



Legacy Cases 5

3rd July 2008

Previous ILPA information sheets on “Legacy Cases” continue to provide useful information, and this information sheet should be read together with them. All previous information sheets are available at www.ilpa.org.uk/infoservice.html

This information sheet provides information on how and when the Case Resolution Directorate of the UK Border Agency may contact individuals and their legal representatives; and on how individuals and their legal representatives may contact that Directorate.

General information

A short summary of information regarding legacy cases is provided in the General Information section of the “Legacy Cases 4” information sheet which accompanies this information sheet.

Case Resolution Directorate contacting individuals

On 4 June 2008, the Case Resolution Directorate implemented a procedure for notifying individuals when one of the Directorate’s teams begins actively considering the individual’s case. Some individuals will be excluded from the procedure (see below).

Unless someone is excluded, he or she should be contacted in writing shortly after the particular team that is to deal with the case receives the case file. The individual may be sent a questionnaire. However, the Case Resolution Directorate no longer uses questionnaires for all cases. A questionnaire may not be sent if the team thinks they have sufficient information on the case file. If a questionnaire is not sent, a standard letter should be sent instead.

Whether the individual is notified by a questionnaire or standard letter, he or she should at this time be provided with the following information:

- an explanation that the case is now being actively considered
- contact details for the case owner (i.e. the person responsible for handling of the case)
- a standard paragraph about how to obtain legal advice
- details of how the individual can arrange to return voluntarily to his or her home country
- a reminder of the need to ensure the UK Border Agency has all relevant information about the individual’s case within 21 days of the date of the letter

Anyone receiving notice from the Case Resolution Directorate that his or her case is being actively considered should immediately make sure that his or her legal representative is aware of this. If the individual does not have a legal representative, he or she may wish to seek legal advice at this time. If so, he or she should ensure that any legal adviser is aware that the Directorate has sent this notice.

Those who are not contacted by the Case Resolution Directorate

Some individuals may be excluded from the procedure described above. If any of the following circumstances apply in the individual’s case, he or she may not be notified when active consideration of the case begins:

- the Directorate considers that there is evidence of serious criminality (this is likely to include most convictions which have led to a prison sentence)
- the Directorate considers that there is a serious risk of the person absconding (e.g. because the person has previously absconded or breached reporting conditions)

ILPA information service

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Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

- the Directorate considers that removal or deportation is planned or is imminent
- the Directorate considers that it is clear that the consideration of the case will result in the individual being granted permission to remain in the UK

Some of these circumstances may apply without the individual or any legal representative knowing that they apply – e.g. it may not be known that the Directorate considers there is a serious risk the individual will abscond; or that a removal is planned or imminent. It is safest, therefore, to assume in individual cases that notice will not be given of when the Directorate begins active consideration of the case.

Where the Case Resolution Directorate do not contact the individual

Someone who is to be removed from the UK should normally be given notice of any date that is set for his or her removal from the UK. However, those who are to be removed from the UK may be detained before this notice is given. The notice period may be very short. In many cases it may be too short for an individual to seek appropriate legal advice; and may be too short for a legal representative to make adequate representations to the Case Resolution Directorate. Further information on the notice period is given in the information sheet on “Removals and Judicial Review”. There is a risk, therefore, that some people may be detained for removal, despite the fact that they have never received notification that their case was being considered by Case Resolution Directorate. There are steps that can be taken to mitigate this risk.

One step is for legal representatives to immediately make further representations or fresh claims – whether or not it is known whether the Directorate is currently considering the case. These may need to be updated in the future – perhaps more than once. However, since there is no way to be sure whether the Directorate will contact an individual when it does begin considering the case, it may be reasonable to take this step (if there are good arguments that can be made on the individual case) despite the fact that the step may have to be repeated one or more times.

Another step is to ensure that the individual (and any current legal representative) has a full copy of the individual’s case papers. If the individual has these, it would be advisable to ensure that the papers can be quickly accessed by a reliable friend or supporter in case the individual (or family) is detained without warning. One way to obtain a full copy of papers is to make what is called a Subject Access Request.

Case Resolution Directorate contacting legal representatives

At the same time as implementing the procedure for notifying individuals (see above), the Case Resolution Directorate (which is divided into about 60 teams) implemented a procedure for notifying legal representatives when one of the Directorate’s teams begins actively considering the individual’s case. However, if the individual is excluded from the procedure (see above), notification will not be given to the legal representative.

If a legal representative is to be notified, this may be done by letter or by telephone. Where possible, the particular team should provide the representative with a summary of the relevant documents held on the file. This is to help the representative assess whether further representations or evidence are required on the case.

Note of caution

It is not possible to predict whether a particular case is one where the Case Resolution Directorate will notify the individual or any legal representative when it begins to actively consider the individual case. If, therefore, there is important new information that the Directorate should consider, it is not safe to simply wait to be told that the case is now being considered.