

# UK Asylum Claims - Status and Corresponding Rights

26 June 2020

## Overview

- A UK asylum application can have several possible outcomes, including:
  - Permission to stay as a refugee;
  - Permission to stay for humanitarian or other reasons; or
  - Requirement to leave the UK.
- Individuals with registered asylum claims have certain rights pending the outcome of their claim. These rights may change once their claim is determined, depending on its outcome.
- Certain primary medical care and treatment is available free of charge to all, irrespective of immigration status or age.
- Refugees and asylum seekers are exempt from charges that are otherwise payable for some types of medical care.
- Asylum seekers generally do not have a right to work. Refugees and persons granted humanitarian protection are able to work.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.

LONDON

**Maurits Dolmans**  
+44 207 614 2343  
[mdolmans@cgsh.com](mailto:mdolmans@cgsh.com)

**Byron Spring**  
+44 207 614 2326  
[bspring@cgsh.com](mailto:bspring@cgsh.com)

**Courtenay Stock**  
+44 207 614 2375  
[cstock@cgsh.com](mailto:cstock@cgsh.com)

**Chloe Hassard**  
+44 20 7614 2295  
[chassard@cgsh.com](mailto:chassard@cgsh.com)

**Kathryn Collar**  
+44 20 7614 2208  
[kcollar@cgsh.com](mailto:kcollar@cgsh.com)

**Axel Nordlöf**  
+44 20 7614 2265  
[anordlof@cgsh.com](mailto:anordlof@cgsh.com)

## Introduction

Cleary Gottlieb participated in the Financial Times Global Legal Hackathon 2020 (**Hackathon**) and responded to an immigration challenge: “*How to assist asylum seekers who have been significantly impacted by the COVID-19 crisis?*”<sup>1</sup> This memorandum is a product of the firm’s submission to the Hackathon and is aimed at charities and organisations who assist refugees and asylum seekers. It is intended to be supplemented by additional materials directed at individual asylum seekers and refugees, which may take hard copy and/or digital forms.

Asylum seekers and refugees in the UK may be unsure of their rights to access healthcare and to work. The COVID-19 pandemic likely exacerbates such uncertainty. This memorandum sets out the various stages of the UK asylum claims process, together with an overview of the corresponding rights to access healthcare and to work.

<sup>1</sup> Cleary Gottlieb’s Hackathon submission, *Guide for Asylum seekers in the UK during COVID-19*, accessible at: <https://challenge.globallegalhackathon.com/gallery/5ec840c9136ce600448b0f96>, clearygottlieb.com



## Basic terminology

**Asylum seeker.** An asylum seeker is someone who is seeking international protection as a refugee somewhere other than their home jurisdiction. Asylum seekers who succeed in their claims for asylum are recognized as refugees in the jurisdiction that has provided refuge.

**Refugee.** A refugee is a person who has successfully applied for asylum. The 1951 Convention Relating to the Status of Refugees defines a refugee as “any person who *owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country [...]*”.<sup>2</sup>

## Claiming Asylum in the UK: Overview

### Registering an asylum claim

**Registration** occurs at an applicant’s “screening”, which takes place once an applicant is in the UK, and is the process by which an immigration officer interviews a claimant.<sup>3</sup>



### Pending claim outcome

Asylum applicants who are homeless or do not have money to buy food can ask for somewhere to live (however are not able to choose where) and/or a weekly allowance of £37.75 loaded on to a payment card for each person in a household.<sup>4</sup> Additional amounts are given to those who are pregnant or mothers of children under three years old. Applicants are generally not permitted to work, and may be prohibited from attending a publicly funded education institution depending on the status of their claim and any conditions issued by the Home Office. Assistance can also be given with respect to medical prescriptions, dental care, eyesight tests and glasses.

There are a number of [asylum helplines](#) that offer help with submitting the relevant application forms for [asylum support](#).

It is possible to submit an [appeal](#) if a person (i) has been turned down for asylum support, or (ii) was claiming asylum support and it has been stopped. Judicial review may be possible if an appeal is unsuccessful.



### Leave to remain

There are three main categories of leave to remain for asylum seekers in the UK:



#### Leave to remain as a refugee

Those who qualify for asylum and their dependents may be given leave to remain in the UK for five years. Refugees



#### Leave to remain on humanitarian grounds

Those who do not qualify as refugees but who need to stay in the UK for their protection<sup>6</sup> may be given (along with their



#### Leave to remain on other grounds

Those who are refused asylum and humanitarian protection may be given leave to remain on other grounds. The length of time

<sup>2</sup> Article 1, [the Convention Relating to the Status of Refugees, 1951](#). The Convention is considered the foundation of international refugee law.

<sup>3</sup> See UK Government guidance, *Claim Asylum in the UK*, for information on the asylum application procedure, accessible at: <https://www.gov.uk/claim-asylum>.

<sup>4</sup> For more information, see <https://www.gov.uk/asylum-support/what-youll-get>.

<sup>6</sup> Paragraph 339C of the [Immigration Rules](#) requires the Secretary of State to be satisfied, among other things, that “*substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.*”

have permission to work in the UK and are able to claim welfare benefits.

Asylum support ceases 28 days after refugee status has been granted. In light of the COVID-19 outbreak, refugees will be able to stay in their asylum support homes until at least 27 June 2020. This decision is due to be reviewed.<sup>5</sup>

#### Residence Permits

##### Leave to remain as a refugee

A residence permit will be granted by the Secretary of State soon as possible after the grant of refugee status.<sup>9</sup>

The residence permit may be valid for five years and renewable, unless compelling reasons of national security or public order dictate otherwise.

Residence permits will also be issued to dependents of a person granted refugee status or humanitarian protection for a five-year period.

#### Asked to leave the UK

It is possible to [appeal](#) to the First-tier Tribunal (Immigration and Asylum Chamber) if the Home Office concludes there is no reason for a person to stay in the UK. A second appeal to the Upper Tribunal (Immigration and Asylum Chamber) may also be possible. If an individual does not have a right of appeal, there may be grounds to ask the Home Office for [administrative review](#).

Those who (i) have been refused asylum, (ii) are homeless<sup>11</sup> and do not have any money to buy food, and (iii) are unable to leave the UK yet, can be given somewhere to live and a weekly allowance of £35.39 loaded on to a payment card for each person in a household in the interim.<sup>12</sup> Additional amounts are given to those who are pregnant or mothers of

dependents) leave to enter or leave to remain in the UK for five years.<sup>7</sup> Those granted humanitarian protection have permission to work in the UK and are able to claim welfare benefits.

##### Leave to remain on humanitarian grounds

A residence permit will be granted by the Secretary of State soon as possible after the grant of humanitarian protection.<sup>10</sup>

The residence permit may be valid for five years and renewable, unless compelling reasons of national security or public order dictate otherwise.

for which individuals are permitted to stay in the UK for reasons other than asylum or humanitarian protection is determined on a case-by-case basis.<sup>8</sup> Depending on the specific case, persons granted leave to remain in the UK may not have recourse to public funds, and may not be permitted to work.

##### Leave to remain on other grounds

Determined on a case-by-case basis.

<sup>5</sup> Home Office Letter - C. Philip to A. Fraser, 27 March 2020, accessible at:

<https://www.emcouncils.gov.uk/write/Documents/27.03.20-Chris-Philp-Letter.pdf>.

<sup>7</sup> Humanitarian protection will cease to apply “where the Secretary of State is satisfied that the circumstances which led to the grant of humanitarian protection have ceased to exist or have changed to such a degree that such protection is no longer required” (paragraph 339GA of the [Immigration Rules](#)). Paragraphs 339GB, 339GD and 339H of the [Immigration Rules](#) also set out the grounds on which humanitarian protection can be revoked by the Secretary of State.

<sup>8</sup> It is possible to [apply](#) for an extension of the permitted time period.

<sup>9</sup> See paragraph 339Q(i) of the [Immigration Rules](#).

<sup>10</sup> See paragraph 339Q(ii) of the [Immigration Rules](#).

<sup>11</sup> In light of the COVID-19 pandemic, the [UK Government has asked local authorities to safeguard homeless people](#) (including asylum seekers and refugees) and has asked local authorities to provide them with housing in an attempt to protect homeless people and stop wider transmission of the virus.

<sup>12</sup> For more information, see <https://www.gov.uk/asylum-support/what-youll-get>.

children under three years old. Assistance can also be given with respect to medical prescriptions, dental care, eyesight tests and glasses.

There are a number of [asylum helplines](#) that offer help with submitting the relevant application forms for [asylum support](#).

It is possible to [appeal](#) if a person (i) has been turned down for asylum support, or (ii) was claiming asylum support and it has been stopped. Judicial review may be possible if an appeal is unsuccessful.

## Right to access healthcare

Asylum seekers and refugees have access to certain free health care from the National Health Service (NHS).<sup>13</sup> Furthermore, there is no charge for overseas visitors, including anyone living in the UK without permission, for the diagnosis or treatment of COVID-19. Doctors of the World has translated the NHS COVID-19 Guidelines into 60 different languages.<sup>14</sup>

### Primary Care

General Practitioner (GP) and primary care nurse consultations, GP treatment, and other primary care services (such as GP drop-in services) are free of charge to all, irrespective of immigration status or age.

Asylum seekers and refugees may register with a GP practice. Registration is free of charge. There is no regulatory requirement to prove identity, address, immigration status or to have an NHS number in order to register as a patient and no requirement for GPs to request this. Asylum seekers and refugees must be registered on application unless the GP practice has reasonable grounds to decline.<sup>15</sup>

Individuals who are seriously injured or seriously ill – and life is at risk – are able to call 999. If urgent medical advice is required, but the situation is not

life threatening, asylum seekers and refugees can call 111.

### Secondary care

Hospital treatment is freely available to those who are “ordinarily resident” in the UK. Entitlement is contingent on living in the UK on a lawful and properly-settled basis for the time being.<sup>16</sup> Citizens of non-EEA countries who are subject to immigration control are not ordinarily resident unless they have indefinite leave to remain. Several categories of individuals are exempt from charges that may otherwise be payable, including:

- Refugees granted asylum, humanitarian protection or other temporary protection under the immigration rules, and their dependents;
- Individuals applying for asylum, humanitarian protection or temporary protection, whose claims or appeals are yet to be determined, and their dependents; and
- Individuals whose asylum applications were rejected but who nonetheless receive support from the government or a local authority under certain legal provisions.<sup>17</sup>

Certain NHS services are free of charge irrespective of an individual’s country of normal residence and immigration status (as long as the individual hasn’t

<sup>13</sup> NHS Guidance, *NHS entitlements: migrant health guide*, accessible at: <https://www.gov.uk/guidance/nhs-entitlements-migrant-health-guide>.

<sup>14</sup> Accessible at: <https://www.doctorsoftheworld.org.uk/coronavirus-information/>.

<sup>15</sup> NHS guidance, “*Asylum seekers and refugees: How to register a doctor (GP)*”, accessible at: <https://assets.nhs.uk/prod/documents/how-to-register-with-a-gp-asylum-seekers-and-refugees.pdf>.

<sup>16</sup> UK Department of Health & Social Care, *Guidance on implementing the overseas visitor charging*

*regulations*, accessible at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/865496/Ways\\_in\\_which\\_people\\_can\\_be\\_lawfully\\_resident\\_in\\_the\\_UK\\_-\\_Feb\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865496/Ways_in_which_people_can_be_lawfully_resident_in_the_UK_-_Feb_2020.pdf).

<sup>17</sup> The [National Health Service \(Charges to Overseas Visitors\) \(Amendment\) Regulations 2017](#) and [Guidance on overseas visitors hospital charges](#), set out which NHS services are free of charges (as long as the person has not travelled to the UK specifically for the purposes of seeking treatment).

travelled to the UK for the purpose of seeking that service), including:

- Accident and emergency services; and
- Diagnoses and treatment of certain communicable diseases such as HIV and COVID-19.<sup>18</sup>

Furthermore, individuals who are refused asylum can continue, free of charge, with any course of treatment already underway before their application was refused.

### Mental health care

The World Health Organization and United Nations High Commission for Refugees highlight:

*“While mental health and psychosocial problems are common in all communities of the world, these problems are much more frequent among people who have faced adversity, such as exposure to a humanitarian crisis.”<sup>19</sup>*

The NHS provides various online [resources](#) related to mental health and wellbeing, including guidance on where to access [urgent help for mental health](#).

### Prescriptions, dental care and eye care

Patients are often required to pay towards the cost of:

- Prescription medicines;
- Dental care;
- Eye care; and
- Wigs and fabric supports.

Recipients of asylum support can receive these services for free. Financial help for other individuals is available through the NHS [Low Income Scheme](#).

## Right to work

### Overview



### Asylum seekers

The general position is that asylum seekers are not allowed to work in the UK while their asylum claim is pending. However, those who have waited longer than 12 months for an initial decision on their asylum claim may apply for permission to work provided the delay in reaching such decision is not attributable to them.<sup>20</sup>

To apply for permission to work, an asylum seeker should write to one of the following teams:

- **Asylum Casework Team:** Asylum seekers who are awaiting a decision on their asylum claim should send their application for permission to work to the asylum team dealing with their claim.
- **Complex Casework Directorate:** Asylum seekers whose asylum claims have failed but who have outstanding further submissions in respect of that claim should send their application for permission to work to the ‘Permission to Work’ team operating under the Complex Casework Directive.

The application should include: the applicant’s full name, date of birth, nationality, and Home Office reference number; a statement setting out their request for permission to work; and contact details

<sup>18</sup> *Ibid.*

<sup>19</sup> World Health Organization and United Nations High Commission for Refugees, *Assessing Mental Health and Psychosocial Needs and Resources: Toolkit for humanitarian settings*, accessible at: [https://www.who.int/mental\\_health/resources/toolkit\\_mh\\_emergencies/en/](https://www.who.int/mental_health/resources/toolkit_mh_emergencies/en/).

<sup>20</sup> See paragraph 360 of the [Immigration Rules](#). See also Home Office guidance on [Permission to work and volunteering for asylum seekers](#). A delay will be attributable to the asylum seeker, *inter alia*, if they have been convicted of a criminal offence and the decision on their asylum claim has been delayed pending the outcome of any prosecution.

for the applicant and their legal representative (if they have one).<sup>21</sup>

Once granted permission to work, an asylum seeker will be limited in what they can do.

- Asylum seekers are not permitted to work on a self-employed basis or to be involved in setting up a business.
- Asylum seekers can only take up positions that are included on the [list of shortage occupations](#) as published by the UK Visas and Immigration office at the time when the offer of employment is accepted.

An asylum seeker's permission to work will come to an end when their claim has been finally determined.

Asylum seekers may also volunteer whilst their asylum claim is pending without the need to apply for permission to work. However, this must not amount to the asylum seeker being considered an 'employee' or a 'worker'.<sup>22</sup>

For more information, see [Part 11B of the Immigration Rules](#) and the Government advice on [Working in the UK while an asylum case is considered](#).

### Refugees

Once an individual has been given refugee status, they will have permission to work in the UK in any profession and at any skill level,<sup>23</sup> and they will be assigned a National Insurance number.

A refugee's Biometric Residence Permit or Immigration Status Document will serve to demonstrate their right to work.<sup>24</sup>

Refugees who are unable to work due to health or other reasons may be eligible for financial support in the form of, *inter alia*, universal credit or a refugee integration loan.<sup>25</sup>

<sup>21</sup> See Home Office guidance on [Permission to work and volunteering for asylum seekers](#), p.8.

<sup>22</sup> See Home Office guidance on [Permission to work and volunteering for asylum seekers](#), pp.14-15.

<sup>23</sup> See paragraph 344B of the [Immigration Rules](#).

<sup>24</sup> For more information, see the Home Office "[An Employer's guide to right to work checks](#)" (18 January 2019).

### Those with leave to remain on humanitarian grounds

An individual who has been granted leave to remain on humanitarian or other grounds has the same right to work as an individual with refugee status.<sup>26</sup> There are no restrictions placed on the type of employment or occupation they may seek.

### Those with leave to remain on other grounds

The rights attaching to leave to remain on other grounds vary from case to case. Many individuals granted leave to remain on this basis will not be permitted to work.

### Indefinite leave to remain

When an individual has had refugee status or humanitarian protection in the UK for a continuous period of five years or more, they may apply to remain in the UK indefinitely.<sup>27</sup> An application for [indefinite leave to remain](#) (also known as "settled status" or "[settlement](#)"), whether successful or not, should not have an impact upon the individual's rights to healthcare and work.

Where an [application for settlement is rejected](#), a refusal letter should be sent to the applicant setting out whether an applicant who still requires refugee status or humanitarian has been granted leave to remain (usually for an additional three years).

If an individual still needs humanitarian protection or is a refugee, they can stay in the UK for three more years. Their refusal letter will explain what they have been offered instead of settlement.

### Voluntary return

Asylum seekers who wish to withdraw their application for asylum, or who have their claim or appeal refused, can apply for assistance to return to their home country ("voluntary return"). This service can assist eligible persons with leaving the UK. Although not currently available due to COVID-19,

<sup>25</sup> Information on how to apply for a refugee integration loan can be found [here](#).

<sup>26</sup> See paragraph 344B of the [Immigration Rules](#).

<sup>27</sup> For more information, see paragraphs 339R, 339S and 339T of the [Immigration Rules](#).

voluntary return also encompasses financial assistance for accommodation and securing employment (or starting a business) in recipients' home countries.<sup>28</sup>

Amongst the restrictions on eligibility [for voluntary return](#), persons who have been granted humanitarian protection, indefinite leave to remain or refugee status in the UK cannot apply for voluntary return.

## Conclusion

Rights to access healthcare and to work vary throughout the different stages of an asylum claim.

Primary care (GP and nurse consultations) is free of charge for all (irrespective of immigration status). Refugees and asylum seekers are exempt from charges that are otherwise payable for some other types of medical care.

Asylum seekers, refugees and employers alike are often uncertain of the rules surrounding their right to work. Asylum seekers with claims pending for 12 months or more may apply for permission to work. Once refugee status or humanitarian protection is granted, there are no restrictions on an individual's right to work.

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<sup>28</sup> For more information on migrants' applications for voluntary return, see the Home Office "[Get help to return home if you're a migrant in the UK](#)".