

MEDICAL EVIDENCE (NON-MEDICAL FOUNDATION CASES)

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Introduction

This instruction does not relate to non-asylum medical claims, which are considered by Managed Migration (NCC5).

This instruction provides guidance on handling and considering asylum claims and Active Review applications, where a applicant states that he intends to submit a medical report in support of his claim, or where such a report has already been submitted.

This instruction does not apply to cases where the Medical Foundation is involved. For guidance on handling cases which have Medical Foundation involvement see Medical Foundation Cases and also the Asylum Instruction on The Medical Foundation for the Care of Victims of Torture.

The Difference between Medical Foundation and Non Medical Foundation Reports

All medical evidence and reports submitted at the initial stage will be considered when assessing a claim. However, the UK Border Agency recognises the particular expertise of the Medical Foundation (MF) in identifying and treating survivors of torture. For this reason, special arrangements have been made with the Medical Foundation in handling cases with Medical Foundation involvement.

The procedure for deciding whether to delay the consideration of a case in order for a medical report to be submitted differs from the process relating to medical evidence received from applicants treated by the Medical Foundation.

Determining Whether to Allow Time for Submission of Medical Evidence

When deciding whether or not to delay the consideration of a case, pending receipt of a medical report, the guiding principle is that the Asylum Casework Directorate or New Asylum Model should act reasonably.

The decision to delay consideration of a case pending receipt of medical evidence needs to be made on a case-by-case basis. Officers should assess the importance of the medical evidence to the claim/application, and seek advice from a Senior Caseworker if in doubt.

Where the medical report is believed to be essential to the consideration of the case, the officer should allow reasonable time for it to be submitted before a decision is made. For guidance on setting time limits see [Setting Time Limits For Submission Of Medical Evidence](#).

Evidence of Intention to Submit a Medical Report

The officer should establish whether there is any evidence that the applicant has seen or will be seeing, a doctor or consultant. Appointment letters, or letters pertaining to assessment or treatment should be photocopied and placed on file. In NAM cases, the Case Management Plan should be updated accordingly. Officers should check whether or not the applicant declared a medical condition at the first opportunity. In NAM cases, the Case Management Plan should be updated accordingly. For guidance on the implications of evidence of intention to submit a medical report, see [Medical Issues Raised at the Substantive Interview](#).

Length of Time Already Spent in the United Kingdom

It should be noted that applicants who have been in the United Kingdom for only a very short time might not have had an opportunity to seek a medical report. Equally, it is reasonable to expect that a applicant who has been in the country for many months should have been able to arrange for a medical report to be submitted prior to a decision being made.

Setting Time Limits for Submission of Medical Evidence

It is **not** acceptable for a case to be pending indefinitely whilst awaiting receipt of medical evidence. The New Asylum Model or Asylum Casework Directorate is entitled to set a reasonable time limit for the receipt of medical evidence, after which the case will be decided. It is not possible to state a time limit which would be appropriate for all cases, and therefore, **officers should set a time limit on a case-by-case basis, in consultation with a Senior Caseworker and the Team Leader**. A time limit of five to ten working days would usually be considered reasonable; however this could be extended in exceptional circumstances, depending on the particular details of the case.

It should be noted that the requirement for the UK Border Agency to act reasonably takes precedence over the need to achieve UK Border Agency targets, notwithstanding the importance of UK Border Agency targets.

Implications for Target Dates

By agreeing to wait for medical reports, the projected decision date in New Asylum Model cases (e.g. Day 11 for segment 4 cases) or decision target date in ACD (e.g. "2 Months") may be missed in some cases. For this reason, the Team Leader should be consulted regarding the target date, and alerted to the possible missed target. In New Asylum Model cases, the Case Management Plan should be updated to reflect this.

Requests to Submit Medical Evidence During Asylum Process

Request Received before Substantive Interview Date

The asylum interview should not be delayed pending the receipt of a medical report unless there is evidence that a medical condition may prevent the applicant from attending the interview.

Medical Issues Raised at the Substantive Interview

Officers should check the case file prior to interview to see whether evidence has been submitted indicating that the applicant has requested to submit a medical report, or that the applicant has approached a medical practitioner, or may require particular care during the interview.

Officers should read the Screening Interview Record and note any previous mention of a medical condition, medication or other treatment.

Where applicants raise medical issues for the first time at interview, interviewing officers will need to ascertain why this information has not been mentioned previously. Where the applicant failed to mention medical issues at the screening interview, the reason for this should be fully explored at the substantive interview.

The interviewing officer should aim to establish the applicant's current medical condition, their current medication and treatment, and when and where they last received medical treatment. This information should be recorded on the Interview Record.

For further guidance, see Asylum Instruction on Conducting the Asylum Interview.

Where the notification to submit a medical report is made during the interview, and there is no evidence on file of intention to submit a medical report, the officer should first consider whether it is likely that receipt of the medical report is essential to the consideration of the case. The officer should find out from the applicant/legal representative the reason why they have not requested to submit a medical report earlier in the asylum process.

If the applicant/legal representative indicates that they intend to submit a medical report, the interviewing officer should make a note of this on the interview record. The officer should photocopy any evidence of a medical appointment, and place this on file. The applicant/legal representative should be asked why they believe a medical report would be important to their claim. They should be informed that the medical report is needed as soon as possible, and that a decision will not necessarily be delayed. The officer should inform the applicant/legal representative by separate letter of the deadline for receipt of the medical report, following consultation with a Senior Caseworker and the Team Leader. For further guidance, please refer to Setting Time Limits for Submission of Medical Evidence.

Case Owners should where the applicant expresses that they will be seeking a medical report to confirm that they have been tortured be directed to seek that their legal representatives or health professional refer them to the Medical Foundation.

Request to Submit a Medical Report Received After Interview

Where a notification of intention to submit a medical report is received after interview, officers should follow the guidance in Determining Whether to Allow Time for Submission of Medical Evidence. However, it should be noted that if medical issues were being raised for

the first time at this point, officers would need to carefully examine the context of the request, and consider whether the medical report is essential to consideration of the claim.

If, despite the late request to submit a medical report, it is believed that the medical evidence is essential for a sound decision to be made, consideration of the case may be delayed for a short period (if necessary agreed in consultation with a Senior Caseworker and/or the Team Leader). This time would not usually exceed a period of five to ten working days, except where there are exceptional circumstances. It is not the duty of the officer to make a clinical judgement about potential medical evidence only to allow a reasonable time limit for it to be produced. For further clarification, please refer to the guidance in *Determining Whether to Allow Time for Submission of Medical Evidence and Setting Time Limits for Submission of Medical Evidence*.

Where it has been Decided to Delay Consideration of a Case Pending Receipt of a Medical Report

Where a Senior Caseworker and the Team Leader agree that the medical evidence is essential to the consideration of the claim, the officer should minute the case file, making a recommendation outlining what evidence is expected and why it is important to the claim (i.e. why consideration of the case should be delayed).

The officer should write to the applicant/legal representative, informing them of our intention to delay consideration of the claim, and advising them of the deadline for receipt of the medical evidence.

The applicant/legal representative should be advised that if the medical evidence has not been received by this date, the claim will be decided on the basis of the information already on file. The case file should be minuted to this effect.

Asylum team Case Owners are to update the Case Management Plan and if appropriate amend the reporting regime (depending on nature of illness/injury the report will document).

Suggested Wording for Letter to Applicant/Legal representative

(Note: For ACD the telephone number referred to in the text is the general contact number for the UK Border Agency which appears at the top of the letter, Case Owners should insert their contact number.)

Dear **NAME**

Thank you for your letter of **DATE** in which you requested that the UK Border Agency temporarily postpones taking a decision on your/your client's case, pending receipt of a medical report. This is to inform you that your request has been agreed.

Please ensure that the report is submitted by **DATE** in order for us to consider it as part of the claim. If the report is received after this date, it may not be considered.

If you have any difficulties meeting this deadline, please contact me at the number given on this letter.

Yours *sincerely/faithfully*

Officers Name

Address of unit [for New Asylum Model cases only]

Where a Medical Report is Received after the Agreed Time Limit

Receipt of Medical Report Prior to a Decision Being Made

If the medical report is submitted after the deadline, officers should still consider this evidence if the decision has not yet been made.

Receipt of Medical Report After the Case has been Decided but not Served

If the officer receives the medical evidence after the case has been decided, but prior to the decision being served, the evidence should still be considered. If the officer is minded to change the decision, the new decision should be implemented, and the case file fully minuted to explain the change. CID records should be amended

Where the decision remains unchanged, the officer should amend any Reasons for Refusal letter to acknowledge that the report has been taken into account in the consideration process.

Receipt of Medical Report after Service of Decision

If the officer receives the medical evidence after the decision has been made and served, it should normally be considered at the appeal stage.

Where the case is Appeal Rights Exhausted, a designated Case Management Unit handling further representations should consider it.

Consideration of Medical Reports

When medical reports are received, they must always be given consideration.

Officers should ascertain whether a doctor who has been personally involved in the applicant's medical assessment and/or treatment has prepared the medical report. A hand-written note is not acceptable. A medical report should be printed on letter-headed paper, showing the full address, telephone and fax numbers of the hospital or practice. It may include the curriculum vitae of the author. The report should be signed by the medical practitioner.

The officer should decide the degree of weight that should be attached to the medical report, in the context of the overall claim. A medical report from the applicant's General Practitioner should be taken into account; however, reports from a medical consultant or specialist would normally add greater weight.

Officers are reminded that, in considering a medical report, they must avoid making clinical judgements about medical evidence. Officers should consider its relevance to the overall claim, once they have accepted its authenticity and the credentials of the practitioner. (See Determining Credentials of Medical Practitioners)

Psychiatric medical reports will sometimes attribute mental health problems to events experienced in the country of origin, which led to the asylum/human rights claim. In cases such as this, more weight will be attached to a report from a consultant psychiatrist, who is trained to diagnose, assess and treat mental health problems, than would be given to a report from a General Practitioner without such specialist training.

Most frequently, a medical report will simply confirm the existence of the medical condition cited by the applicant. Confirmation of a medical condition would not, in most cases, result in a grant of leave but should be considered as a Human Rights claim even if the medical condition is not explicitly raised in association with Article 3 or 8 of the UNHCR. For guidance as to when a medical condition may lead to a grant of leave (under Article 3 or 8 of the ECHR) see the Asylum Instruction on Considering Human Rights Claim: for further information about medical cases see the Immigration Directorate Instructions - [Chapter 1 Section 8](#).

Determining Credentials of Medical Practitioners

Officers are able to check whether a doctor or medical practitioner is registered on the General Medical Council. This can be checked on the [GMC website](#) by entering the doctor's name, GMC reference (and year of qualification if available). If the practitioner is registered, this will be confirmed on the website. If the name does not appear on the register, this may not necessarily mean the doctor is not registered and officers should contact the help number on the website for further information. If the GMC reference number is not known, the officer should contact the GMC helpline. The results of a search can be given over the telephone. The helpline number and details of opening times is detailed on the website.

Any information obtained from the site, or through contacting the GMC, should be recorded on the file and, in New Asylum Model cases, on the Case Management Plan.

Claims Considered under Fast Track Processes

Applicants Detained at Oakington (Non-NSA Cases)

Asylum applicants considered under the fast track process are usually detained, and are necessarily required to be suitable for this purpose. Therefore, applicants or their legal representatives seldom request to submit medical reports.

Where a applicant, or his legal representative, does request that an asylum decision be postponed, pending submission of medical evidence in support of an asylum claim, the legal representative should be asked, in writing, to specify (also in writing) how a medical report would be likely to assist their client's case. The legal representative should be given two working days to comply with this request, in accordance with the standard provision for further representations following interview within the Oakington Process.

When the officer has received a medical report, and is satisfied as to its authenticity, it should be fully considered, in the same way as any other relevant evidence.

Where a legal representative does commission a medical report from a medical agency outside the fast track process, this will impact on the fast track time scale. In this case, the officer must consider whether to grant an extension of time or to take the applicant out of the process, in consultation with a Senior Caseworker. For guidance on handling NSA cases detained at Oakington, see Applicants detained at Oakington.

Applicants Detained at Harmondsworth and Yarl's Wood Removal Centres

Harmondsworth and Yarl's Wood officers should follow their own guidelines.

Applications from Those Entitled to Reside in a Designated NSA Country, or Potential Case-by-Case Certification Cases

Case handling prior to interview

Where a applicant/legal representative indicates an intention to submit medical evidence prior to an asylum interview they should be advised to submit the evidence for consideration as soon as possible and that the decision will not necessarily be delayed to await the medical report. They should further be advised to confirm their intention in writing, together with the reasons why the medical evidence is important to the case.

Applicants detained at Oakington

Where a legal representative has indicated that they will submit a medical report, and requests the postponement of a decision, they should be asked in writing (via fax) to specify (also in writing) how a medical report would assist their client's claim. This should be received within the two working days given at Oakington for further representations to be made.

Non-detained claims

Where a legal representative has indicated that they will submit a medical report and requests the postponement of a decision, they should be asked in writing, to specify (also in writing) within five working days, how a medical report would assist their client's claim.

Determining whether to certify potential NSA cases

On receiving a response from the legal representative about the reasons for obtaining a medical report, the officer should consider whether it is arguable that such a medical report

would prevent an appeal from being “bound to fail”. Where the claim would be clearly unfounded regardless of the proposed medical report, the decision to refuse should not be postponed and the claim should be certified. The Reasons for Refusal letter should acknowledge the request to obtain a medical report and set out the reasons why such a report, obtained for the reasons explained by the legal representative, would not provide evidence that the claim was not clearly unfounded.

Where medical reports have been made available prior to a decision being made on the case then these should be fully considered in the decision making process. The Reasons for Refusal letter should address all key points arising from the medical report. Officers should treat medical evidence as they would all other evidence. If such evidence, after scrutiny, means that an appeal would not be “bound to fail” then the claim should not be certified. For further guidance, see the Asylum Instruction on Certification Under Section 94 of the Nationality, Immigration and Asylum Act 2002.

Children

Claims from children who have provided evidence that they intend to submit a medical report in support of their asylum claim must be dealt with in the same way as those from adults. Medical reports relating to child applicants should be considered in the same way as those relating to adults.

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	SL	20/03/07	New web style implemented
2.0	BN	21/11/08	Update branding only