

Asylum - introduction

What is asylum?

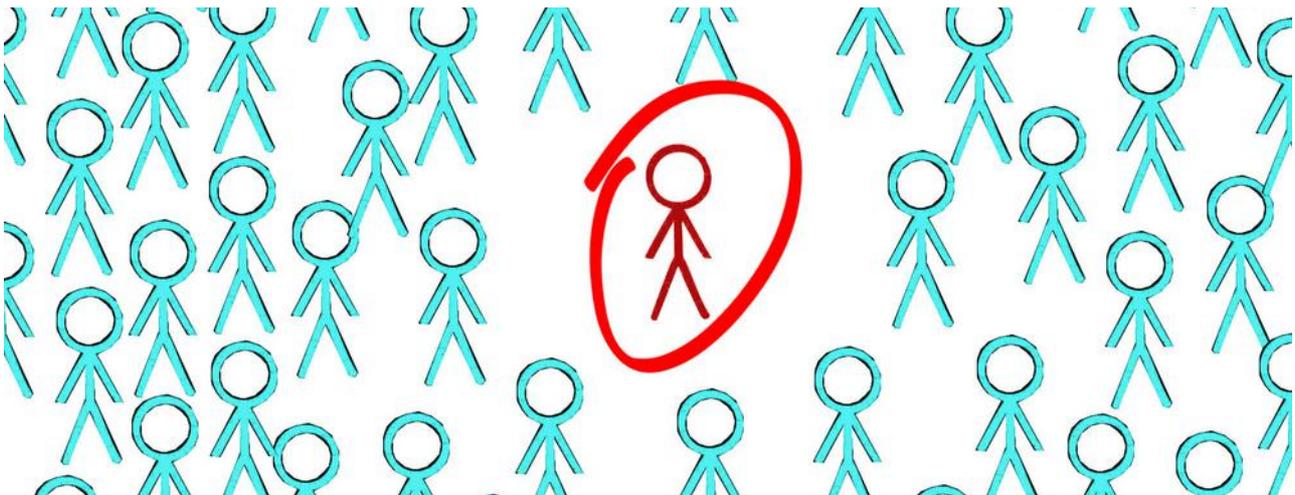
Asylum claims are considered under the 1951 UN Refugee Convention, and its incorporation into European and UK immigration law.

To be granted asylum (to get refugee status), it's necessary to show that you have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group you are outside your country of origin or normal residence and you cannot get protection in your own country.

Do you have a well-founded fear (will it happen?) of persecution (what will happen?) for a Refugee Convention reason (why will it happen?) and no protection available to you in your home country (what will stop it happening?).

Persecution

Persecution, in terms of claiming asylum, is serious, targeted mistreatment of an *individual* because of who they are, or what they do, or what people think they are or do.



The Refugee Convention itself does not define "persecution". The Refugee Convention is international law. It is translated into EU law as the Qualification Directive. This is part of UK law (though this is likely to change once the UK leaves the EU) under rules known as the Qualification Regulations. The definition of persecution in the Qualification

Regulations (and any relevant case law) is what the Home Office should use to assess whether a person is at risk of persecution if removed from the UK.

The Qualification Regulations state:

5.— (1) In deciding whether a person is a refugee an act of persecution must be:

(a) **sufficiently serious by its nature or repetition** as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms(1); or

(b) an **accumulation of various measures**, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).

(2) An act of persecution may, for example, take the form of:

(a) an **act of physical or mental violence, including an act of sexual violence**;

(b) a **legal, administrative, police, or judicial measure** which in itself is discriminatory or which is implemented in a discriminatory manner;

(c) **prosecution or punishment**, which is disproportionate or discriminatory;

(d) **denial of judicial redress** resulting in a disproportionate or discriminatory punishment;

(e) **prosecution or punishment for refusal to perform military service** in a conflict, where performing military service would include crimes or acts falling under regulation 7 [exclusion clauses, see below]

(3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention [reasons of race, religion, nationality, political opinion or membership of a particular social group].

As you can see above, the Regulations state that persecution consists of an act that is **“sufficiently serious by its nature and repetition as to constitute a severe violation of a basic human right”** or **“an accumulation of various measures”**.

Discrimination is not the same as persecution, but if it is repeated or is very serious, it may then be considered persecution.

Many people seeking safety in the UK are fleeing war and widespread violence. This in itself does not mean you can be granted protection under the Refugee Convention (given “refugee status”). There are other kinds of protection for people in this situation, but the UK government has a very high threshold of how bad and widespread the violence has to be,

how many civilians are affected by it, to give protection to people fleeing war and violence. See *Indiscriminate violence* section below.

Well-founded fear

An asylum claim should be based on a “well-founded fear” of persecution if you were returned to your country of origin/country of residence. This means you do not need to show that the persecution would definitely happen, but that there is a **real risk** it could happen.

Having been persecuted in the past does not necessarily mean you will get refugee status. You need to show there is a **future** risk.

To show this fear is well-founded, you will need to provide **evidence**.



The evidence that everyone has is their story – what has happened to you, what have you been threatened with, what has happened to your family/colleagues/people you know – do these things mean you are at risk? Why did you leave? Why can't you go back?

In most cases, the UK Home Office (the government department who makes the decision on your asylum claim), will not believe your story. If you are able to go to court and appeal the Home Office refusal of your claim, the judge may also not believe your story.

Try and obtain other evidence to support your story. You should not wait for the Home Office or courts to say they do not believe you before you try and get evidence to support what you have said.

Are there witnesses to things that happened to you? Have you got documents that prove any part of your story? These might include arrest warrants, court documents, letters from friends/organisations showing you are in danger. Is there newspaper coverage of an event

you are talking about? Are there human rights reports that show the situation in your country is like you say it is?

Grounds for an asylum claim

To qualify for refugee status, you need to show that the reasons for which you have been persecuted or will be persecuted come under one of the Refugee Convention grounds: reasons of race; religion; nationality; political opinion; or membership of a particular social group.

You do not need to specify or say in legal language which Refugee Convention grounds you are applying under. Your case may actually come under more than one of these grounds. You tell the Home Office your reasons for fleeing, and they then consider which grounds this comes under. If you feel you have been refused because they applied the wrong grounds, this could be challenged.

Nationality, race, and religion are relatively straightforward grounds (if often difficult to evidence), but imputed beliefs and particular social group require further explanation.

Imputed identity or beliefs: what people think you are or do

“Imputed” identity or beliefs means what people think you are or do. What people think you are, or do, could put you at risk of persecution even if it’s not true.

For example, if your local community *thinks* or says you are a Christian or an atheist, this may put you in danger even if you are not actually a Christian or atheist. If your family and neighbours *believe* you are gay or lesbian, you might be at risk irrespective of whether you are gay or straight. You may not actually be a member of an at-risk political group, but someone might spread rumours that you are, to try and get you in trouble.

Imputed beliefs might be a factor if a family member or friend is politically active or a member of a religious minority, and it is assumed you also hold these beliefs (this often applies to women asylum applicants). It may be because you are a gay rights campaigner, and therefore would be at risk in a homophobic country because people assume you are gay. Or it may be that because of your lifestyle (for example, you are unmarried in a country/culture where this is unusual) people assume you are gay and you would be at risk of persecution because of that.

Imputed beliefs may be assumed because of where you live, the job you do, and many other things outside of your control.

Particular social group (PSG)

Particular social group is the most complicated area of the Refugee Convention grounds. This is because it is quite vague and can cover a variety of situations. This category is heavily reliant on case law to explain what it currently means. Case law is the body of

available writings explaining the verdicts in a case, and is used to explain the meaning of laws and policy.

Gender and **sexuality** are not distinct Refugee Convention grounds but come under particular social group. Gender as a particular social group needs to be more narrowly defined than just “being a woman” or “being a man”. A certain category of women or men who face gender-specific persecution may fall under this category, such as “women at risk of domestic violence in Pakistan”.

The category of particular social group is particularly important when dealing with non-state actors of persecution (see below), because it can be argued by the Home Office that while a person may be at risk, it is not for a Refugee Convention reason; therefore the UK has no obligation to offer protection. This may include claims involving domestic violence, honour killings, and gang violence/blood feuds.

Who are you at risk from?

You may fear persecution from the state and/or its agents such as the army or the police. If this is the case, it is fairly clear why you would be “unable or unwilling” to seek protection from the state, to use the words of the Refugee Convention.

You may fear persecution from people that aren't officially recognised as the state, but are the de facto state (they are in effective control of a country or part of the country).

Examples of this could be Al-Shabaab in areas of Somalia that it controls, or ISIS in Iraq. Again, it should be fairly easy to explain why you cannot get protection from the 'state' in these circumstances.

Persecution might also come from “**non-state actors**”, such as a member of your family or community, a gang, religious or political opponents.

To qualify for refugee status because you fear persecution from a non-state actor, you must show that you **cannot be protected from this persecution by the state**. This may be because there is no protection available from your government (for example, no refuges or facilities to protect women fleeing domestic violence), or it may be that asking for protection would put you in danger (for example, if the person you are trying to get protection from has connections in the government).

Internal relocation

Another factor that will be considered when deciding if refugee status is needed is whether there is **somewhere else in your country you could go and be safe**.

This is frequently argued by the Home Office – they may accept that you would be at risk in your home region of Afghanistan, for example, but argue that you would be safe if you relocated to the capital Kabul. Or accept that you may be at risk of persecution because of your clan identity in Mogadishu (capital of Somalia), but argue that you would be safe in

Somaliland because your clan has protection from a majority clan there.

To show that internal relocation is not going to protect you, you would either need to prove **that the risk you face would follow you to where you were relocated** (e.g. you would be tracked down by the person trying to harm you), or that you may be safe from persecution but other risks would present themselves.

This may be because you have no family or social networks in the place it is being suggested you could internally relocate to, and could not safely begin a new life there. Economic and social factors should be considered here – would you be able to make a living if you didn't know anyone and had no social, religious or ethnic connections? If you couldn't make a living, what would happen to you?

The test that is applied is whether asking you to relocate within your country would be “*unduly harsh*”.

Indiscriminate violence

Refugee status should be granted if you can show you are at risk of serious, targeted mistreatment of you as an individual because of who you are, or what you do, or what people think you are or do. If you are fleeing war or violence that is threatening/harming many people - not you specifically - you may not qualify for refugee status.

You may, instead, have your case considered under **Article 15c of the Qualification Directive**, which is the interpretation of the Refugee Convention in EU (and therefore UK) law.

Article 15c refers to a “*serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*”

This is different from the specific threat to an individual covered in the Refugee Convention. Article 15c covers situations where civilians are at serious risk simply by being present in a very dangerous situation of armed conflict where indiscriminate violence is widespread.

Very few situations have been ruled to reach this high threshold, but if they have then *humanitarian protection* may be granted.

Exclusion from protection

In some cases, the Home Office may take the view that a person should be excluded from protection under the Refugee Convention (excluded from being granted refugee status and humanitarian protection).

This can happen in cases where the person has committed a serious criminal offence, or where the Home Office considers they may have been involved in human rights violations in their country of origin. This is a broad definition, and can extend to people who were

employed in a wide range of roles in the government in their countries of origin if that government was involved in human rights abuses.

One stage of the process where the Home Office will try and find out if the exclusion clause applies to you is during the screening interview. They will ask you questions about criminal convictions, arrest warrants, involvement in terrorism, detention as an enemy combatant and encouragement of hatred between communities. The Home Office will also seek this information from elsewhere if they suspect it to be the case.

If the Home Office raise exclusion in your case, or if you feel it is a possibility, it is very important to seek legal advice. You can appeal against being excluded from refugee or humanitarian protection, much as you can appeal against a refusal of asylum. Even if an exclusion is upheld, a person may be allowed to stay if they would be at risk if removed from the UK (see *Article 3 Human Rights*).