Rights of the Child sections of the Toolkit for ideas of who to ask for supporting statements and other evidence.

Remember that in an asylum fresh claim, you need to prove that you, individually and specifically, are at risk. It is not enough to prove that there is a risk of persecution/human rights abuses in your country in general.

You may need to look for "objective evidence" - general information about the situation in your country, from reliable sources such as human rights organisations or trusted media sources; or an expert statement on your country or situation. This is especially important if your credibility has been questioned in your original asylum case by the Home Office and the courts.

See the list of sources for country of origin information in the *After a Refusal* section of the Toolkit, and on the country information page of the Right to Remain website:

[www.righttoremain.org.uk/coi/](http://www.righttoremain.org.uk/coi/)

If you are using recent case law as a basis of a fresh claim, you may find it helpful to read our tutorial on 'Understanding Case Law', which has a specific section on country guidance cases: [www.righttoremain.org.uk/legal/understanding-case-law/](http://www.righttoremain.org.uk/legal/understanding-case-law/)

## **3. Write a letter to explain the further evidence you are submitting**

- Explain that these are your further submissions
- Explain what the new evidence is
- Explain how you obtained the new evidence
- Explain why it should be believed, and how your claim now amounts to a fresh claim.

There is a Further Submissions form on the Home Office website but you do not have to use it: [http://bit.ly/fc\\_form](http://bit.ly/fc_form)



You may find the form helpful for structuring your arguments, and making sure you address the fresh claim criteria. Be aware that this is a Home Office form which begins with information to persuade you to return to your country of origin. Note - the form refers to "changes in your country of claim". This, confusingly, means your country of origin/residence that you are saying you cannot return to, not the country in which you have claimed asylum (the UK).

*Make a copy of the letter or form, and the evidence you are submitting, for your own records.*

#### **4. Submit your evidence**

In most cases, you have to submit further submissions for a fresh claim in person. If you cannot attend in person, for example because you are in detention or if you are seriously ill or have a serious disability, speak to the Home Office to try and arrange an alternative.

See below for the procedure for submitting your further submissions.

Make sure you get a receipt showing the date you handed in your further submissions .

### **ACTION SECTION**

Preparing fresh claims are an area where you might be doing a lot or all of the work yourself, if you don't have a lawyer. It's an area where friends/supporters can help out a lot, for example:

- getting previous documents. See point (1) of 'preparing your fresh claim'. If a previous lawyer is refusing to hand over documents, a friend/supporter might be able to negotiate their release, or if necessary make a complaint on your behalf to the lawyer's regulator or the Legal Ombudsman. They may also be able to help you make a Subject Access Request to the Home Office, to get your file from them.
- going through previous documents, particularly your appeal judgment. This is particularly helpful if you cannot read English easily, or do not understand the legal terminology being used. You use these documents as the starting point of your fresh claim. See point (1) of 'preparing your fresh claim'.
- finding evidence. This may be supporting statements or letters, or objective evidence. See point (2) of 'preparing your fresh claim'.
- can a good lawyer be found to take up the case?. You may have struggled to find a lawyer to help you with your fresh claim. However, if you and your supporters have managed to find good evidence that makes your case stronger, a lawyer may now be persuaded to take up your case, and write the legal arguments to submit with the evidence.

## Submission procedure

In January 2015, the Home Office announced that anyone wishing to submit further submissions will be required to make an appointment to do so, in person, at the Further Submissions Unit (FSU) in Liverpool.

To make an appointment, you need to telephone the Further Submissions Unit on 0151 213 2411. The Home Office states that it will aim to make appointments within 10 working days of the initial telephone contact.

Your further submissions/fresh claim appointment will be held at the Further Submissions Unit, The Capital Building, 6 Union Street, Liverpool L3 9AF. Do not turn up without making an appointment by telephone first.

The Home Office's internal guidance on further submissions states that you should take the following with you to your appointment:

- a completed Further Submissions form detailing the additional information you would like the Home Office to consider [remember, you do not need to use the specified form]
- supporting documents, including, where available, any Reasons For Refusal Letters (RFRLs) or appeal determinations
- your Application Registration Card (ARC) if still in possession of this
- passport (yours and your dependents', if they aren't already with the Home Office)
- 4 unseparated passport sized photographs (of you and any dependents)
- evidence of accommodation (if not asylum accommodation)

There have been incidents of people being detained when they go to submit their further submissions. It is not yet known how common this is, or if this is part of a deliberate Home Office strategy. In some of these cases, the person has been held at the Further Submissions Unit while their further submissions were looked at and rejected, and then they have been taken to a detention centre.

## Exceptions to submitting in person

There are exceptions to having to submit your fresh claim in person:

- **inability to travel.** If you have a "disability or severe illness and are physically unable to travel" you need to contact the Further Submission Unit and discuss submitting by post. You will need to provide medical evidence that "clearly indicates a disability or severe illness that results in [you] being physically unable to travel to Liverpool".
- **Ongoing judicial review.** If you have an ongoing judicial review challenging a

removal or enforcement decision, or if you have been granted permission to proceed with a judicial review, you can submit by post.

- **If you are detained** you need to ask your Home Office caseworker how you can submit further submissions (or ask your lawyer to do this for you, if you have one)
- If you are serving a criminal sentence in **prison**. In this situation, you submit further submissions by post or fax to the Criminal Casework team.
- If you are in the **Family Returns Process** you may be able to submit your submissions at your usual reporting event. You need to discuss this with your Home Office caseworker.
- If your submissions are based only on **Article 8 family/private life** (and not a protection claim), you can submit by post. See the link to guidance notes at the Fresh Claims page of the online Toolkit on how/where to apply. Read Toolkit section on Article 8 for more information on these applications.

## **Fresh claims and forced removal**

The immigration rules say that *"An applicant who has made further submissions [to be considered as a fresh claim] shall not be removed before the Secretary of State has considered the submissions under paragraph 353 [the fresh claim legal test] or otherwise."*

But submitting further evidence does not mean you are safe. The Home Office may issue the letter saying your further submissions are not considered to be a fresh claim at the same time as detaining you and/or informing you they intend to remove you. They may also attempt removal if you cannot prove you have submitted a fresh claim – so make sure you have evidence of receipt by the Home Office.

If you have already been told you are going to be removed, and then you submit further evidence, the Home Office will typically consider and refuse the further evidence very quickly (as not being a fresh claim) and say that they still intend to remove you.