

THE MEDICAL FOUNDATION FOR THE CARE OF VICTIMS OF TORTURE

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MEDICAL FOUNDATION

1. Introduction

The Medical Foundation for the Care of Victims of Torture, founded in 1985, is a registered charity providing medical and social care, practical assistance, and psychological and physical therapy to survivors of torture. The Foundation is funded by voluntary contributions from individuals and trusts. Its work has received recognition and support from a wide range of organisations, including the United Nations, the European Union, the British Medical Association and the Council of Churches in Britain and Ireland.

1.1. Medical Foundation guidelines on examining torture survivors

Asylum casework staff have access to a booklet published by the Medical Foundation called *Guidelines for the examination of survivors of torture (second edition)*. The booklet gives guidance to doctors on writing medical reports requested by representatives of asylum claimants who allege torture. The booklet is available to caseworkers, both in the ACD library on the 14th Floor, Lunar House and from senior caseworkers based in Liverpool.

The guidelines provide advice about the long-term medical and psychological effects of torture and how these influence the asylum seeker's ability to present their case. They should assist caseworkers to understand the context in which medical reports are prepared by the Foundation and help caseworkers to give proper weight to the evidence in the reports. UK Border Agency considers that the guidelines are fair.

1.2. Interviewing survivors of torture

The traumatic nature of torture means that particular care and sensitivity is required when interviewing claimants who claim to be victims of torture. Caseworkers should ensure that they are familiar with the best practice guidance which can be found at **Annex C** of the **Interviewing API**. Caseworkers should note that not all forms of torture result in physical scars or injuries that are identifiable during a medical examination or are visible to an interviewing officer.

A torture victim's potential shame, distress, embarrassment and humiliation about recounting their experiences are difficulties which may need to be overcome. They may find it particularly difficult in the atmosphere of officialdom. Those who have suffered at the hands of their own authorities may distrust officials here, despite travelling to this country to seek refuge. In many ways, this is an intractable problem but common sense, awareness and sensitivity can reduce its influence.

2. Medical Reports

In producing a medical report, the medical expert will assess consistency between the claimant account of torture and the signs and symptoms of torture apparent on examination.

2.1. Medical Foundation procedures

The Asylum Policy Manual section *applications - Medical Foundation cases* explains how the Medical Foundation's procedure operates. Essentially, there are three stages in the Foundation's consideration of referrals:

- Examination of the case on the papers to see whether there are grounds for consideration
- A 'pre-assessment' appointment with a MF caseworker, who determines whether a full assessment by a medical practitioner is required
- Full assessment by a doctor with a view to completing a medico-legal report.

The Medical Foundation normally informs claimants and their representatives of the results of the first two stages within 10 working days of each of the appointments.

2.2 Cases that have been accepted for pre-assessment by the Medical Foundation

Subject to paragraph 2.4 below all cases that have been accepted for pre-assessment by the Medical Foundation will be placed on hold pending the outcome of the pre-assessment, as long as evidence of the appointment is provided in writing. Such evidence will usually take the form of correspondence from the Medical Foundation to the claimant or representative. If the claimant's representative does not confirm to UK Border Agency in writing within fifteen working days of the pre-assessment appointment that the claimant will have a full medical assessment with a doctor, then UK Border Agency will normally consider the asylum claim without further delay unless there are exceptional reasons to keep the claim on hold that are supported by appropriate evidence such as a copy of correspondence from the Medical Foundation where the Foundation requests further details before reaching a decision. Where a medical certificate is produced as evidence of an illness that has prevented the claimant from attending a pre-assessment appointment with the Foundation, the claim may be kept on hold. In such circumstances, however, the representative should be asked to submit correspondence from the Medical Foundation confirming that the pre-assessment appointment has been delayed due to the claimant's ill-health.

If the Foundation agrees that a full medical assessment is necessary, UK Border Agency will continue to defer consideration of the claim until the results of that assessment (including any medico-legal report) are known or until the claimant ceases to be a client of the Foundation.

Representatives will be required to submit all correspondence from the Medical Foundation that relates to future appointments and the timescale for completing the report. UK Border Agency will request updates from the claimant or representatives every two months. Failure to respond to a written update request within fifteen working days will normally be taken to mean that the claimant is no longer a client of the Medical Foundation and UK Border Agency may consider the claim without further delay. Please see **APM** section on **Considering Applications - Medical Foundation cases** for further guidance.

2.3 Extensions for post-interview representations

Special arrangements have been agreed to allow requests for an extension of time for post-interview representations to be submitted where the claimant has obtained an appointment with the Medical Foundation. Such requests should be carefully considered and, where supported by written evidence, refused only in exceptional circumstances.

Where a credible account of torture is given during interview, caseworkers should consider suggesting that the claimant may wish to approach the Medical Foundation for assistance. However, it is ultimately for the claimant, in consultation with any legal representative, to decide whether to seek an appointment with the Medical Foundation. UK Border Agency does not insist that a medical report should be submitted when torture has been alleged and will delay consideration of a claim only after confirmation of an appointment with the Medical Foundation has been provided in writing. A medical report may not be necessary if claims of torture are not contested or if caseworkers already intend to grant asylum. In such cases the claimant may still wish to approach the Medical Foundation for care or treatment.

2.4 Granting asylum without the need for a report

If caseworkers are minded to grant asylum they may do so without holding the file for a medical report, even where the case has already been referred to the Medical Foundation. Caseworkers should refer such cases to a senior caseworker for advice. The Medical Foundation should be informed if asylum is granted in a case they are dealing with so that assessment appointments can be reallocated.

2.5 Production of Medical Foundation reports

A full assessment with a doctor will normally result in the production of a medical report which will be forwarded to the claimant's representatives. Medical reports should be submitted at the earliest opportunity.

The Medical Foundation may choose not to produce a report for reasons that do not reflect adversely on the claimant's claim or credibility. The injuries may have already been documented or could be documented elsewhere, or a report would not make a material difference to the claim (e.g. following a regime change or where the history of ill treatment is not contested). If the Medical Foundation does not produce a report, a letter will be sent to the claimant's representative explaining why.

Not all reports prepared by the Medical Foundation are favourable to the claimant and caseworkers should be mindful that the claimant or their representatives may decide not to submit the report to the Home Office. If a report is not submitted, caseworkers should request a copy.

If a medical report is still not submitted (and neither is a letter explaining why a report has not been produced), caseworkers cannot demand a copy. If the caseworker has no reason to doubt the account of torture, the absence of a medical report need not be significant. Where the credibility of the claimant is doubted, failure to submit a medical report should be considered on the individual facts of the case. If no explanation is forthcoming as to why a report has not been submitted it may be appropriate to raise doubts about credibility in the RFRL on that ground. If an explanation has been submitted the caseworker should assess whether it has merit and whether there is any evidence to support it. If in doubt the caseworker should contact a senior caseworker for advice.

2.6 **Assessment of Medical Foundation reports**

It is important that reports prepared on behalf of the Foundation are understood fully and given proper weight in the consideration process.

It is important to stress that caseworkers must avoid making clinical judgements. If caseworkers have concerns about any medical aspect of a medical report prepared by the Medical Foundation, they should discuss those concerns with a senior caseworker who must refer the matter to the Foundation, in writing to the Legal Officer, before reaching a final decision on the asylum claim. Problems with medical reports should also be reported to the Medical Foundation Enquiry Team, in ACU4 (the Asylum Co-ordination Unit) via a senior caseworker - see paragraph 2.10 below.

Where a claimant submits a report from the Medical Foundation which supports his account of torture, the fact that the claimant has been tortured should be accepted unless there are significant reasons for rejecting that conclusion despite the content of the report. By “significant reasons” we mean cases where significant doubts about the credibility of the claim as a whole could lead to the conclusion that the claimant’s injuries, even though the Medical Foundation considers them consistent with the account given, are not reasonably likely to have been inflicted in the circumstances described. If a Medical Foundation report has been produced in support of an allegation of torture and, having considered the report, the caseworker is minded to refuse the claim, the case must always be referred to a senior caseworker. If it is then decided to refuse the claim, the RFRL should address the contents of the report and explain what weight has been given to the medical evidence. If the allegation of torture has been rejected, the RFRL should give reasons.

Evidence of past torture in the country of origin will be very relevant when assessing whether there is a reasonable likelihood that the claimant would face persecution or torture in that country in the future. However, the existence of a medical report and/or the acceptance of past torture will not necessarily justify a grant of asylum or Humanitarian Protection. For example, conditions in the country may have improved such that past mistreatment does not give rise to a current fear of persecution or, in respect of claims for asylum, there may not be a Convention reason for the mistreatment. The RFRL should explain why there is no reasonable likelihood that the claimant will be at risk in the future.

Refer to the APM section **Considering Applications - Medical Foundation cases** for further guidance.

2.7 **Assessing the overall claim**

Where a medical report is submitted in support of a claim, the claim must still be considered in its entirety and not solely on the findings set out in the medical report. As with all cases, caseworkers will need to assess whether:

- i) there is a **well-founded fear** of **future** persecution (which may include torture) for a 1951 Convention reason (in which case the person will normally qualify to be recognised as a refugee – see the API on **Assessing the Claim**); or if not,
- ii) there are **substantial** grounds for believing that, if removed, there is a **real risk** of the claimant being subjected to torture or inhuman or degrading treatment or punishment (in which case Humanitarian Protection should normally be granted. (Please refer to the APIs on **Humanitarian Protection** and **ECHR**.)

2.8 **Medical Foundation reports submitted following refusal**

Where a Medical Foundation report is submitted after a claim has been refused, the case should be reviewed before any appeal in line with the guidance at 2.6 above, subject to the time constraints of the appeals system. Having considered the report it may be appropriate to grant asylum or Humanitarian Protection (see the APIs on **Assessing the Claim** and **Humanitarian Protection**). If refusal is to be maintained a further letter to the claimant will be required explaining how the report has been considered and why the caseworker has concluded that the original decision should not be reversed.

2.9 **Reporting difficulties to the Home Office
Medical Foundation Enquiry Team (Asylum Co-
ordination Unit)**

The Home Office Medical Foundation Enquiry Team in ACU 4 (Asylum Co-ordination Unit) should be informed of any problems or difficulties that occur when senior caseworkers discuss individual reports with the Foundation. Should a medical report appear to depart considerably from the Foundation's own guidelines, the senior caseworker should also bring it to the attention of the Enquiry Team. If appropriate, the Enquiry Team will bring any general concerns to the attention of the Foundation. In cases where a clinical judgement may be required which the caseworker is not competent to provide, the Enquiry Team will provide guidance on whether it would be appropriate, on a case by case basis, to seek a further expert medical opinion.

Enquiries: Further enquiries should normally be made in writing via a senior caseworker to the Asylum Policy Unit.

Further advice: see also the APIs on **Interviewing, Assessing the Claim, Humanitarian Protection, ECHR and the APM section Considering Applications - Medical Foundation cases** for further guidance.