

## Evidential Flexibility – Level 4 instruction

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**Introduction** In response to significant feedback from the caseworking teams, as well as from our customers, from August 2009 a flexible process was adopted allowing PBS caseworkers to invite sponsors and migrants to correct minor errors or omissions in applications both main and dependant submitted under Tiers 1, 2, 4 and 5.

The instruction enabled caseworkers to query details or request further information, such as a missing wage slip or bank statement from a sequence. Three working days was given to the customer to provide the requested information.

This instruction only applied to cases which would be refused solely on the absence of a piece of evidence or information. Where the application would fall for refusal even if the missing evidence was submitted, a request to submit this further information would not be made.

The introduction of this instruction resulted in a reduced refusal rate. However, those that fell for refusal where multiple pieces of information were missing were often successful on appeal.

Following analysis of allowed appeals and feedback from the National Audit Office (NAO) and Chief Inspector (CI), the original Evidential Flexibility instruction has been reviewed to meet the recommendations put forward in these reports whilst continuing to provide improved levels customer service.

As such, there have been two significant changes to the original Evidential Flexibility instruction:

- 1) The time given to applicants to produce additional evidence has been **increased from three working days to seven working days**; and
- 2) There is **now no limit on the amount of information that can be requested from the applicant**. However, requests for information should not be speculative, we must have sufficient reason to believe that any evidence requested exists.

The evidence requested must only relate to the attributes, not general immigration issues or validation.

### **NOTE:**

**Although deadlines will be given for customers to respond to our request for further information, if additional information is received within UKBA (not necessarily by the relevant case owner) prior to the case being despatched this must be taken into account by the caseworker. This applies even if a refusal decision has been completed but the case has not been despatched on CID.**

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**Procedure** This procedure describes the steps to take when an application has missing evidence or there is a minor error.

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Step	Action						
1	<p data-bbox="534 324 1388 380">Is there missing evidence, or evidence that is not in an acceptable format?</p> <table border="1" data-bbox="598 414 1380 638"> <thead> <tr> <th data-bbox="598 414 901 448">If?</th> <th data-bbox="901 414 1380 448">Then?</th> </tr> </thead> <tbody> <tr> <td data-bbox="598 448 901 571">No</td> <td data-bbox="901 448 1380 571">The case should be considered as normal. The Evidential Flexibility instruction should not be applied.</td> </tr> <tr> <td data-bbox="598 571 901 638">Yes</td> <td data-bbox="901 571 1380 638">Go to step 2</td> </tr> </tbody> </table>	If?	Then?	No	The case should be considered as normal. The Evidential Flexibility instruction should not be applied.	Yes	Go to step 2
If?	Then?						
No	The case should be considered as normal. The Evidential Flexibility instruction should not be applied.						
Yes	Go to step 2						
2	<p data-bbox="534 739 1388 795">Would the application fall for refusal even if the missing information was provided, or minor error corrected?</p> <p data-bbox="534 828 1388 952"><i>An example of this may be where the applicant has failed to provide sufficient evidence to demonstrate that they meet the requirements of the Maintenance (funds) attribute, but in addition has not declared on their application that they have a conviction which is not spent.</i></p> <p data-bbox="534 985 1388 1108"><i>Additionally, if there are any reasonable doubts over the information currently held that would cause caseworkers to seek further verification, this should take place prior to any request for further evidence. This also applies where the application hits a risk profile.</i></p> <table border="1" data-bbox="598 1131 1380 1422"> <thead> <tr> <th data-bbox="598 1131 901 1164">If?</th> <th data-bbox="901 1131 1380 1164">Then?</th> </tr> </thead> <tbody> <tr> <td data-bbox="598 1164 901 1220">No</td> <td data-bbox="901 1164 1380 1220">Go to step 3</td> </tr> <tr> <td data-bbox="598 1220 901 1422">Yes</td> <td data-bbox="901 1220 1380 1422">Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</td> </tr> </tbody> </table>	If?	Then?	No	Go to step 3	Yes	Evidence cannot be requested. The application should be <u>refused</u> . All grounds should be included including any attributes where there was any missing evidence or minor errors.
If?	Then?						
No	Go to step 3						
Yes	Evidence cannot be requested. The application should be <u>refused</u> . All grounds should be included including any attributes where there was any missing evidence or minor errors.						

3	<p>We will only go out for additional information in certain circumstances which would lead to the approval of the application.</p> <p>Before we go out to the applicant we must have established that evidence exists, or have sufficient reason to believe the information exists.</p> <p>Examples include (but are not limited to):</p> <ol style="list-style-type: none"> <li>1) bank statements missing from a series;</li> <li>2) evidence that specific qualifications have been provided previously (either from reviewing CID, or a legacy application, such as globe);</li> <li>3) evidence detailed on a CAS is missing; and</li> <li>4) named deposits on bank statements from an employer, but no wage slips provided.</li> </ol> <p>The evidence listed in the attachment below is not exhaustive, but provides caseworkers with guidance as to the circumstances when evidence can be requested.</p> <p>&lt;Document copied separately:</p> <p>Evidential flexibility - Documents which it maybe appropriate to request for each Tier&gt;</p> <p>Is the caseworker satisfied that the evidence, which is missing exists, or has sufficient reason to believe that it exists?</p> <p><b>Please note:</b> Multiple pieces of evidence can be requested</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If?</th> <th style="text-align: left;">Then?</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>Go to step 5</td> </tr> <tr> <td>No</td> <td>Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</td> </tr> <tr> <td>Unsure</td> <td>Go to step 4</td> </tr> </tbody> </table>	If?	Then?	Yes	Go to step 5	No	Evidence cannot be requested. The application should be <u>refused</u> . All grounds should be included including any attributes where there was any missing evidence or minor errors.	Unsure	Go to step 4
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No	Evidence cannot be requested. The application should be <u>refused</u> . All grounds should be included including any attributes where there was any missing evidence or minor errors.								
Unsure	Go to step 4								

<p>4</p>	<p>If the caseworker is unsure as to whether the evidence exists, they should discuss the issue with their &lt;out of scope&gt;senior manager</p> <p>Where there is uncertainty as to whether evidence exists, benefit should be given to the applicant and the evidence should be requested.</p> <p>Is the &lt;out of scope&gt; senior manager satisfied that the missing evidence exists, or has reasonable grounds to believe that it exists?</p> <table border="1" data-bbox="600 488 1383 862"> <thead> <tr> <th data-bbox="600 488 906 521">If</th> <th data-bbox="906 488 1383 521">Then</th> </tr> </thead> <tbody> <tr> <td data-bbox="600 521 906 584">Yes, or unsure</td> <td data-bbox="906 521 1383 584">Go to step 5</td> </tr> <tr> <td data-bbox="600 584 906 862">No</td> <td data-bbox="906 584 1383 862"> <p>Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</p> <p>Notes should be added to CID to explain why Evidential Flexibility was not applied.</p> </td> </tr> </tbody> </table>	If	Then	Yes, or unsure	Go to step 5	No	<p>Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</p> <p>Notes should be added to CID to explain why Evidential Flexibility was not applied.</p>
If	Then						
Yes, or unsure	Go to step 5						
No	<p>Evidence cannot be requested. The application should be <u>refused</u>. All grounds should be included including any attributes where there was any missing evidence or minor errors.</p> <p>Notes should be added to CID to explain why Evidential Flexibility was not applied.</p>						
<p>5</p>	<p>The caseworker must contact the applicant / rep / sponsor initially by telephone.</p> <p>The applicant / rep / sponsor should be informed that they have a maximum of seven working days to respond i.e. the missing information should be with the UKBA within this timeframe.</p> <p>We will use the date of receipt at UKBA if this cannot be established then evidence of the date of postage should be considered.</p> <p>We strongly recommend that the information requested be sent by next day special delivery.</p> <p>Original documentation must be provided – we will not accept faxed, scanned or photocopied docs.</p> <p>Go to step 6</p>						

6.	<p>When attempting to contact the applicant / representative / sponsor by phone, caseworkers should normally make no more than two attempts using the relevant telephone number (s). If an applicant has a representative the caseworker should initially contact them rather than the applicant.</p> <p>Each time and date of call, and the relevant number contacted should be recorded on CID as if the case is eventually refused, these details will need including in the Immigration History section of the refusal notice.</p> <p>Where ever possible, caseworkers should speak directly to a relevant person, rather than leave a message.</p> <p>Where an email address is held for the applicant / representative / sponsor the telephone call should be followed up by email. As part of the telephone conversation, you should clarify the email address, or if one was not provided as part of the application, ask the applicant / representative / sponsor to provide one (if one exists).</p> <p>Note that there are particular points that need to be made to the applicant / representative / sponsor when requesting further information, these are in the standard telephone scripts below.</p> <p><b>Tier 1 Version</b></p> <p>&lt;out of scope&gt;</p> <p><b>Tier 2/5 Version</b></p> <p>&lt;out of scope&gt;</p> <p><b>Tier 4 Version</b></p> <p>&lt;out of scope&gt;</p> <p>Additionally please see the attached “lines to take” document which should answer common questions caseworkers may be asked in response:</p> <p>&lt;Document copied separately:</p> <p>Standard lines 28 March 2011&gt;</p> <p>Have two attempts been made?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">If?</th> <th style="width: 50%;">Then?</th> </tr> </thead> <tbody> <tr> <td>Yes – &lt;out of scope&gt; senior manager is satisfied an appropriate number of attempts have been made</td> <td>Go to step 8</td> </tr> <tr> <td>Yes – &lt;out of scope&gt; senior manager is not satisfied an appropriate number of attempts have been made</td> <td>Take action as directed by &lt;out of scope&gt; Senior Caseworker</td> </tr> <tr> <td>No</td> <td>Go to step 7</td> </tr> </tbody> </table>	If?	Then?	Yes – <out of scope> senior manager is satisfied an appropriate number of attempts have been made	Go to step 8	Yes – <out of scope> senior manager is not satisfied an appropriate number of attempts have been made	Take action as directed by <out of scope> Senior Caseworker	No	Go to step 7
If?	Then?								
Yes – <out of scope> senior manager is satisfied an appropriate number of attempts have been made	Go to step 8								
Yes – <out of scope> senior manager is not satisfied an appropriate number of attempts have been made	Take action as directed by <out of scope> Senior Caseworker								
No	Go to step 7								

7.	<p>Continue attempting to phone customer.</p> <p>Ensure that all contact numbers available are used and that where multiple attempts are required the calls are made at different times of the day (e.g. do not make two attempts 15 minutes apart)</p> <p>Return to step 8</p>						
8.	<p>Were verbal contact with the applicant / representative / sponsor has been made by phone, you must followed this up via an email.</p> <p>Has the applicant supplied an email address</p> <table border="1" data-bbox="598 656 1380 815"> <thead> <tr> <th data-bbox="598 656 962 689">If?</th> <th data-bbox="962 656 1380 689">Then?</th> </tr> </thead> <tbody> <tr> <td data-bbox="598 689 962 750">Yes</td> <td data-bbox="962 689 1380 750">Go to step 9</td> </tr> <tr> <td data-bbox="598 750 962 815">No</td> <td data-bbox="962 750 1380 815">Go to step 10</td> </tr> </tbody> </table>	If?	Then?	Yes	Go to step 9	No	Go to step 10
If?	Then?						
Yes	Go to step 9						
No	Go to step 10						

<p>9.</p> <p>When attempting to contact the applicant / representative / sponsor by email, one attempt to each available address can be made. Care should be taken to ensure the correct email address is used.</p> <p>Details of the information that has been requested along with details of any emails sent should be recorded on CID, with copies of emails sent and received printed off and stored with the case file. If the case is eventually refused, these details will need including in the Immigration History section of the refusal notice and copies of emails would be included in any bundle.</p> <p>All emails should be sent via the team mailbox, not from an individual's personal mailbox. This allows other team managers and caseworkers to access any responses in the case owner's absence.</p> <p>Caseworkers should refer to the standard email / letter templates below when contacting to customers.</p> <p><b>Tier 1 Version</b></p> <p>&lt;out of scope&gt;</p> <p><b>Tier 2/5 Version</b></p> <p>&lt;out of scope&gt;</p> <p>For Employment Route colleagues it is important that you include (EV) after your team name. This allows ERWT colleagues to sift out this post and ensure that it is prioritised.</p> <p><b>Tier 4 Version</b></p> <p>&lt;out of scope&gt;</p> <p>Additionally please see the attached "lines to take" document which should answer common questions caseworkers may be asked in response:</p> <p>&lt;Document copied separately:</p> <p>Standard lines 28 March 2011&gt;</p> <p>Have the email(s) bounced back / been returned as undeliverable?</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="padding: 5px;">If?</th> <th style="padding: 5px;">Then?</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Yes</td> <td style="padding: 5px;">Go to step 10</td> </tr> <tr> <td style="padding: 5px;">No</td> <td style="padding: 5px;">Go to step 14</td> </tr> </tbody> </table>	If?	Then?	Yes	Go to step 10	No	Go to step 14
If?	Then?					
Yes	Go to step 10					
No	Go to step 14					

10.	<p>Have you been able to contact the applicant / representative / sponsor by telephone?</p> <table border="1" data-bbox="600 275 1378 434"> <thead> <tr> <th data-bbox="600 275 962 309">If?</th> <th data-bbox="962 275 1378 309">Then?</th> </tr> </thead> <tbody> <tr> <td data-bbox="600 309 962 367">Yes</td> <td data-bbox="962 309 1378 367">Go to step 12</td> </tr> <tr> <td data-bbox="600 367 962 434">No</td> <td data-bbox="962 367 1378 434">Go to step 11</td> </tr> </tbody> </table>	If?	Then?	Yes	Go to step 12	No	Go to step 11
If?	Then?						
Yes	Go to step 12						
No	Go to step 11						
11.	<p>As we have been unable to contact the applicant / representative / sponsor by telephone and email, we should issue them with a letter confirming the information that is required.</p> <p>It should be noted that if a letter is sent, the <b>seven day deadline starts from the date of the letter</b> (even if the caseworker has tried to contact the customer via other methods prior to this).</p> <p>Go to step 13</p>						
12.	<p>As we have been unable to follow up telephone contact with the applicant / representative / sponsor by telephone, we should issue them with a letter confirming the information that is required.</p> <p>It should be noted that if a letter is sent, the <b>seven day deadline starts from the date of the telephone call</b> to the applicant / representative / sponsor to request the information.</p> <p>Go to step 13</p>						

13.	<p>When attempting to contact the applicant / representative / sponsor by post, one attempt to the contact address stated on the application form can be made. Care should be taken to ensure the correct address is used.</p> <p>Details of any letter sent should be recorded on CID and copies of letters sent and received should be printed off and stored with the case file. If the case is eventually refused, these details will need including in the Immigration History section of the refusal notice and copies of letters would be included in any bundle.</p> <p>All letters should be sent via 1 st class post.</p> <p>Caseworkers should refer to the standard email / letter template below when contacting customers. The contents of this template should be copied &lt;out of scope&gt; to ensure that a record of this contact is kept on the system. Caseworkers should ensure that the telephone number included on the letter is correct.</p> <p>Tier 1 and 4 – Immigration Enquiry Bureau = 0870 606 77 66 Tier 2/5 – Customer contact Centre = 0114 207 4074</p> <p><b>Tier 1 Version</b></p> <p>&lt;out of scope&gt;</p> <p><b>Tier 2/5 Version</b></p> <p>&lt;out of scope&gt;</p> <p>For Employment Route colleagues it is important that you include (EV) after your team name. This allows ERWT colleagues to sift out this post and ensure that it is prioritised.</p> <p><b>Tier 4 Version</b></p> <p>&lt;out of scope&gt;</p> <p>Additionally please see the attached “lines to take” document which should answer common questions caseworkers may be asked in response:</p> <p>&lt;Document copied separately: Standard lines 28 March 2011&gt;</p> <p>Go to step 14</p>
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<p>14.</p>	<p>The case should be placed in BF for <b>nine working days</b> following existing procedures. <b>Note that two further working days have been added to allow for the movement of evidence from workflow to the caseworking teams.</b></p> <p>Each operational Tier has a specific <b>Evidential Flexibility BF spreadsheet</b> to recorded cases of this type. <b><u>This must be completed fully and care taken to ensure details are correct.</u></b></p> <p><i>The information contained on the Evidential Flexibility BF spreadsheet will be reviewed and reported on to identify the success of the instruction and to determine whether future amendments should be made.</i></p> <p>Go to step 15.</p>								
<p>15.</p>	<p>After nine working days (with the day of contact starting as day one), have elapsed since the customer was contacted (either spoken to verbally on the telephone, time email was sent or time the letter was sent), the case should be taken out of BF and reassessed.</p> <p>If a caseworker receives all of the requested information / evidence before the nine days have elapsed, the case should be considered immediately.</p> <p>Caseworkers should take care to check CID comments to see if additional information has been received.</p> <p>Has the relevant information been received by UKBA?</p> <table border="1" data-bbox="598 1160 1380 1444"> <thead> <tr> <th data-bbox="598 1160 965 1193">If?</th> <th data-bbox="965 1160 1380 1193">Then?</th> </tr> </thead> <tbody> <tr> <td data-bbox="598 1193 965 1256">Yes</td> <td data-bbox="965 1193 1380 1256">Go to step 16</td> </tr> <tr> <td data-bbox="598 1256 965 1352">No and contacted by phone/email</td> <td data-bbox="965 1256 1380 1352">Go to step 16</td> </tr> <tr> <td data-bbox="598 1352 965 1444">No and contacted solely by letter</td> <td data-bbox="965 1352 1380 1444">Go to step 17</td> </tr> </tbody> </table>	If?	Then?	Yes	Go to step 16	No and contacted by phone/email	Go to step 16	No and contacted solely by letter	Go to step 17
If?	Then?								
Yes	Go to step 16								
No and contacted by phone/email	Go to step 16								
No and contacted solely by letter	Go to step 17								

<p>16.</p>	<p>If the information is with UKBA but not yet with the relevant caseworker, hold the case until post received.</p> <p>Case should then be considered as normal, including any additional information supplied.</p> <p>If the case is to be refused, all attempts to contact the applicant and any responses they gave should be included in the immigration history (SP4 section of the refusal notice) e.g.</p> <p><b>On (enter date and time if phone contact) we contacted you by telephone/email/letter and requested (enter details of required evidence).</b></p> <p><b>On (enter date) we received (enter full details of information received) and have used this when considering your application for leave to remain.</b></p> <p>Any written forms of contact and any written responses should be included in any bundle that needs creating.</p> <p>Caseworkers must ensure that the BF sheet is fully updated when the case is closed.</p> <p><b>Note: If any additional evidence is received after the deadline but prior to the case being despatch on CID, this information will need to be considered by the caseworker and the case reassessed.</b></p>						
<p>17.</p>	<p>The case should be referred to &lt;out of scope&gt; Senior Caseworker for a decision to be made on what action should be taken.</p> <p>Should case be considered on the evidence currently available?</p> <table border="1" data-bbox="600 1285 1378 1442"> <thead> <tr> <th>If?</th> <th>Then?</th> </tr> </thead> <tbody> <tr> <td>No</td> <td>Go to step 18</td> </tr> <tr> <td>Yes</td> <td>Go to step 19</td> </tr> </tbody> </table>	If?	Then?	No	Go to step 18	Yes	Go to step 19
If?	Then?						
No	Go to step 18						
Yes	Go to step 19						
<p>18.</p>	<p>Take action as directed by &lt;out of scope&gt; Senior Caseworker.</p>						

19.	<p>Case should then be considered as normal on the evidence held by UKBA.</p> <p>All attempts to contact the applicant and any responses they gave should be included in the immigration history (SP4 section of the refusal notice) e.g.</p> <p><b>On (enter date and time if phone contact) we contacted you by telephone / email / letter and requested (enter details of required evidence). No response was received.</b></p> <p>or</p> <p><b>On (enter date and time if phone contact) we contacted you by telephone / email / letter and requested (enter details of required evidence). You advised UKBA that you were unable to provide the required information.</b></p> <p>Any written forms of contact and any written responses should be included in any bundle that needs creating.</p> <p>Caseworkers must ensure that the BF sheet is fully updated when the case is closed.</p> <p><b>Note: If any additional evidence is received after the deadline but prior to the case being despatch on CID, this information will need to be considered by the caseworker and the case reassessed.</b></p> <p><u>End of instruction</u></p>
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**Conclusion**

The Evidential Flexibility instruction has been applied and the case has been decided.

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