

# ILPA information sheet

Information sheets provide general information only.

ILPA members listed in the directory at [www.ilpa.org.uk](http://www.ilpa.org.uk) provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at [www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

**Steve Symonds** ILPA Legal Officer 020-4790 1553 [steve.symonds@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

**Immigration Law Practitioners' Association** [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

## Making Further Submissions – Advice to Legal Representatives

30<sup>th</sup> October 2009

On 13 October 2009, the UK Border Agency announced changes about how and where further submissions may be made to it. The changes took effect on 14 October 2009. General information about these changes is available from two information sheets:

- Making Asylum Claims and Further Submissions
- Making Asylum Claims and Further Submissions 2

### **WARNING:**

ILPA has produced this information sheet to assist legal advisers and representatives. Making further submissions is regulated under the Immigration and Asylum Act 1999, and advising or assisting someone about making further submissions may be a criminal offence if you are not authorised to provide this advice or assistance.

This information sheet provides general information only. Individuals and those not authorised to give advice or assistance on these matters are strongly advised to seek legal advice and are welcome to provide this information sheet to any legal adviser dealing with the case.

### **The changes that have been made**

There are three changes that affect further submissions. These are briefly described in the following bullet points. Some further information is then given under separate headings below. However, the policy position of the UK Border Agency as it is set out in the relevant asylum process guidance is not recounted in this information sheet. Rather the information sheet provides advice to legal representatives about how to deal with the changes that have been made, and provides some additional information that is not included in the asylum process guidance. A link to the guidance is provided in the final section of this information sheet.

From 14 October, UK Border Agency policy is that:

- Further submissions (including fresh claims) in legacy cases can no longer be made by post. These submissions must be made in person by first obtaining an appointment for the claimant to attend the Further Submissions Unit (FSU) in Liverpool.
- Further submissions (including fresh claims) in New Asylum Model (NAM) cases can no longer be made by post. These submissions must be made in person at a regular reporting event or by making arrangements in accordance with regional policy.
- Further submissions, whether in legacy or NAM cases, can now be made on a standard form.

ILPA has protested about these changes, and the fact that we were not informed of them until 13 October – they day before they took effect. ILPA has also made clear that we do not regard these changes to be lawful. This is discussed further in the sections which follow.

### **Why have these changes been made**

On 13 October, Phil Woolas MP, Minister of State for Borders and Immigration, made a Written Statement. The statement is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/wms-asylum.pdf>

He explained the purpose of the changes as being to ensure that information is “gripped” as quickly as possible.

In addition, the UK Border Agency has said to ILPA that it has had difficulty in dealing with further submissions that consist of nothing more than lengthy country information or otherwise fail to make clear what is the basis on which the claimant is now seeking leave to remain in the UK.

### **Whether to use the new standard further submissions form**

A copy of the standard form, and guidance that has been issued, is available at the link provided in the final section of this information sheet. There is no legal requirement that the form be used. ILPA has made this plain to the UK Border Agency, and the UK Border Agency has acknowledged that this is correct.

The standard form itself contains the following statement:

**You are expected to use this form when submitting further submissions. All documentation relating to your claim should be submitted with this form. It is not compulsory for you to use this form but it will help you to decide whether you should make further submissions and to structure those submissions effectively if you decide to make them.**

While it is stated that the form will help structure further submissions, this statement is not necessarily correct. Legal representatives should consider carefully the substance of the further submissions that they wish to make. In many cases, especially where there is a need to make reference to a range of information, it may be that sticking to the form merely produces further submissions that are disjointed and are not as persuasive as would be achieved by simply writing a letter that addresses all of the relevant information (both new and old) in a structure that is specifically designed to best present the submissions to be made. In the past, similar problems with using a standard form have led to the withdrawal of the standard form for making initial asylum claims (often referred to as a Self-Completion Questionnaire).

Whether representatives choose to use the standard form or not, it is the responsibility of representatives to ensure that the further submissions are presented in a manner that best present their client’s case. This means avoiding potential or apparent discrepancies and omissions that may arise from trying to stick to the standard form, or from trying to in part use the form and in part append further information to the form. Whatever approach is taken, it is necessary to recall that making further submissions is not simply an exercise in passing information for the UK Border Agency to consider. It is about presenting that information in a manner that is best able to persuade any decision-maker, who may have cause to consider it, that the client should be granted leave to remain in the UK.

There may be some concern that not using the form may lead to delay on the part of the UK Border Agency in considering the further submissions. There is, however, no justifiable basis for the UK Border Agency to delay considering further submissions simply because the form has not been

used. Moreover, if the form is not suitable for presenting further submissions, using it may create delay – either because the decision-maker finds it difficult to follow the totality of the further submissions being made, or because less persuasive submissions are refused requiring further legal action (whether by judicial review or appeal, depending on whether or not the UK Border Agency accepts that a fresh claim has been made). However, none of this provides any guarantee that the UK Border Agency will not delay considering further submissions, which are not made on the standard form. An option may be to append a blank form to the front of further submissions, and to write “please see appended” in the relevant boxes – much as many representatives used to do with the Self-Completion Questionnaire when this was used for initial asylum claims.

ILPA has informed the UK Border Agency that we do not consider the form to be a useful tool for presenting further submissions, and that we do not generally recommend its use. However, ILPA acknowledges the responsibility upon representatives to make further submissions in a way that properly sets out the basis upon which it is asserted that a decision should now be made to grant their client leave to remain; and, in respect of a fresh claim on either asylum or human rights grounds, to clearly address how the further submissions satisfy the requirements of paragraph 353 of the Immigration Rules. It is not sufficient to merely send country or other information without explaining how this relates to the specific circumstances of the client’s case, as we are informed by the UK Border Agency has been done in some cases in the past.

### **Making further submissions in legacy cases – the UK Border Agency policy**

From 14 October, the UK Border Agency’s policy is that further submissions in legacy cases must be made by the claimant in person at the Further Submissions Unit (FSU) in Liverpool; and that an appointment must be made first. An appointment may be made by telephoning 0151-237 0980. The policy that further submissions must be made in person does not apply in the following circumstances:

- Where there is outstanding litigation (whether judicial review or appeal).
- Where removal directions have been set (including where the claimant is to be removed on a charter flight).
- Where the claimant is detained or in prison.
- Where the claimant is physically unable to travel due to disability or severe illness (medical evidence will be required).

**PLEASE NOTE:** The information initially given on the UK Border Agency website about when that telephone line is open is incorrect. The telephone line is open between 0900 and 1600 hours, Monday to Friday, for making appointments.

Before making an appointment for a client, a legal representative will need to consider how the client will be able to travel to the Liverpool FSU in order to attend it. The follow difficulties may arise:

- The client may be incapable, due to physical or mental disability, to travel to Liverpool.
- The client may be unable to travel because he or she is detained, in prison or in hospital.
- The client may not be able to afford to travel to Liverpool.
- The client may be able to travel and to afford to travel to Liverpool, but may not be able to arrive before a certain time and/or may need to leave at a certain time. It is likely that many of those clients who can afford to travel to Liverpool may be very restricted, because of the cost, as to the method and time of travel that is available to them.
- The client may be impeded from travelling because of child or other care responsibilities, or may be restricted as to when he or she may travel because of limited opportunities to make alternative care arrangements.

The UK Border Agency has confirmed that:

- Those who attend the Liverpool FSU in order to make further submissions will not be interviewed about those submissions. Claimants may be required to establish their identity, and may have biometric information (e.g. fingerprints) taken.
- Interpreters will not be provided at Liverpool.
- No decision will be made on the further submissions at Liverpool. The further submissions will be sent to the relevant Case Resolution Team.
- A written notice of receipt of the further submissions will be provided to the claimant. It may be useful to provide clients attending Liverpool with a written request for such a receipt.
- Dependants are not required to accompany the claimant. However, the UK Border Agency suggests that it would be helpful if a dependant, who has not previously been formally made dependent on the claimant's case, does attend.
- The UK Border Agency will not provide funding for claimants to travel to Liverpool or for any overnight stay that may be required in order to attend an appointment.
- The policy that further submissions must be made in person applies to all further submissions, including where it is merely intended to provide additional information in support of further submissions that remain outstanding.

### **Making further submissions in legacy cases – ILPA's advice**

ILPA does not consider that it is lawful to require attendance at the Liverpool FSU in order to make further submissions. The requirement does not accord with the Immigration Rules (see below); and is not consistent with the broad definition given to 'further submissions' in *R(AK (Sri Lanka)) v Secretary of State for the Home Department* [2009] EWCA Civ 447. The UK Border Agency has stated that if further submissions are posted to it, these will simply be returned without consideration. ILPA does not consider that this is lawful. It may impede, or in some cases preclude, a person from establishing entitlements under international law including under the 1951 Refugee Convention, the Human Rights Act 1998 (and policies giving effect to such entitlements) and the European Qualification Directive 2004/83/EC .

Whether or not an appointment has been, or is to be made for a client, to attend the Liverpool FSU, ILPA recommends that further submissions should be made by recorded delivery. This will ensure that the UK Border Agency is immediately on notice of the outstanding further submissions – whether or not it chooses unlawfully to refuse to acknowledge or deal with these. This may be important if further submissions must be made later (e.g. when removal directions have been set) in order to demonstrate that there has been no delay on the part of the claimant. In legacy cases, further submissions may be sent to the Case Resolution Team whose address is available by entering the client's Home Office reference number at:

<http://www.ind.homeoffice.gov.uk/asylum/oldercases/who-is-processing-my-case/>

For reasons explained in more detail in the paragraphs which follow, the following information may usefully be included in any further submissions sent by post (or by fax):

- Details of any inability or difficulties in attending at Liverpool facing the client (reasons and evidence should be included).
- An explanation of why the requirement to attend Liverpool is unnecessary and will cause delay.
- An explanation as to how the client may be prejudiced by any delay (reasons and evidence should be included).
- An explanation as to the unlawfulness of requiring attendance.

It may be useful to include this information with any further submissions sent in order to persuade the UK Border Agency that it must deviate from its policy, or so as to prepare the way for any judicial review if it refuses to deviate from its policy. If the legal representative is satisfied in the individual case that a judicial review application will be made if the further submissions are simply returned in line with the policy, it would be useful to present this information as part of a letter before action so that the application can be made immediately on return of the further submissions.

If the client is unable or has difficulties in attending, evidence that will be useful to include may include medical evidence (such as a doctor's certificate) demonstrating why the client cannot travel or will have difficulty travelling, details of the client's means and the costs and timetable of travel (and where relevant of overnight stay), and information about child or other caring responsibilities (which itself might include medical evidence concerning the person being cared for).

Given that there will be no interview at the Liverpool FSU, the requirement to attend the Liverpool FSU is to do no more than effect the delivery of the further submissions. Moreover, that delivery will not be to the person who can or will decide the further submissions. The further submissions will have to be internally redelivered to the relevant Case Resolution Team. It is clear, therefore, that the new policy does not achieve what the Minister has stated to be its aim since information can most quickly be "gripped" by it being sent immediately (by fax or recorded delivery) to the decision-maker (i.e. the Case Resolution Team) rather than making arrangements for an appointment in order to hand deliver the information to a third person who must then forward the information on. Representatives may be best advised to draw this to the attention of the Case Resolution Team in any correspondence enclosing written further submissions.

It may also be questioned why there is a need in legacy cases to "grip" information quickly. If the further submissions are to be considered immediately (see also the section on 'section 4 claims', below), this would run counter to the 'Case Resolution Directorate – Priorities and Exceptional Circumstances' policy which sets out the limited circumstances in which a claimant may have his or her legacy case prioritised.

That there will be no interview at the Liverpool FSU indicates the requirement to attend is irrational for the reasons explained in the previous paragraph. Moreover, there is no statutory or other provision in law expressly permitting the requirement. By contrast, paragraph 353A of the Immigration Rules states that procedures for considering further submissions shall be set out in those Rules. The Rules include no such procedures.

In addition, the delay that the new policy position would cause (because an appointment must first be made, and then the information must be redirected following the appointment) may cause significant prejudice to individual claimants. For example:

- A claimant who is destitute and is seeking section 4 support may be caused prolonged destitution or homelessness.
- A claimant who is not able to record his or her further submissions may be at heightened risk of detention for removal because there is no outstanding impediment to his or her removal known to the UK Border Agency.

Any prejudice (e.g. prolonged destitution or detention) may itself be unlawful if this results directly from the UK Border Agency policy to require further submissions to be made in person. However, one reason why a claimant may prefer to make further submissions in person may be to avoid the risk that he or she is detained because the UK Border Agency think there is no outstanding impediment to his or her removal. On the other hand, it cannot be ruled out that someone may be detained when they go to their appointment. Representatives should make arrangements for the client to check-in with the representative after the appointment to confirm that he or she has not been detained.

### **Making further submissions in NAM cases – the UK Border Agency policy**

From 14 October, the UK Border Agency's policy is that further submissions in NAM cases must be made by the claimant in person at his or her regular reporting event, or by appointment made according to regional arrangements. Information should be available from the NAM caseowner. The policy that further submissions must be made in person does not apply in the following circumstances:

- Where there is outstanding litigation (whether judicial review or appeal).
- Where removal directions have been set (including where the claimant is to be removed on a charter flight).
- Where the claimant is detained or in prison.
- Where the claimant is physically unable to travel due to disability or severe illness (medical evidence will be required).

The UK Border Agency has confirmed that:

- Those who attend to make further submissions will not be interviewed about those submissions. Claimants may be required to establish their identity by presenting an ARC card or have biometric information (e.g. fingerprints) taken.
- Interpreters will not be provided.
- No decision will be made on the further submissions at the reporting centre (or other place to which these are required to be personally delivered). The further submissions will be sent to the relevant NAM caseowner.
- A written notice of receipt of the further submissions will be provided to the claimant. It may be useful to provide clients delivering further submissions with a written request for such a receipt.
- Dependants are not required to accompany the claimant. However, the UK Border Agency suggests that it would be helpful if a dependant, who has not previously been formally made dependent on the claimant's case, does attend.
- The UK Border Agency will not provide funding for claimants to travel to a reporting centre in order to make further submissions. However, the UK Border Agency policy on paying for travel for reporting will apply if the submissions are delivered as part of a regular reporting event.
- The policy that further submissions must be made in person applies to all further submissions, including where it is merely intended to provide additional information in support of further submissions that remain outstanding.

### **Making further submissions in NAM cases – ILPA's advice**

In principle, the requirement for further submissions to be made in person is no more lawful in NAM cases than it is in legacy cases (see above). However, representatives will need to consider whether any prejudice to their client is sufficient to merit non-compliance or litigation. If there is no significant prejudice to a claimant in personally delivering further submissions to the UK Border Agency at a reporting event that he or she would in any event be required to attend, ILPA would recommend that this is what is done.

ILPA would nonetheless recommend giving advance written notice to the NAM caseowner that further submissions will be made (and this may usefully be copied to the reporting centre) so that the UK Border Agency is aware that there will be further submissions made before taking a decision to detain the claimant on the basis that there is no immediate impediment to his or her removal.

## **Section 4 claims**

The UK Border Agency has indicated that it will seek to make a decision on further submissions before making a decision on a claim for section 4 support. However, it has not stated that it will necessarily do so. It has also refused to set out any timeframe in which it will deal with section 4 support claims in light of its new policy on further submissions. Representatives assisting clients to make section 4 support claims would be best advised to make express to the UK Border Agency a realistic timeframe (by reference to the immediate or imminent needs of their client, which should where possible be evidenced) in which that support should be provided, failing which an application for judicial review may be made.

## **New UK Border Agency guidance**

The asylum process guidance on Further Submissions has been amended. It is available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/postdecisionrepresentations/guidance/further submissions.pdf?view=Binary>

The standard form and guidance issued by the UK Border Agency for making further submissions are available at:

<http://www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/further-submissions/>