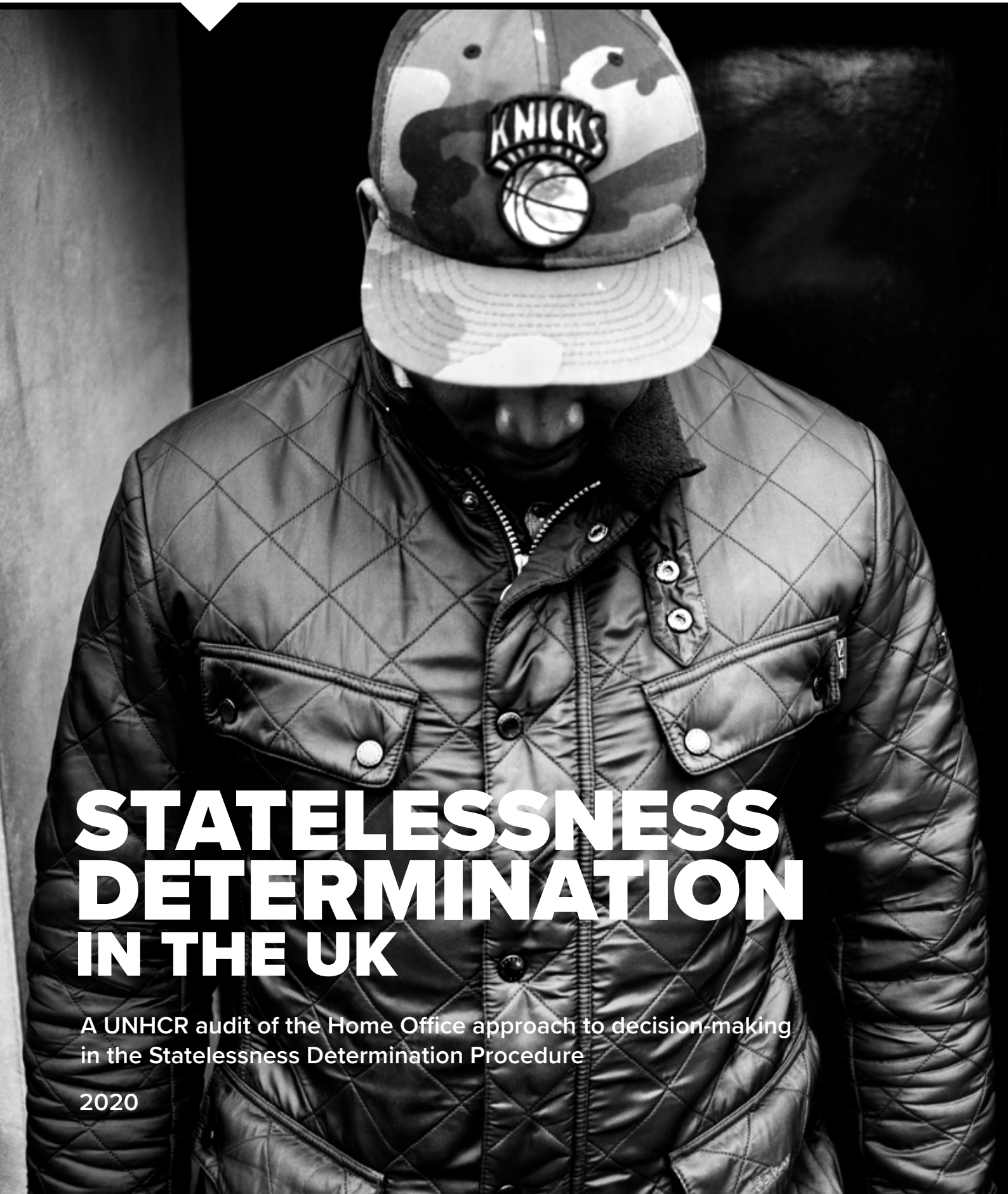
UNHCR
The UN Refugee Agency



STATELESSNESS DETERMINATION IN THE UK

A UNHCR audit of the Home Office approach to decision-making in the Statelessness Determination Procedure

2020

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GLOSSARY OF TERMS

AI	Asylum Instruction
API	Asylum Policy Instruction
AR	Administrative Review
'2016 Home Office Policy'	Asylum Policy Instruction Statelessness and applications for leave to remain
'2019 Home Office Policy'	Home Office Stateless leave policy Version 3.0
AVR	Assisted Voluntary Return
BGD HC	Bangladesh High Commission
CID	Case Information Database
CIG	Country Information and Guidance
CIO	Chief Immigration Officer
COI	Country- of -Origin Information
COIS	Country-of-Origin Information Service
CPINs	Country Policy and Information Notes
ETD	Emergency Travel Document
ILR	Indefinite Leave to Remain
IRC	Immigration Removal Centre
PGDO	Palestinian General Delegation Office (now called the Palestinian Mission)
QAT	Quality Audit Team
QAF	Quality Assurance Framework
QPP	UNHCR Quality Protection Partnership
SDP	Statelessness Determination Procedure
UNHCR	United Nations High Commissioner for Refugees
'UNHCR Handbook'	UNHCR Handbook on Protection of Stateless Persons
UKVI	UK Visas and Immigration
'1954 Convention'	1954 Convention relating to the Status of Stateless Persons
'1961 Convention'	1961 Convention on the Reduction of Statelessness

EXECUTIVE SUMMARY

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An estimated 10 million people around the world live without any nationality.[1] These people are stateless, and are arguably amongst the most vulnerable in the world because they do not have access to the basic rights associated with citizenship of a nation state.[2] Research indicates that the majority of stateless people in the UK are undocumented migrants, at risk of human rights violations due to their lack of an immigration status.[3]

In 2013, the UK Government introduced a Statelessness Determination Procedure (SDP)[4] enabling stateless people to apply for recognition of their status as people who are without a nationality and to be granted leave to remain, giving stateless people the right to work and access to public funds. The SDP has been accompanied by policy guidance, last updated in 2019.[5] The UK is one of fewer than 25 countries to have such a procedure – introduced to help ensure that the UK Government complies with its international obligations under the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), to which it is a signatory. There are serious consequences to incorrectly rejecting an application for stateless status. Where these individuals cannot be returned to another country, but remain without a regular immigration status, they risk destitution, homelessness and prolonged immigration detention in the UK[6] as well as the denial of the right to identity documents, education, health services and employment.[7] It is for these reasons that UNHCR, the UN Refugee Agency, urges the UK government to continue to reinforce the protection function of the SDP in the design and improvement of this system going forward.

The United Nations General Assembly entrusts UNHCR with a global mandate for the identification, prevention and reduction of statelessness, and for the international protection of stateless persons.[8] In 2018 UNHCR undertook a review into the UK Home Office approach to decision-making on applications for leave to remain as stateless person, known as "statelessness leave". This review was carried out under the Quality Protection Partnership, a joint UNHCR and UK Government collaborative endeavour aimed at improving the quality of Home Office decision-making.

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1 UNHCR Global Trends report 2016 www.unhcr.org/globaltrends2016/
2 Foreword to the UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention, 2014 available from: www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html
3 UN High Commissioner for Refugees (UNHCR),"Mapping Statelessness in the United Kingdom", November 2011, available from: www.refworld.org/docid/4ecb6a192.html
4 Immigration Rules part 14: stateless persons www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons
5 Home Office Policy Guidance "Stateless leave", 30 October 2019, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843704/stateless-leave-guidance-v3.0ext.pdf.
6 UN High Commissioner for Refugees (UNHCR), "Mapping Statelessness in the United Kingdom", November 2011, see note 3 above.
7 Home Office Policy Guidance "Stateless leave", 30 October 2019, see page 5.
8 General Assembly Resolution 3274 (1974), General Assembly Resolution 50/152 (1996)

A report of the findings and recommendations was presented to the Government in late 2019. UNHCR would like to thank the Home Office for the positive collaboration on this audit.

Since the introduction of the SDP in 2013 and up to the end of 2019, there have been 161 grants of leave to remain on initial decisions.[9] This report reviews 36 decisions (both grants and refusals) by the Home Office under the SDP. Home Office case file reference numbers have been removed from this report for the purposes of data protection. This report aims to assess the quality of decision making in these cases and makes key recommendations seen as crucial for the strengthening and transparency of the SDP.

Recommendations are listed throughout the report and include the following:

- Comprehensive revision and development of training for decision-makers working in the SDP
- Amendments to the Immigration Rules and policy guidance concerning statelessness
- Introduction of a right of appeal on decisions on statelessness leave
- Introduction of legal aid for applications for statelessness leave
- Publication of statistics on applications and decisions made under the SDP
- Development of the quality assurance framework for the monitoring of the quality of statelessness leave decisions

9 This figure was provided by the Home Office and is revised down from 2018 because the previous annual figure combined grants of statelessness leave from both initial decisions and subsequent grants made after the initial period of leave had expired.

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KEY FINDINGS

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The Home Office approach to assessing and determining statelessness needs considerable strengthening

The definition in Article 1(1) of the 1954 Convention requires proof of a negative because the term "stateless person" is defined as **"a person who is *not* considered as a national by any State under the operation of its law."** This presents significant evidentiary and practical challenges for both the applicant and the decision-maker.

Central foundations to effective decision-making on statelessness were considered in the cases reviewed. These were specifically the application of the burden and standard of proof as well as the credibility assessment. This highlighted several shortcomings in the current approach.

BURDEN AND STANDARD OF PROOF

UNHCR recommends that in statelessness determination the burden of proof should in principle be *shared* between the applicant and the decision-maker and that a low standard of proof - "to a reasonable degree" - should be applied in determining if a person is stateless. As with refugee status determination, this approach recognises the serious consequences of incorrectly rejecting an application for stateless status and the practical difficulties inherent in proving statelessness.

Burden of proof

The Home Office policy on statelessness leave is not in line with UNHCR guidance and instead states that the burden of proof "rests with the applicant."

Paragraph 403(d) of the Immigration Rules also requires the applicant to "obtain and submit all reasonably available evidence". Yet, where the available information is **"lacking or inconclusive"** the caseworker **"*must* assist"** the applicant by undertaking relevant research or making enquiries. The Home Office guidance, therefore, envisages that a shared burden of proof will be required in some cases.

In the cases reviewed, UNHCR observed that where an applicant presented evidence which was "lacking or inconclusive", decision makers did not always offer their assistance. In seven cases, where the applicant had made efforts, often with limited or no success, to visit or contact relevant foreign authorities in order to obtain confirmation regarding their citizenship status, the burden was placed exclusively on the applicant. The decision-maker did not "assist" the applicant in any cases by contacting relevant foreign authorities to enquire about the applicant's citizenship status, as required by the policy.

These challenges in evidencing claims were compounded by a lack of clarity from both applicants and decision-makers as to what is meant by **"reasonably available evidence"** and what process is required to establish this threshold. For example, some decision-makers had high expectations of what documentary evidence applicants should possess and/or should reasonably be able to obtain and submit, whilst applicants in some cases, appeared to be unaware of the evidence which would be useful in supporting their claim.

Standard of proof

The Home Office maintains that a higher standard of proof should be applied when determining statelessness than is applied in refugee status determination. The threshold applied is whether **"on the balance of probabilities"** a person is stateless. Whilst UNHCR does not endorse the higher standard applied in the UK SDP, it was positive to find that in the majority of cases reviewed, the standard of proof appeared on face value, when considered in isolation, to be applied in accordance with Home Office policy.

However, UNHCR observed that in almost half of the cases where a substantive decision was made on statelessness, not all the available evidence was before the decision-maker. This was due to a failure to apply the burden of proof correctly as outlined in the section above. The lack of assistance to the applicant by the decision-maker, where evidence was inconclusive played a role in this. In these cases, it is not surprising therefore that on the basis of evidence available, the applicant was not, on the balance of probabilities, found to be stateless. However, further evidence, or a further effort to obtain evidence, could have allowed the decision maker to make a more informed and complete assessment.

UNHCR RECOMMENDS THAT:

- In statelessness determination the burden of proof should be shared and a low standard of proof should be applied.
- The Home Office should consider supporting applicant's in approaching and gathering evidence from embassies/consulates. This support could be provided for by the funding of an independent organisation.
- A checklist to supplement the policy should be developed to assist decision-makers and applicants in understanding what is required to determine if "all reasonably available evidence" has been provided or not.

APPROACH TO CREDIBILITY ASSESSMENT

The credibility assessment involves a determination of whether and to what extent the evidence gathered can be accepted and therefore inform a determination of statelessness. This audit examined the extent to which this process was effectively undertaken in line with UNHCR credibility guidelines.[10] Whilst there were several areas of positive practice, UNHCR highlighted a number of areas needing improvement.

Gathering of evidence

- UNHCR considered that the applicant's previous asylum claim and/or immigration history was relevant to the determination of statelessness in ten of the 36 cases. However, the use of this information by decision makers was mixed. In three cases, the decision-maker used this to carefully inform their decision. However, in seven cases, the applicant's immigration history was not fully examined and vital information, such as a finding on the State's previous position as to an applicant's citizenship status, was missed.
- Positive practice was observed in the gathering of nationality law. There were 15 cases where information on the nationality law in question was absent from the evidence submitted by the applicant. In all these cases, the decision-maker proactively sought to verify or collect information on the relevant nationality law in efforts to determine the applicant's citizenship status.

10 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Section 9.

- Decision-makers took active steps to gather relevant country of origin information (COI) in eight cases. However, UNHCR considered that there were five further cases where an absence of COI hindered the assessment of statelessness, but the decision-maker did not seek this information. Analysis suggests that a lack of up to date Home Office COI on nationality law and statelessness contributed heavily to this. However, there were no specific individual enquiries made to the Country Policy and Information Team (CPIT) by decision-makers to full this gap, as is directed by Home Office policy.

Determining material facts and assessing their credibility

- There was a lack of clarity in both grant and refusal letters reviewed as to what facts the decision-maker considered material. For example, cases were identified in which the letter focused on elements of the applicant's circumstances which appeared immaterial to the determination of statelessness. In other cases, the material facts of the case were not established, therefore it was unclear how these facts went on to be considered as part of the overall credibility assessment.

- There was mixed practice as to how an applicant's written and oral testimony was considered. In four cases the applicant testified to having been in contact verbally with the relevant foreign authority but failed to obtain a formal response in writing confirming that the State refused to document them. Decision-makers did not acknowledge or take this testimonial evidence into account, dismissing it without giving it weight. Conversely in two other cases, sympathetic consideration was given to testimonial explanations regarding the lack of a response from the relevant State, and weight was assigned to this, in accordance with UNHCR guidelines.

- There was a tendency for caseworkers to consider some facts in isolation when reaching their decision. This was particularly pronounced in four cases in which nationality law on the papers was privileged by caseworkers above other evidence. This meant an analysis was undertaken as to how nationality law simply appears on paper, without consideration of how the law applied *in practice* to the individual circumstances of the case.

- In two cases, negative credibility findings were reached by the decision-maker without an appropriate assessment of credibility indicators. This arose in cases where there was little or no documentary evidence available because the applicant claimed to have never held legally accepted identity documentation. This included credibility findings based on subjective assumptions or speculation as well as a lack of consideration of the internal consistency of an applicant's account.

UNHCR RECOMMENDS THAT:

- A structured approach to decision-making in the SDP should be introduced. This would help ensure that the principles underpinning credibility assessment are fulfilled and the credibility findings are objective and impartial. This could be achieved through the development of templates and tools to focus decision-making.
- Training for statelessness leave decision-makers should be strengthened. This should include sessions on how to identify material facts, when and how to 'assist' applicants, how to utilise credibility indicators and how to consider and weigh different types of evidence.
- Relevant Home Office COI reports should include a section on "nationality and citizenship". This would ensure that decision-makers have information on the updated country situation to draw on to make accurate determinations of statelessness.
- Home Office policy on statelessness leave should be amended to address the issue of credibility in statelessness claims. This would ensure that decision-makers are guided directly in this regard.

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The absence of procedural guarantees can hinder the quality of decisions made and adversely impact upon the integrity of the process

UNHCR considered a number of fundamental procedural guarantees relating to applications for statelessness leave. These include the right to an individual interview, access to legal counsel, the right to appeal and that decisions are made and communicated within a reasonable time. Analysis in these areas points to deficiencies in the application of these procedures, undermining the fairness and transparency of decision-making as well as limiting the information gathered by the decision-maker.

STATELESS INTERVIEWS

It is unknown to UNHCR what proportion of applicants for statelessness leave are offered interviews, but from the selection of cases given to UNHCR for this audit, the numbers appear very low. UNHCR selected seven cases where interviews took place. UNHCR was concerned to review cases in some instances where interviews were not offered, and the applications were refused. This included three cases where UNHCR deemed an interview necessary because more information was needed on the individual circumstances of the case in order to undertake a full assessment of statelessness.

SPEED OF DECISION-MAKING

The UNHCR handbook[11] advises that it is undesirable for a first instance stateless decision to take more than six months to be issued. Home Office policy, however, does not provide a specific time scale for the statelessness leave decision to be made. In just under 30% of cases reviewed, a decision was made by the Home Office within a six-month time frame. In just over 60% of all cases audited, a decision took more than one year to issue. Two of these applications took more than two years to finalise. Positive practice on decision making on children's claims however, was observed. These were made at a quicker rate than for adults, with four of seven cases decided within six months, arguably in "in a timely" manner as outlined in Home Office policy.

11 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 74.

AVAILABILITY AND IMPACT OF LEGAL ADVICE AND REPRESENTATION

Legal aid is not generally available for advising, representing or assisting someone who wishes to make an application for statelessness leave. In the cases audited, half of applicants made their initial applications without the assistance of a legal representative. The absence of legal advice and representation for applications for statelessness leave in UNHCR's view contributed to problems in the assessment and determination of statelessness. This included a failure by self-represented applicants to submit available or relevant evidence pertinent to their statelessness application. Furthermore, in four self-represented cases the information submitted suggested that statelessness leave may not have been the correct route for the individual and that applications for asylum or British citizenship would have been more appropriate.

Where the applicant had a lawyer, the quality of advice and representation was nevertheless mixed. There are examples where legal representation was particularly effective and necessary in demonstrating an applicant's lack of nationality and in meeting the legal tests required. Yet in seven cases in which the applicant had a legal representative, either very little, inappropriate evidence or no evidence was provided about the applicant's lack of nationality to substantiate the applicant's claim. This indicates that more training for legal representatives on statelessness is required.

ADMINISTRATIVE REVIEW (AR)

There is no statutory right of appeal against the decision to refuse to grant leave as a stateless person in the UK. Rather, unsuccessful applicants can only apply for an administrative review (AR). There were eight cases in the audit in which the applicant applied for an AR. In all cases where an AR was undertaken, the original decision to refuse the application was maintained and in only one case was a case working error identified correctly by the decision-maker. UNHCR observed that rigorous scrutiny was not applied to all the claimed case work errors highlighted in AR applications. This resulted in case work errors not being identified, similar errors being replicated in the AR decision notice as those made in the first instance decision and not all of the applicant's challenges being addressed in every case.

Statelessness cases are legally and evidentially complex, but in the UK judicial review is the only judicial remedy available in these cases. This is a mechanism which does not focus on the facts of the case but instead challenges the lawfulness of the decision made. UNHCR therefore considers that a right to appeal in the UK SDP would be most effective in ensuring the correct decisions are made on eligibility under the 1954 Convention.

UNHCR RECOMMENDS THAT:

- A stateless determination interview should be mandatory in all cases. This policy should be combined with the development of a process for accelerated case management. This would mean that an interview may not be necessary in both manifestly unfounded and manifestly well-founded applications.
- The Home Office should adequately staff the SDP to ensure that in the majority of cases decisions are made within 6 months and up to 12 months in exceptional circumstances. This timescale should be detailed in the Home Office policy.
- Legal aid should be introduced for applications for statelessness leave. This could not only assist applicants but could also reduce the number of applications made without appropriate supporting evidence and help ensure fewer unmeritorious applications.
- Applicants to the statelessness procedure should have an effective right to appeal against a negative first instance decision. The appeal procedure should rest with an independent body.

Aspects of the Immigration Rules and policy do not uphold the purpose and intention of the 1954 Convention

Two areas of decision-making reviewed in this audit - specifically on 'admissibility' and the application of the General Ground for Refusal, indicated that the Immigration Rules and Statelessness leave policy in these areas do not uphold the purpose and intention of the 1954 Convention.

ADMISSIBILITY

Even if an applicant is determined to be stateless, they can still be refused leave to remain in the UK because they are deemed "admissible" to their country of former habitual residence.[12] Home Office policy indicates that admissibility equates to the applicant having a right of "permanent residence" in the relevant country.[13]

In the cases audited, the rules on admissibility were only applied to applicants originating from Palestine. Analysis revealed that decision-makers appeared to consider admissibility in these cases solely with regard to the ability to "re-enter" another country without reference to the applicant's ability to enjoy "permanent residence" as outlined in the policy. This appears to undermine efforts to ensure that stateless persons are not returned to a country without an adequate level of protection.

Further, these cases shed light on the challenges of interpreting and establishing the concept of admissibility under the current rules. It is UNHCR's position that the current admissibility test is contrary to the object and purpose of the 1954 Convention because it appears to have unintended and adverse consequences for stateless persons, namely that they remain without legal status in any country. This means that the way the existing rules on admissibility are drafted does not ensure sufficient protection for stateless persons.

UNHCR believes that the admissibility provision in the UK Immigration Rules should only apply to those individuals who are able to acquire or reacquire nationality through a **"simple, rapid, and non-discretionary procedure" or, "enjoy permanent residence in a country to which immediate return is possible."**[14] The UNHCR Handbook also states that return to another State must also be accompanied by a full range of civil, economic, social and cultural rights, in conformity with the object and purpose of the 1954 Convention. UNHCR advises considerable amendments be made to the current "admissibility" test in the UK Immigration Rules and policy.

GENERAL GROUNDS FOR REFUSAL

If an applicant is found to be stateless under Paragraph 401, they may still be refused statelessness leave where there is evidence in their background, behaviour, character, conduct or associations[15] which satisfies Part 9 of the Immigration Rules – the General Grounds for Refusal. The application of this rule applied to five applicants in this audit due to their history of offending.

In all five cases, there was no substantive consideration given to their claim to be a stateless person under the Immigration Rules. Instead, the Home Office proceeded directly to refuse the applications under the mandatory general grounds for refusal. It is noteworthy that in UNHCR's view, four of these five cases demonstrated clear indicators of statelessness. UNHCR does not consider the approach taken in these cases to be correct and rather advises the first question to be asked is whether or not a person is stateless. This was raised with the Home Office during the course of this audit, and UNHCR is pleased to note that the updated statelessness leave policy now directs

12 See Paragraph 403(c) of Part 14 of the UK Immigration Rules

13 Home Office Policy Guidance "Stateless leave", 30 October 2019 See pages 4, 5, 6, 7, 12, 14, 17 and 27.

14 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, paras. 153 – 157, available from: www.unhcr.org/53b698ab9.html.

15 Home Office Guidance "General Grounds for Refusal Section 1" 11 January 2018, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827971/GGFR-Section-1-v29.0-EXT.PDF.

the decision-maker to undertake a substantive consideration of statelessness in cases where general grounds applies.

Additionally, in the same five cases, there was no subsequent consideration as to whether or not there were any human rights grounds that needed to be considered, as is directed by policy as interpreted by UNHCR. This omission is significant because human rights considerations are particularly relevant in the context of statelessness. An individual who has been found to be stateless but does not qualify for statelessness leave is at increased risk of potential breaches of the European Convention on Human Rights including a real risk of destitution and arbitrary detention.

UNHCR RECOMMENDS THAT:

- The current "admissibility" test in the UK Immigration Rules and policy should be amended. This is to ensure it is in line with international law, by reflecting the UNHCR Handbook.
- In cases where general grounds applied, the Home Office should identify and reconsider those cases where this error has been made historically. This is in recognition of the seriousness of the oversight in failing to undertake substantive determinations of statelessness.
- The Home Office should consider human rights issues when applying general grounds, rather than expecting a stateless person to make a separate application.

Additional safeguards are needed to prevent stateless persons from being subjected to prolonged or arbitrary detention in the UK

Stateless persons generally do not possess identity documents or valid residence permits, so they can be at high risk of repeated and prolonged detention with significant barriers to removal which could render detention arbitrary.[16]

UNHCR requested examples of decision-making on statelessness leave applications made whilst the applicant was in immigration detention. However, the Home Office was only able to specify one case fitting this criterion. A lack of known applications from detention could, in UNHCR's view, point to barriers which prevent or deter applications for statelessness leave being made from within detention, such as lack of access to information and legal advice. The Home Office view is that statelessness applications should be flagged and considered when deciding whether or not to detain an individual, and that this is what accounts for the low number of applications from within detention.

16 UN High Commissioner for Refugees (UNHCR), "Stateless Persons in Detention: A tool for their identification and enhanced protection" June 2017, available from: http://www.refworld.org/docid/598adacd4.html.

Observations from the full analysis of case files however, points to individuals in detention exhibiting indicators of statelessness but who have not applied to the SDP at an early stage. In five cases, the applicant spent a period of time in detention prior to their application to the SDP. In all cases the applicant was eventually released due to difficulties obtaining documentation meaning there was no realistic prospect of removal. Each case exhibited a number of indicators of statelessness but notes on file suggest these were not identified by officials when the applicant was entering detention or during detention reviews. UNHCR considers that more research is needed into this area to gain an insight into what is happening in practice.

UNHCR RECOMMENDS THAT:

- The Home Office should amend the "Adult at Risk in immigration detention" policy to expressly identify an individual's risk of statelessness as a factor that will weigh against detention on the basis that it is likely to indicate that there are no reasonable prospects of removal.
- The Home Office should make changes to its training and detention review forms in respect of statelessness. This will help ensure that officials are able to identify indicators of statelessness, the appropriateness of immigration detention in these cases and the approach that should be taken to removal.

CONCLUSION

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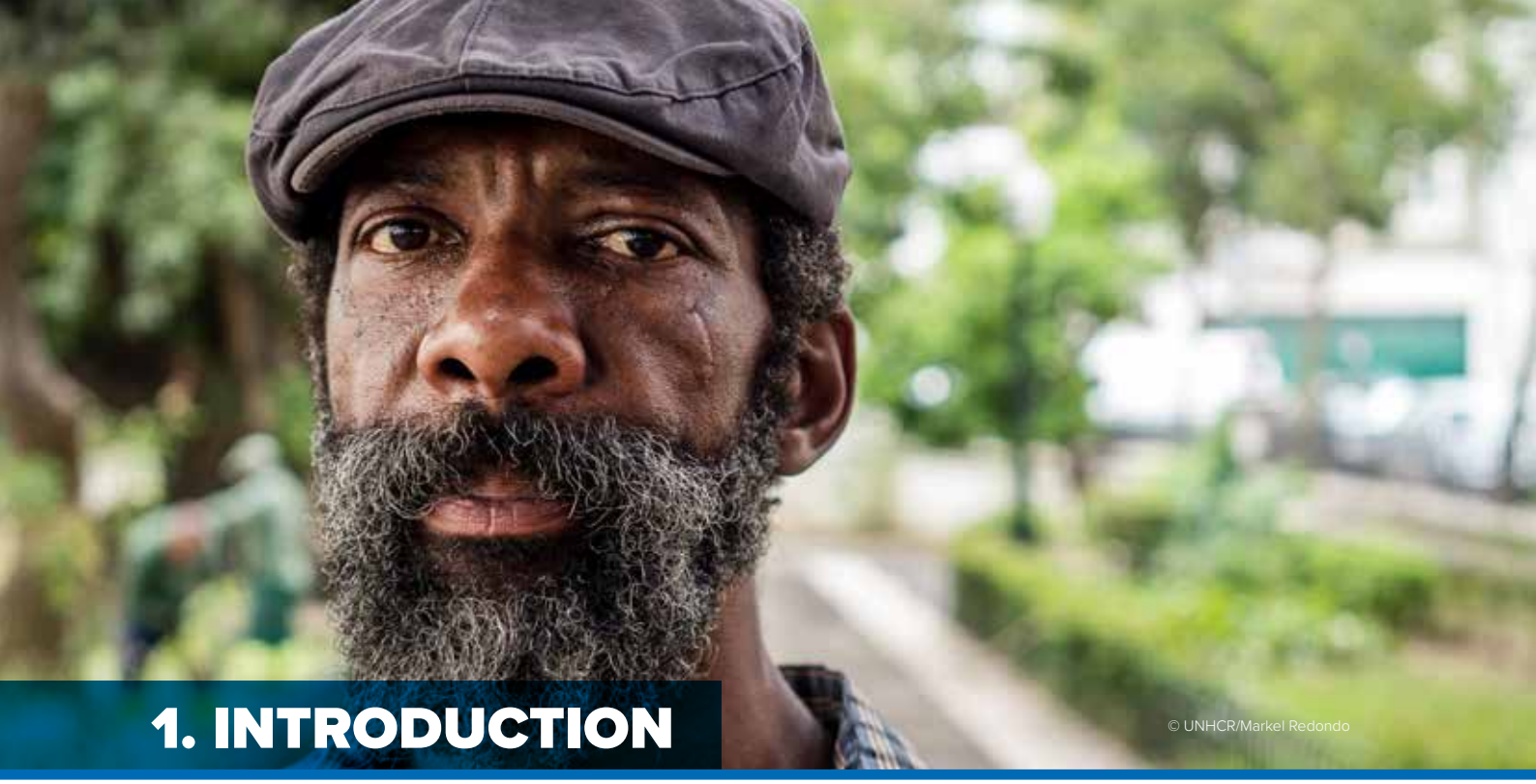
The introduction to the UK of a Statelessness Determination Procedure in 2013 was a critical step forward in ensuring the UK meets its obligations to stateless persons under the 1954 Convention. This report provides evidence of the vital protection role this procedure and a determination of stateless status can play for some of the most vulnerable people in the UK - those without a nationality. However, a detailed analysis of decision-making in this system has also highlighted some of its shortcomings, indicating that stateless people may be falling through the gaps of protection due to both deficiencies in the quality of decision-making on individual cases and wider systemic limitations including a lack of legal aid and right of appeal. UNHCR stands ready to provide support to the UK Government to help improve this system to ensure all stateless people in the UK are properly identified, protected and can thrive.



1. INTRODUCTION

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1.1 UNHCR'S WORK ON STATELESSNESS

UNHCR is entrusted by the United Nations General Assembly with a global mandate relating to the identification, prevention and reduction of statelessness and the protection of stateless persons.[17]

UNHCR estimates that millions of people around the world live without any nationality. UNHCR considers that "Stateless people are amongst the most vulnerable in the world" because they do not have access to the basic rights associated with citizenship of a nation state.[18]

The Office of the United Nations Secretary-General[19] recognises that **"the phenomenon of statelessness itself violates the universal human right to a nationality"**,[20] explaining that discrimination (e.g. against racial/ethnic groups, religious/linguistic minorities and women) is both a common root cause and a consequence of statelessness, and that **"stateless persons have protection needs distinct from those of other non-citizens."** Stateless persons cannot enjoy full equality with citizens in any country. Statelessness often leads to limits on access to birth registration, identity documents, education, health care, legal employment, property ownership, political participation and freedom of movement. Stateless persons are often subject to abuse, discriminatory treatment and risk falling victims to crimes like trafficking.[21]

In October 2013, UNHCR called for the "total commitment of the international community to end statelessness"[22] and developed a Global Action Plan to End Statelessness: 2014 – 2024 (Global Action Plan) in consultation with States, civil society and international organisations. This sets out a guiding framework made up of 10 Actions that need to be taken to end statelessness within 10 years.[23]

17 General Assembly Resolution 3274 (1974), General Assembly Resolution 50/152 (1996).

18 Foreword to the "UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention" 2014. See note 2 above.

19 Guidance Note of the Secretary-General, "The United Nations and Statelessness", June 2011, available from: www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-the-united-nations-and-statelessness/ pp. 2, 6, 7 and 12.

20 The right to a nationality is recognised in the 1948 Universal Declaration of Human Rights, Article 15; Convention on the Rights of the Child, Article 7; Convention on the Elimination of all Forms of Discrimination Against Women, Article 9; Convention on the Elimination of All Forms of Racial Discrimination, Article 5; Convention on the Rights of Persons with Disabilities, art 18; International Covenant on Civil and Political Rights, Article 24(3).

21 UN High Commissioner for Refugees (UNHCR), "Ending Statelessness Within 10 Years", 2014, available from: www.refworld.org/docid/545b3b47ade.html.

22 High Commissioner's Closing Remarks to the 64th Session of UNHCR's Executive Committee, 4 October 2013, available from: http://unhcr.org/525539159.html.

23 UN High Commissioner for Refugees (UNHCR) "Global Action Plan to End Statelessness 2014- 2024", available from: www.unhcr.org/uk/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html.

While some stateless people are also refugees, most are not. The Global Action Plan focuses primarily on non-refugee stateless populations, but also complements UNHCR's efforts to resolve protracted refugee situations.

UNHCR also works to ensure implementation of all aspects of its statelessness mandate in accordance with relevant General Assembly Resolutions and Conclusions of UNHCR's Executive Committee.[24]

As part of that work, UNHCR advocates for the adoption of national legislation that regulates the protection of stateless persons, and for the full implementation of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The total number of Parties to the 1954 Convention is 90[25] and the total number of Parties to the 1961 Convention is 71.[26]

1.2 UNHCR QUALITY PROTECTION PARTNERSHIP (QPP)

The QPP (formerly the QI project) is a joint UNHCR and UK Government collaborative endeavour aimed at improving the quality of decision-making in the refugee status determination procedure and the SDP. UNHCR's work on the SDP forms part of the current QPP Grant Agreement with the UK Home Office.

UNHCR welcomes the commitment shown by the UK Home Office to improving the quality of statelessness decision-making under the auspices of the QPP. As part of this audit, UNHCR was asked to determine if the decisions under review are well-reasoned and being made in accordance with both UK legislation and policy, and international standards; how the procedural safeguards and guarantees for applicants provided for in policy and legislation are applied in practice, and finally, whether the applicable policy and legislation is adequate. This report sets out the findings of the audit and provides recommendations for strengthening the SDP, to thereby afford stateless persons their full rights in the UK.

24 ExCom Conclusion No 78 (XLVI) 1995, ExCom Conclusion 90 (LII) 2001, ExCom Conclusion No 106 (LVII) 2006.

25 *UN Treaty Collection on Convention on the Status of Stateless Persons*, available from: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en.

26 *UN Treaty Collection on Convention on the Reduction of Statelessness*, available from: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en.

2. LEGAL FRAMEWORK

2.1 INTERNATIONAL LAW

The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the key international conventions addressing statelessness. They are complemented by international human rights treaties and provisions relevant to the right to a nationality, which is recognised in a series of international legal instruments,[27] and Article 15 of the Universal Declaration of Human Rights.

The object and purpose of the 1954 Convention is **"to assure stateless persons the widest possible exercise of [their] fundamental rights and freedoms"** (Preamble). It addresses the special vulnerability of stateless persons by granting them a core set of civil, economic, social and cultural rights.[28] Article 1(1) of the 1954 Convention defines a stateless person as **"a person who is not considered as a national by any State under the operation of its law."** Whilst 93 countries are parties to the 1954 Convention, fewer than 25 countries have established dedicated statelessness determination procedures.

The 1961 Convention aims to prevent statelessness and reduce it over time, 74 countries are parties to the 1961 Convention. This convention establishes an international framework to eradicate statelessness. It requires that states establish safeguards in their nationality laws to prevent statelessness at birth and later in life.

2.2 UK LAW AND POLICY ON STATELESSNESS

The UK is a party to both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The UK ratified the 1954 Convention in 1959 but it did not establish a formal mechanism for recognising and providing protection to stateless people for many years. In 2011, UNHCR and Asylum Aid undertook a mapping study to investigate the extent of statelessness in the UK.[29] This study revealed that unrecognised stateless and 'unreturnable' persons **"face the risk of a number of human rights challenges that are directly linked to their lack of immigration status. These range from destitution and street homelessness to immigration detention".**[30]

As a result of this research and with accompanying advocacy, the UK government introduced an SDP by way of Part 14 of the Immigration Rules,[31] which came into force on 6 April 2013, enabling stateless persons to apply for recognition of their status and a grant of leave to remain. A grant of leave to remain confers some of the protections stateless persons are entitled to under the 1954 Convention (e.g. the right to work and access public funds).[32] The Home Office issued an instruction on applications for leave to remain as a stateless person to accompany the new immigration rules. This instruction was amended and a second version was published in February 2016[33] (2016 Home Office Policy). The decisions made by the Home Office on cases in this audit were decided under this policy. In March 2019, the Home Office announced[34] that persons granted leave to remain because they are stateless will normally be granted 5 years leave to remain. This is a very welcome improvement over the previous grant of leave given of 2.5 years, now paralleling refugee status and humanitarian protection. To accommodate this rule change, the Home Office also updated the policy on statelessness leave in October 2019 (Home Office 2019 Policy).[35]

In 2014 UNHCR published the Handbook on Protection of Stateless Persons (UNHCR Statelessness Handbook).[36] This Handbook is intended to guide government officials, judges and practitioners, as well as UNHCR staff and others involved in addressing statelessness. It provides a valuable resource for both statelessness determination and the development and implementation of law and policies relating to the protection of stateless persons. The Home Office policy is, however, not fully consistent with the UNHCR Handbook in a number of key areas. These are indicated in the table on the next page:

27 This includes the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

28 Many provisions were taken literally from the Refugee Convention, reflecting the Conventions' shared drafting history. However, where a stateless person is also a refugee, the wider provisions of the Refugee Convention apply.

29 UN High Commissioner for Refugees (UNHCR)," Mapping Statelessness in the United Kingdom", November 2011, See note 3 above.

30 Ibid pp. 148 para. 6.

31 Immigration Rules Part 14: Stateless Persons, see note 4 above.

32 With respect to articles in the 1954 Convention relating to social housing (Article 21); public education (Article 22); healthcare and social assistance (Article 23); social security (Article 24), those granted statelessness leave in the UK are not eligible for home student fees or student finance (except in Scotland) and they are not exempt from charging for secondary health services, and are not eligible for social housing.

33 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016. No longer available online.

34 Home Office "Statement of Changes to the Immigration Rules" (2019), available from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784059/CCS001_CCS0319710302-001_HC_1919_Web_Accessible.pdf

35 Home Office Policy Guidance "Stateless leave", 30 October 2019, see note 5 above.

36 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014 see note 2 above.

	Home Office Policy	UNHCR Handbook
Interviews	An interview may be required if you believe that the statelessness leave application is lacking information needed to make an informed decision, which cannot be obtained through other means... An interview will not be required where there is already sufficient evidence that an individual is stateless, is not admissible to any other country and is eligible for leave to remain on this basis.	The right to an individual interview, and necessary assistance with translation/interpretation throughout the process, are essential to ensure that applicants have the opportunity to present their cases fully and to provide and clarify information that is material to the claim. These procedural guarantees also permit the decision-maker to explore any ambiguities in an individual case. (Paragraph 73)
Burden of proof	The burden of proof rests with the applicant, who is expected to cooperate with the decision-maker to provide information to demonstrate they are stateless and that there is no country to which they can be removed. Paragraph 403(d) of the Rules requires applicants to obtain and submit all reasonably available evidence to enable the Secretary of State to determine whether they are stateless.	The burden of proof is in principle shared, the applicant and examiner must cooperate to obtain evidence and to establish the facts. Due to the nature of statelessness, authorities need to be sympathetic towards explanations regarding the absence of certain kinds of evidence. (Paragraph 90)
Standard of proof	A higher standard of proof is applied than in refugee status determination. The applicant is required to establish that he or she is not considered a national of any State to the standard of the balance of probabilities (that is more likely than not).	The same standard of proof should be applied as in refugee status determination. It should be required to establish to a reasonable degree, that an individual is not considered as a national by any State under the operation of its law. (Paragraph 91)
Timeframe for decision-making	The Home Office Policy is silent on a timeframe for decision-making. Where the Home Office is waiting for a response from a national authority, it is a matter for judgement in the individual case as to how long it is reasonable to wait for a decision.	In general, it is undesirable for a first instance decision to be issued more than six months from the submission of an application as this prolongs the period spent by an applicant in an insecure position. However, in exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months to provide time for enquiries regarding the individual's nationality status to be pursued with another State, where it is likely that a substantive response will be forthcoming in that period. (Paragraph 75)
Review of decisions	Applicants do not have a right of appeal. They should be advised in the decision letter that they are entitled to apply for an administrative review, which must be made online using the appropriate form. This falls in line with other immigration routes.	Applicants should have an effective right to appeal against a negative first instance decision. The appeal procedure should rest with an independent body. (Paragraph 76)
Admissibility	Paragraph 403(c) requires the applicant to have been "unable to secure the right of admission to the country of former habitual residence or any other country." Paragraph 403 contains two new requirements: that the applicant "(e) has sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and (f) ... in the case of a child born in the UK, has provided evidence that they have attempted to register their birth with the relevant authorities but have been refused." Admissibility in the Home Office policy equates to 'permanent residence' in the relevant country.	When considering if a stateless person has a 'realistic prospect' of obtaining protection in another State, an assessment must be undertaken as to whether the stateless person: • is *able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; OR* • *enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.* (Paragraph 154)

3. METHODOLOGY

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3.1 SCOPE OF AUDIT

Together, the Home Office and UNHCR agreed that UNHCR would undertake a quality audit of the Home Office's approach to decisions concluded under the SDP. In preparation for the audit, UNHCR reviewed the content of legislation and guidance relevant to statelessness decision-making. Additionally, an inception meeting was held with the Status Review Unit and Asylum Policy team for coordination and information gathering purposes. The Home Office has highlighted that both operational practices and the policy guidance for the SDP has improved in the time between the auditing of files for this report which took place in 2018, and its publication. The Home Office has also notably now included the SDP within its Quality Assurance Framework (QAF), an internal system for checking the quality of decisions. This is a welcome development for the monitoring of quality in decision-making on statelessness. Throughout this report, UNHCR has endeavoured to reflect where these changes have occurred alongside areas for improvement with recommendations.

UNHCR selected 40 cases for the audit, which reflected the type and nature of cases generally considered by the Home Office stateless team. The decisions by the Home Office in these cases were made in 2016 and 2017. The variables considered for this selection were; countries of origin of applicants; gender; final decisions taken and cases where interviews with applicants had been undertaken. A selection of different decision-makers responsible for the decision was also requested to avoid over auditing the same decision maker. To widen the scope, the team requested the option to choose cases where an application was made from within the detention estate, cases where criminality was a factor in decision-making and cases where an administrative review had been carried out on the initial decision.

3.2 SAMPLING OF CASES

UNHCR based its audit findings on a review of the original Home Office paper case files, as well as any additional information available on the Home Office Case Information Database (CID). Each case typically involved an assessment of the applicant's own application for statelessness leave with attached evidence, a decision letter by the Home Office and any additional evidence on file such as previous asylum or immigration applications and/or detention review files. The audit review was conducted using a standardised decision assessment form developed and agreed in consultation with Home Office colleagues and based on international standards, national legislation and policy guidance.[37]

37 The decisions made by the Home Office on cases reviewed in this audit were decided under the Home Office 2016 policy, but where relevant, the 2019 Home Office Stateless leave policy will be referenced throughout this report.

40 CASES WERE SELECTED FOR AUDIT

Four cases could not be audited because one file had incomplete information and one file had the decision made prior to the new policy being in place. Two files did not have a substantive statelessness leave decision made and the application had been withdrawn as the asylum application was still pending so they were removed from the sample.

The final sample comprised 36 cases, with the following variables:

- Applicants were born in 12 different countries: Angola (1), Bangladesh (5) Denmark (1), France (1), India (3), Iraq (2), Ivory Coast (1), Myanmar (3), Nigeria (2), Palestine (6), UK (7), Zimbabwe (4)
- The gender ratio was 28 males and 8 females
- Cases with an administrative review undertaken (8)
- Cases where criminality was a factor in decision-making (5)
- Cases where interviews with applicants were undertaken (7)
- Grants of statelessness leave (7)
- Refusals of statelessness leave (29)
- Cases with children as main applicant (6)
- Cases with adults as main applicant (30)
- UNHCR assessed decisions from 5 different decision-makers

Image © UNHCR/Greg Constantine

4. ASSESSING AND DETERMINING STATELESSNESS

4.1 BURDEN OF PROOF

The burden of proof is crucial to the process of evidence gathering and assessment in statelessness determination. There is, however, a difference in the approach taken by UNHCR and the UK Home Office with respect of the burden of proof.

The UNHCR Handbook advises that in statelessness decision-making **"the burden of proof is in principle shared, in that both the applicant and the examiner must cooperate to obtain evidence and to establish the facts"**.[38] This is for two reasons: first, because of the fundamental importance of the substantive rights conferred on stateless persons by the 1954 Convention and the serious consequences of incorrectly rejecting an application for stateless status (as outlined in the introductory section of this report) and second, in recognition of the practical difficulties inherent in proving statelessness. These are the same reasons as those behind the standard and burden of proof in refugee cases.[39] Conversely, Home Office policy states that **"in all cases, the burden of proof rests with the applicant"**. Paragraph 403(d) of the Immigration Rules requires applicants **"to obtain and submit all reasonably available evidence"** to enable the Secretary of State to determine whether they are stateless and whether they qualify for statelessness leave.

The 2016 Home Office policy[40] (as well as the current 2019 policy[41]) however, qualified this approach by stating that: **"where the available information is lacking or inconclusive, the decision-maker must assist the applicant by... undertaking relevant research and, if necessary, making enquiries with the relevant authorities and organisations [emphasis added]".** And also that "if the applicant has tried and failed to obtain relevant information from the national authorities, decision-makers should consider whether officials are more likely to receive a response."[42] The Home Office guidance, therefore, envisages a shared burden in some cases. Moreover, in *Semeda*,[43] the President of the Upper Tribunal quashed the respondent's statelessness decision on account of her failure to make enquiries, finding that her policy obligation was underscored by the well-established *Tameside*[44] duty of enquiry.[45]

4.1.1 Cases engaging the duty to assist

There were no cases identified in this audit in which the Home Office contacted relevant foreign authorities in order to obtain confirmation about the citizenship status of an applicant. UNHCR's analysis indicates that as outlined in the policy where information was "lacking or inconclusive", assistance was not always offered and there was a tendency in the decisions audited, for the burden to be placed exclusively on the applicant to produce reasonable evidence in support of their claim. This omission of assistance was particularly noteworthy in seven cases audited where the applicant had made efforts, often with limited or no success, to visit or contact relevant foreign authorities in order to obtain confirmation regarding a lack of citizenship. Information provided by foreign authorities is

38 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 89. See note 2 above.

39 See UN High Commissioner for Refugees (UNHCR) "Handbook and Guidelines on Procedures and criteria from Determining Refugee Status", Para. 42. Available from: www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html.

40 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016. See Section 4.2. See note 33 above.

41 Home Office Policy Guidance "Stateless leave", 30 October 2019, See note 5 above. pp. 14 states: "In such circumstances, where the available information is lacking or inconclusive, you must assist the applicant by interviewing them to elicit further evidence, undertaking relevant research and, if necessary, making enquiries directly with the relevant authorities and organisations." And pp. 13 of 2019 policy which states that; "you must consider liaising directly with relevant authorities where the information available (from the application and interview) is not determinative."

42 Ibid. See Section 4.3.3.

43 Semeda, R (on the application of) v Secretary of State for the Home Department (statelessness; Pham applied) (IJR) [2015] UKUT 658 (IAC) (21 October 2015). Available from: www.bailii.org/uk/cases/UKUT/IAC/2015/658.html.

44 *Secretary of State for Education and Science v Metropolitan Borough Council of Tameside* [1977] AC 1014.

45 This requires that the decision maker must take reasonable steps to acquaint themselves with the relevant information.

sometimes of central importance to statelessness determination procedures.[46] However, significant challenges can be faced by individual applicants in receiving responses from State authorities to nationality-related queries: **"[i]n many cases, States will only respond to such enquiries when initiated by officials of another State".**[47] Applicants often may not have the financial means to make visits to foreign embassies or, if they do, have the ability to secure a clear response to their query. Further, the Home Office has considerable resources and established relationships with many governments which may make the gathering of reliable information from those national authorities disproportionately easier than for applicants.

In one case reviewed, the applicant was born in Zimbabwe, but because his father was Malawian, he held an expired Malawian passport. He provided a letter in his statelessness leave application from the Malawian authorities which stated that he should renounce his Malawian citizenship because the authorities believe him to be a Zimbabwean national. At the time of application, Malawi did not allow dual nationality. The applicant claimed to have subsequently made numerous attempts to contact the Zimbabwean authorities to document himself, including two passport applications, all of which were unsuccessful. The Home Office refusal letter states that:

> **"the letter from [the] Malawian [authorities] does not confirm that you are not a national of Malawi and indeed states that you should renounce your Malawian citizenship and you are a Zimbabwean national... The fact that you cannot obtain a passport or travel document does not mean you are not a national of a country".**

Efforts were not made by the Home Office decision-maker to contact either the Malawian or Zimbabwean authorities in light of an inconclusive position on the citizenship of the applicant. The application was refused with a lack of interrogation by the Home Office as to how the Malawian authorities in practice consider this individual's citizenship status.

In another case an applicant claiming to be Bihari[48] had made an application for a Bangladeshi passport and provided a copy of an email response from the Bangladeshi High Commission which stated that:

> **"We are unlikely to issue an ETD to a Bihari citizen. However, we are trying to ascertain your nationality".**

Without making enquiries as to the outcome of these checks the Home Office nevertheless refused the applicant statelessness leave. The Home Office had themselves made a number of previous attempts to obtain a travel document when they sought to remove the applicant, a process which also appeared to have been inconclusive.

In these seven cases, applicants were refused statelessness leave in part under Paragraph 403(d) of the Immigration Rules. Despite the applicant making efforts to satisfy their burden of proof and facing challenges in doing so with consular officials, decision-makers did not make enquiries or otherwise support the applicant in the gathering of evidence from the national authorities. In these cases, for example, the decision-maker could have made reasonable efforts, with the consent of the applicant, to contact relevant foreign authorities to seek to obtain further evidence relevant to the assessment of the applicant's case. Such an approach would have been consistent with the Home Office policy and the obligation it places on decision-makers to assist applicants in gathering evidence.

Furthermore, other forms of assistance were not always provided. In only two of these seven cases was an interview undertaken with the applicant, despite this being a method which according to both the 2016[49] and 2019[50] Home Office policy, is required when providing assistance to an applicant. The 2016 Home Office policy, under which these cases were decided, stated **"In such circumstances, where the available information is lacking or inconclusive, the decision-maker must assist the applicant by interviewing them"** (See also section 7.1 on interviews).

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46 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 96. See note 2 above.

47 UN High Commissioner for Refugees (UNHCR) Good Practices Paper "Establishing statelessness determination procedures to protect stateless persons" 11 July 2016 p 6, available from: www.refworld.org/pdfid/57836cff4.pdf.

48 The Urdu-speaking community of Bangladesh, also known as the "Biharis", is a linguistic minority that was excluded from the body of citizens upon the creation of the independent State of Bangladesh in 1971.

49 Home Office Policy Guidance "Statelessness and applications for leave to remain" See Section 4.2, 18 February 2016 See note 33 above.

50 Home Office Policy Guidance "Stateless leave", 30 October 2019, See Page 14, See note 5 above.

4.1.2 Provision of assistance due to applicant's personal circumstances

In UNHCR's view the point at which decision-makers "assist" applicants should not be restricted to those occasions on which the applicant has demonstrated that they have tried and are unable to obtain information necessary to the consideration of the process. This is because applicants may not always be in a position to either obtain necessary information or know what information is considered necessary for the determination of their claim, noting the limitation posed by the lack of legal aid in the process. Additionally, waiting for an applicant to try and fail to gain "necessary information" may undermine the efficiency of the procedure. Indeed, the Home Office 2016 and more recent 2019 policy states that: **"Applicants are expected to have made enquiries with relevant national authorities, unless there is good reason not to"** [emphasis added]. It goes on to state that one reason someone may not be able to provide evidence is that "they do not have the resources or knowledge to obtain information about the laws of a given State."[51]

In two cases reviewed, although the applicant had not made approaches to the relevant national authorities themselves, the personal circumstances of the applicant should, in UNHCR's view, in accordance with Home Office policy, have encouraged the Home Office to assist the applicant.

In one of these cases, the Home Office refused an application for statelessness leave, in part on the basis that the applicant had not visited relevant authorities to help determine his claimed lack of nationality and therefore had not satisfied the burden of proof. The applicant's legal representative had asserted, however, that his client was unable to visit relevant embassies because he was highly vulnerable due to a combination of factors including that he spoke very little English, had no formal education and was destitute.

Even where a legal representative is funded, few law firms have the resources to send staff or volunteers to accompany and support individual applicants in their visit to foreign consulates, to produce expert witness statements that can be used as evidence to support statelessness applications. Refugee Action's Embassy Project[52] provided this function in the past, but funding has since ended and there is currently no organisation in the UK which offers this service. The case described above may have benefited from a similar scheme to Refugee Action's project. UNHCR is of the view that to assist some applicants in substantiating their claim, the re-introduction of a similar programme should be considered by the Home Office.

In another case, the Home Office refused statelessness leave under Paragraph 403(d) of the Immigration Rules where it was indicated that the decision-maker perceived the applicant to be uncooperative. In this case, during his stateless interview, the applicant expressed reservations in response to the suggestion from the decision-maker that he needed to visit the Iranian authorities in an attempt to re-document by saying that:

> **"When somebody go to the Iran embassy they take background and they will ask why I was born in Iraq and position of my parents".**

The Home Office refusal letter for this case stated:

> **"You were also asked why you hadn't approached the Iranian embassy to apply for travel documents. You claimed it was too dangerous for you to go to the Iranian embassy...The interviewer also stated your stateless application would not succeed until you were able to obtain documents from the Iranian embassy confirming the authorities were denying you Iranian travel documents. So far you have not provided this information".**

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51 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, see Section 4.2, see note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, see Page 14, see note 5 above.

52 This project ran from December 2015 – March 2017 and provided expert casework to help destitute people to gather the evidence from embassies to support statelessness or disputed nationality fresh claims.

Both the 2016 and 2019 Home Office policies require the decision-maker to determine if the applicant is **"genuinely cooperating"** in providing supporting information.[53] Whilst it is recognised that this is not always a straight forward task, in this case, the applicant's strong hesitation to approach the embassy should have enlivened a need for the decision-maker to interrogate the applicant's claimed fear of presenting himself to the Iranian authorities, but this was not examined. It is important to enquire why someone does not want to approach their national authority. This is to ensure, for example, that changes in circumstance have not occurred since the previous refusal of asylum that could give rise to a risk of harm on return to their country of origin. In this circumstance it may be that the decision-maker can redirect the applicant to make further submissions into the asylum procedure if deemed appropriate.

Further, this scenario also presented an opportunity for the decision-maker to ask for consent to allow the Home Office to approach the relevant Iranian authorities on the applicant's behalf. No such offer was made. This could have produced more evidence for the decision-maker to assess whether the applicant was unwilling as opposed to unable to cooperate, in order to determine whether, on the balance of probabilities, he was stateless. The circumstances of this case present particular challenges for decision-makers in the context of there being no legal aid to assist applicant's with comprehensive legal advice prior to submitting a statelessness leave application and no assistance available to accompany applicants to a consulate or embassy where this support may be beneficial.

It was noteworthy that decision-makers, however, did more actively assist applicants in obtaining evidence from other UK government teams or departments. For example, in three cases of suspected fraudulent applications, the decision-maker made proactive enquiries to the Foreign and Commonwealth Office and in two cases with Home Office records to investigate possible fingerprint matches based on suspicions that the applicants had different identities. In another case a mother with refugee status applied on behalf of her child for statelessness leave. The decision-maker undertook enquiries with the Home Office Asylum Casework Directorate to determine information about the mother's grant of refugee status and then advised the applicant to apply for refugee leave in line with her mother. The positive practice undertaken in these cases could be more readily replicated to deal with foreign authorities where required.

4.1.3 The meaning of "reasonably available evidence"

UNHCR's analysis highlighted that the use of Paragraph 403(d) of the Immigration Rules which requires applicants to 'obtain and submit all reasonably available evidence' appeared to not always be clearly understood by both applicants and decision-makers alike and that where evidence was lacking, in the majority of cases, the applicant was not asked by the decision-maker whether he or she could obtain further evidence to support their application.

The research also indicated that some decision-makers had high expectations of what documentary evidence applicants should possess and/or should reasonably be able to obtain and submit in support of their applications (see examples in the section on "close and rigorous scrutiny"). Clarity is therefore needed on what is understood to be meant by 'reasonably available evidence' and what process is required to establish this threshold. Guidance could confirm that applicants would be required to not only submit all relevant documents in their possession, but should also make efforts to gather evidence in support of the application and when an applicant is unable to submit evidence that the authorities consider he or she can reasonably be expected to submit, the applicant must at least demonstrate efforts made to obtain the evidence. Such guidance could include a non-exhaustive "checklist" for both applicants and decision-makers to assist in ensuring that decisions which rest on this are clear and transparent.

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53 Home Office Policy Guidance "Stateless leave", 30 October 2019, See Page 14, see note 5 above.
Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, see Section 4.2, see note 33 above.

4.2 STANDARD OF PROOF

UNHCR advises States that they should adopt the same standard of proof as that applied in refugee status determination, notably, that the degree of likelihood to be shown by the applicant that they are a refugee is **"to the reasonable degree"** threshold. For the same reasons that the burden should be shared, the standard should be low where there are serious consequences to incorrectly rejecting an application for stateless status and practical difficulties inherent in proving statelessness. UNHCR therefore considers that requiring a high standard of proof in statelessness determination would undermine the object and purpose of the 1954 Convention, which is: **"to assure stateless persons the widest possible exercise of [their] fundamental rights and freedoms"** (Preamble).[54] The Home Office, however, maintains that the higher **"balance of probabilities"** standard (which in practice means 'it is more likely than not') should be applied when determining a statelessness claim.[55]

UNHCR brought the abovementioned arguments for a lower standard in the determination of whether a person qualifies for the status of a stateless person as a third party in a recent case in the UK Court of Appeal.[56] The Court of Appeal held, however that those asserting that they are stateless need to prove their case on the balance of probabilities.[57] While the following section considers whether the Home Office standard is being met in the cases audited, UNHCR does not endorse this approach.

4.2.1 Application of the standard of proof

There were 30 cases in which a substantive consideration of whether or not the applicant was stateless took place under rules 401-403[58] of the Immigration Rules. In 16 of these cases, analysis suggests that the Home Office applied the standard of proof to the balance of probabilities correctly.

For example, in one case the applicant claimed to be stateless because he was unable to obtain travel documents from the Indian authorities to return to India. The Home Office undertook an interview with the applicant to further investigate his claim and undertook checks which determined that the applicant entered the UK on a valid Pakistani passport as a medical treatment visitor with a correctly issued visa. On the evidence available, the Home Office was able to conclude that the applicant was more likely than not a Pakistani national and therefore not stateless.

In another case, where the applicant had links to both Somalia and Denmark, statelessness was established in line with the balance of probabilities standard based on evidence submitted by the applicant in the form of a letter from the Danish authorities. This letter confirmed that the applicant was not regarded as a citizen and that she was issued a Danish passport in error. The Home Office took steps to understand the applicability of the law to the individual alongside the evidence provided to ultimately decide that "on the balance of probabilities" they did not qualify for Somali nationality. This was achieved by an analysis from the decision-maker of Somali nationality law which concluded that Somali nationality could only be acquired if the father is a Somali citizen and the person has resided in the territory of the Somali Republic. Neither of these requirements applied to the applicant and it was concluded she did not qualify for Somali nationality.

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54 Many provisions were taken literally from the Refugee Convention, reflecting the Conventions' shared drafting history. However, where a stateless person is also a refugee, the wider provisions of the Refugee Convention apply.

55 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, see note 33 above.

56 UN High Commissioner for Refugees (UNHCR), "Submission by the United Nations High Commissioner for Refugees in the case of AS (Guinea) v. Secretary of State for the Home Department before the Court of Appeal (Civil Division), 20 February 2018, C5/2016/3473/A, available from: www.refworld.org/docid/5a9d54884.html.

57 United Kingdom: Court of Appeal (England and Wales "AS (Guinea) Appellant - and – Secretary of State for the Home Department Respondent - and – United Nations High Commissioner for Refugees Intervener", [2018] EWCA Civ 2234, 12 October 2018, See Paras. 46 and 57 available from: www.refworld.org/cases,GBR_CA_CIV,5c07e2e94.html.

58 Rules 401-403, Immigration Rules (HC392 as amended) see note 4 above.

4.2.2 Lack of evidence and analysis of application of the standard of proof

In the remaining 14 cases the application of the standard of proof appears on face value to be in accordance with Home Office policy when reviewed in isolation. However, on further inspection, it was understood that not all the available evidence was before the decision-maker, due to a failure to apply the burden of proof correctly. The lack of assistance to the applicant by the decision-maker, where evidence was inconclusive (as highlighted in the burden of proof section) played a role in this.

In one case for example relating to two sibling applicants born in the UK to Indian parents, both applications failed to provide any information about the registration of the children's births at the Indian High Commission. The Home Office concluded:

> **"as you were born in the UK, your birth should have been registered by your parents at the Indian High Commission... It is considered that you have provided insufficient evidence from the Indian High Commission to demonstrate that this registration has or has not been completed."**

In this case, the decision-maker made a decision on the papers without seeking further evidence or clarification regarding efforts made to register the births of the children at the Indian High Commission. Material facts about the claim were not established in this case, and according to Home Office Policy, as the evidence was "lacking or inconclusive"[59] the decision-maker should have asked for more evidence of whether or not they attempted to register the baby, either through a request to interview or a request for further written information in support.

In another case the applicant claimed to have made requests to the Zimbabwean authorities for a passport which had been unsuccessful. This applicant submitted three news articles relating to the issue of statelessness in Zimbabwe as well as a document which was general in nature which the applicant claimed was a negative response from the authorities to his request for a Zimbabwean passport. The letter did not reference the applicant's name and was instead generic, stating:

> **"In accordance with international law, persons who have applied for/been granted political asylum by the host country are automatically excluded from applying for travel documents from the embassy."**

It is generally UNHCR's advice that where a competent authority issues a pro forma response to an enquiry and it is clear that the authority has not examined the particular circumstances of an individual's position, such a response carries little weight.[60] The Home Office conclusion about this document was in line with this, stating:

> **"the document you have provided was not issued to you and therefore the advice contained in this document does not take account of your personal circumstances, therefore the document was considered but found to have no relevance to your application".**

However, the inconclusive nature of the evidence should have compelled the decision-maker to further investigate the applicant's situation and his asserted lack of entitlement to Zimbabwean citizenship. In the lawyer's letter to the Home Office, the representative sets out that:

> **"Should you require further clarification please make contact with the Zimbabwean Embassy..."**

However, there is no information on file to suggest any approach was made to this effect and the decision-maker instead applied no weight to the evidence lodged and dismissed it in its entirety.

In these cases, it is not surprising therefore that on the basis of evidence available, the applicant was not, on the balance of probabilities, found to be stateless. However, further evidence, or a further effort to obtain evidence, could have allowed the decision maker to make a more informed and complete assessment.

It is also important to note that in no cases in the audit was the applicable standard of proof – on the balance of probabilities, or "more likely than not" made explicit in the decision letter. Although the lack of reference does not necessarily undermine the final decision made, good practice indicates that the standard should be clearly articulated by decision-makers to ensure understanding of the same and correct application.

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59 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, see Section 4.2, see note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, p.13, see note 5 above.

60 Home Office Policy Guidance "Stateless leave", 30 October 2019, para. 41, see note 5 above.

RECOMMENDATIONS

- Decision-makers should more readily assist the applicant making enquiries with relevant national authorities and organisations. Decision-makers should receive updated guidance and training to encourage better understanding of when and how to assist the applicant with these enquiries.
- Home Office could consider introducing a question requesting consent from the applicant for the Home Office to make 'relevant enquiries' to national authorities in the declaration section of the online statelessness leave application form. This should include an option for the applicant to explain why they do not wish to give consent, should that be the case.
- A checklist to supplement the policy, should be developed to assist decision-makers and applicants in understanding what is required to determine if 'all reasonably available evidence' has been provided or not.
- In light of the inherent difficulties some stateless applicants face when attempting to satisfy the burden of proof by obtaining information from State authorities, the Home Office should consider supporting them in approaching and gathering evidence from embassies, as previously provided through Refugee Action's Embassy Project. This support could be provided for by the funding of an independent organisation.
- UNHCR advises States to recognise that the burden of proof should be shared, in that both the applicant and examiner must cooperate to obtain evidence and to establish the facts in every case (UNHCR Handbook paragraphs 89, 90).
- The same standard of proof should be applied to the determination of statelessness as is applied in the determination of refugee status. It should be required to establish "to a reasonable degree", that an individual is not considered as a national by any State under the operation of its law (UNHCR Handbook Paragraph 91).

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4.3 THE CREDIBILITY ASSESSMENT

The term 'credibility assessment' in this context is used to refer to the process of gathering relevant information from the applicant, examining it in the light of all the information available to the decision maker, and determining whether the statements of the applicant relating to material elements of the claim can be accepted, for the purpose of the determination of statelessness. It is a complex and difficult task.

The UNHCR Handbook addresses credibility issues in statelessness[61] which also reflects UNHCR guidelines on undertaking credibility assessments in the asylum context. This guidance identifies and clarifies key concepts on credibility, derived from international and EU bodies.[62] This chapter reports on the extent to which these standards are reflected in the cases audited for this report.

4.3.1 Gathering the evidence

The kinds of evidence that may be relevant to a determination of statelessness can be divided into two categories: evidence relating to the individual's personal circumstances and evidence concerning the laws and other circumstances in the country in question. The audit found both strengths and shortcomings in the evidence gathering practices undertaken by decision-makers in both these areas.

Evidence concerning an applicant's personal history and circumstances helps identify which States and nationality procedures need to be considered in determining an applicant's nationality status, and therefore helps go towards determining the material facts of the claim. The types of evidence at issue can often include testimony of the applicant, response(s) from a foreign authority to an enquiry regarding nationality status of an individual, identity documents (e.g. birth certificate, national identity card, and travel documents (in particular expired passports).
This information may be available from a range of sources including the written application, an interview and in the applicant's previous immigration history.

Gathering evidence at interview

The personal interview should provide the applicant the opportunity to more fully explain the reasons for their application; give the determining authority a crucial opportunity to identify all the material facts; to gather further necessary information and probe the credibility of the asserted material facts.[63] The personal interview will only achieve this if it is conducted in a manner, and in conditions, which are conducive to accurate disclosure by the applicant of the reasons for the application for statelessness leave.

61 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Section 9. See note 2 above.

62 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report" May 2013, available from: www.refworld.org/docid/519b1fb54.html.

63 Ibid.

UNHCR reviewed interview transcripts to assess whether the interviewing style allowed the applicant to substantiate the application and provided the basis for a full and appropriate credibility assessment. A number of areas of positive practice as well as shortcomings were identified in the cases audited.

The previous 2016 Home Office Policy directed that stateless interviews should be conducted and recorded in accordance with the standards set out in the published policy on Asylum Interviews.[64] The 2019 Home Office policy now includes reference to the approach to be taken to stateless interviews with reference to the UNHCR Handbook.[65]

There was evidence from the interviews undertaken that decision-makers, as instructed by the policy,[66] undertook some basic research prior to the interview in order to inform their interview questions to assist in the gathering of evidence. For example, in one case the decision-maker had undertaken background research to ascertain that the applicant had previously held a Pakistani passport and in another case the decision-maker had found out the exact ID number of a birth certificate submitted in the applicant's previous asylum claim. In a third case the decision-maker had undertaken research on Iranian nationality law in advance based on information provided about the applicant's parents and place of birth. All this information was raised with the applicant in their interview and provided a basis for discussion to find out more about their case.

To assist decision-makers in evidence gathering during the interview, the policy encourages decision-makers to prepare for an interview, to ensure focus on key issues and the ability to ask relevant questions.[67] In four of the interviews undertaken, lines of enquiry did not appear to be prepared or used and therefore opportunities were missed at the interview to gather and test evidence.[68] For example, in one interview the Home Office's reasoning as to the applicant's admissibility[69] to Palestine rested on the ability of relatives living there to assist the applicant re-document. In the stateless interview, the applicant was asked when he had last heard from his uncle to which the applicant replied '2004', but there was no further prompting questions about whether he knew where the uncle lived now and whether it was in fact feasible for his maternal uncle to act on his behalf and facilitate his re-documentation remotely. This was despite documentation on file, which appeared to show his uncle was now living in Algeria. The applicant's initial asylum claim mentioned a paternal uncle, but this was not put to the applicant in the interview. Furthermore, when asked whether the applicant could provide evidence that he visited the Palestinian authorities in London as outlined in his application, he stated that a charity organised the trip for him and he offered to give the decision-maker the number of the charity to help assist him in proving his visit. This charity's full address is also written on the statelessness application form. The case file does not indicate any evidence of this being followed up by the decision-maker indicating that information garnered in the interview was not being utilised to gather relevant evidence. The applicant was refused statelessness leave based on the assertion that he was admissible to Palestine.

In another case the application form stated that a passport application to the Bangladesh High Commission had been submitted. It was not clear what response had been received from the High Commission and this was not raised at all by the decision-maker in the interview. This was particularly significant because the Home Office later refused the applicant on the basis that he had failed to provide sufficient evidence to corroborate his claim.

In one case the style and tone of the interview appeared on paper to not easily allow for the applicant to be forthcoming with information.

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64 Home Office Guidance "Asylum Interviews" 2019. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf.

65 Home Office Policy Guidance "Stateless leave", 30 October 2019. See page 12. See note 5 above.

66 Home Office Guidance "Asylum Interviews" 2019. See page 19 which states that "Interviewers must read the reasons for making the asylum claim, other relevant information in the case file and...take into account any evidence already available". See note 64 above.

67 The 2016 Home Office Policy referred decision-makers undertaking statelessness leave decisions to the asylum interview policy which states that decision-makers should "Prepare broad lines of enquiry, to focus the interview on key issues and avoid wasting time on irrelevant questions".

68 Home Office Policy Guidance "Stateless leave", 30 October 2019. See page 15. states that *"If an interview is considered necessary you should make relevant enquiries when preparing for the interview where possible, so that you are able to ask questions of the applicant on matters arising following those enquiries"*. See note 5 above.

69 Under Para. 403(c) of Part 14 of the UK Immigration Rules, see note 4 above.

The stateless interview solely focused on whether the applicant had been to visit relevant consulates. The decision-maker repeatedly made statements during the interview such as:

> **"you are an Iranian national" and "as your father was Iranian, you are Iranian".**

This approach did not appear to create an environment conducive to evidence gathering and instead suggested that a decision had already been made. Whilst UNHCR recognises the limitations of only considering the interview based on paper records, this approach is contrary to UNHCR guidance[70] as well as the 2016 and later 2019 Home Office Policy[71] which states that interviews should consist of:

> **"open-ended questions to encourage applicants to deliver as full an account as possible".**

The style and content of questioning appeared on paper to make it difficult for the applicant to open up about their history or to provide the decision-maker with new information to inform the statelessness leave decision. Decision-makers should remain impartial in the interview and adopt lines of questioning which assist the applicant to be forthcoming with information.

There was however, good practice observed in one case where the applicant claimed in her statelessness leave application to have received a confirmation letter from the French civil registry which allegedly stated that her birth was not registered. However, nothing had been received by the Home Office with her application. In this case, the decision-maker recognised an omission of evidence, and asked the individual applicant to explain this in her interview, where she confirmed that the document had been submitted in the post. A follow up call by the decision-maker to the applicant's representatives confirmed that the documents had been sent by recorded delivery and further research confirmed that they had been received, meaning that the documents must have been lost within the Home Office building. A request was made by the decision-maker to her current representatives to ask them to obtain this document and to re-submit it.

RECOMMENDATION:

- Decision-makers should receive refresher training on standards and guidance for preparing and undertaking stateless interviews in a manner which assists the applicant to present their claim and be forthcoming with information necessary to take an informed decision.

70 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 100. See note 2 above.

71 Home Office Policy Guidance "Stateless leave", 30 October 2019, p. 12. See note 5 above.

Gathering of evidence from previous immigration history

Decision-makers can rely upon findings of fact established during an applicant's previous asylum procedure, as part of their evidence gathering process in a statelessness leave application. The 2016 Home Office policy (which is subsequently reflected in the 2019 policy[72]) stated: **"Findings of fact relevant to determining whether a person is stateless which have previously been established during an asylum claim may be relied upon when considering a subsequent statelessness application, unless information is provided which calls those findings into question."**[73]

Of the cases reviewed for this audit, 19 had a previous asylum claim lodged with the Home Office. In 10 of these cases the applicant's previous asylum claim and/or immigration history was considered by UNHCR to have relevance to the decision made by the stateless team.

There were three cases in which the Home Office had thoroughly reviewed the applicant's previous asylum and immigration history. One case demonstrated a full appraisal of the immigration history, past applications and nationality of the applicant by the decision-maker. In the applicant's previous asylum claim his nationality had been accepted as Nigerian and searches revealed he had been removed to Nigeria on a Nigerian travel document and had since returned to the UK. This was used to inform the decision on the statelessness application. In two cases the Home Office granted statelessness leave based on findings of fact and positive credibility as regards their lack of nationality or admissibility to their country of former habitual residence based on a decision made by a judge as part of the applicant's asylum history. The Home Office considered that no new information was available which in any way contradicted the determination of the immigration judge and, therefore, accepted their opinions.

In one case there was a lack of thorough consideration of the evidence available from a previous asylum claim. In this case, evidence from the applicant's initial asylum claim was examined, but the applicant's subsequent further submissions were not. Firstly, a letter in the applicant's further submissions provided copies of enquiries made on behalf of the applicant requesting a travel document and the response from the Palestinian General Delegation Office (PGDO - now the Palestinian Mission) in which it was stated that the PGDO would not re-document the applicant due to lack of an ID number or passport. This information was potentially crucial and provided a basis on which to question the applicant in more detail at interview. Nevertheless, the applicant was refused on the basis that he was admissible to Palestine.

It is imperative that the Home Office fully consider all immigration history available on file in Home Office records. This should be done in the round alongside all other available evidence. This is especially important in a context where many applicants are unrepresented because legal aid is not available.

Re-documentation efforts whilst applicant previously in detention

One type of evidence which was rarely collected or considered as relevant in the cases reviewed, was previous failed efforts made by the Home Office themselves to re-document an applicant prior to the statelessness leave application. This is an issue specifically referenced in the Home Office policy which states that **"External enquiries undertaken as part of the asylum process may also be relevant. For example, enquiries may have been made to national embassies or consulates to secure travel documents in relation to removal action following refusal".**[74] The UNHCR Handbook also lists previous responses by States to enquiries on the nationality of the applicant[75] as a type of evidence which may be pertinent in determining an applicant's nationality status. Not only may this evidence have offered a finding on the State's previous position which could be considered a material fact of the claim, but it also could offer a picture to the decision-maker as to how

72 Home Office Policy Guidance "Stateless leave", 30 October 2019, p. 10. See note 5 above.

73 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016. Section 3.2. See note 33 above.

74 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016. Section 3.2, see note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, Page 10. See note 5 above.

75 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, See Section D – types of Evidence. See note 2 above.

many attempts to ascertain an applicant's nationality status had been made to a relevant State, and what responses or lack of responses had been received. This is information which should inform a decision on statelessness determination.

In five cases reviewed, the applicant had been detained after refusal of an asylum claim and prior to their statelessness application. During their detention, efforts were made by the Home Office to re-document the individuals via telephone interviews with the relevant competent authority in the individuals' country of origin and via applications for Emergency Travel Documents (ETDs). In all cases, a review of the full file indicated that the stateless team did not fully examine the applicants' immigration histories and therefore these attempts to re-document were not known about by the decision-maker making the statelessness leave decision and were not collected as evidence.

In one case, in the applicant's file, there is a letter sent by the Home Office inviting the applicant to a telephone interview by the Bangladeshi High Commission in 2011. Also on file is an ETD application and confirmation that this was submitted. A handwritten note states that the:

> **"Subject underwent interview with BGD [Bangladesh] High Commission today – confirmed subject is not BGD and that she would be informing RGDU [Returns Group Documentation Unit] of this - email to RGDU advising of interview outcome".**

It is then clearly stated on numerous occasions in handwritten notes that:

> **"subject has been rejected as BGD national."**

This information would appear to be highly relevant to the statelessness determination, but there is no evidence to suggest that this information was considered and assessed in the making of the decision.

In a second example, the applicant had been detained twice, prior to his statelessness leave application. During this time, attempts had been made by the Home Office at re-documentation and return. In particular, in 2011 the Home Office had sought advice from Country Returns Operation and Strategy (CROS) - Iraq consular section which advised that:

> **"...there is no chance of documenting him as he is not Iraqi – he will probably qualify for Iranian citizenship but as his parents fled Iran in 1979 and he has no evidence of their nationality they will not accept him either. CROS have stated that the fact he does not speak Arabic would indicate he is Iranian by birth but he would have to sign a declaration to this affect and as he is Kurdish it is unlikely as removal of a Kurd to Iran is not possible."**

The Home Office refused the applicant's statelessness leave application by maintaining findings from the asylum refusal in 2009. None of the information from CROS was referenced in the statelessness leave decision. As a result of this omission, the stateless team did not appear to take into account what appeared to be highly relevant information when making the assessment of statelessness.

In a third example the applicant had previously been detained in 2010 and 2013, and had been subsequently released each time due to issues with re-documentation. On the paper file it was recorded that his case had been referred to the CIO stating:

> **"due to the fact that customer lived in Dubai from the age of 5 upwards it is highly unlikely that we will obtain an ETD on Bangladesh. Therefore he has authorised to reduce reporting to weekly."**

A common problem identified with these attempts at re-documentation is that the response received by the Home Office from foreign authorities on the ability to re-document the individual was not consistently recorded on paper or on CID. Often the correspondence recorded on the paper file with the foreign authority abruptly ended with no clear record of the conclusion of the individual's re-documentation.

RECOMMENDATION:

- Responses received from national authorities following re-documentation interviews organised by the Home Office which are usually undertaken when the applicant was previously in detention, must be thoroughly and clearly recorded, not just in written form, but also on CID.
- Decision-makers should ensure they have undertaken a review of the full Home Office paper file for each statelessness leave applicant, including from further submissions to gather all necessary information including to ascertain if any removal action (such as applications for ETDs and interviews with national authorities) has previously been undertaken and to consider this in their decision.

Gathering of information on nationality law

Establishing whether an individual is "not considered as a national…under the operation of its law" in order to satisfy the Article 1(1) 1954 Convention definition, requires a careful analysis of how a State applies its nationality laws. A key step in this assessment is gathering evidence on nationality law in the relevant country or countries to which the applicant has a link. This was an area of positive practice by decision-makers seen in this audit. In 15 cases reviewed for this audit, the stateless team proactively sought information on relevant nationality law. This was particularly necessary in cases where this information was absent from the evidence submitted by the applicant.

For example, in one case an applicant born on disputed border territory between Bangladesh and India was refused as a national in writing by the Bangladeshi High Commission. The decision-maker undertook specific consideration of the applicant's access to Indian nationality, determining that the Indian authorities would not accept him because as the border dispute was settled the presumption from the Indian authorities is that the applicant is from Bangladesh, and as Indian nationality law does not permit dual nationality, would not allow him to naturalise. The applicant was granted statelessness leave.

In another case, the applicant claimed that she was unable to acquire Somali nationality because only her mother was Somali and she had never lived in Somalia. The decision-maker researched Somali Nationality Law and found that acquisition of citizenship can only occur for a person whose father is a Somali citizen and the person must reside in the territory of the Somali Republic.[76] This informed the decision to grant the applicant statelessness leave.

In a third case the decision-maker analysed the applicant's date of birth and parent's nationalities to identify entitlement to Indian citizenship. In combination with an interview and analysis of documentary evidence, the decision-maker was able to refuse the applicant for statelessness leave to the balance of probabilities.

Gathering Country of Origin Information (COI)

The 2016 and subsequent 2019 Home Office Policy[77] directs decision-makers to gather evidence by undertaking research using country of origin information (COI). COI is important as a source of information which can support or contradict the credibility of asserted material facts of a case.[78]

In the audit, COI was cited in eight cases which fell within two scenarios. It is welcomed by UNHCR that the Home Office took steps in these cases to find relevant COI. The first scenario involved cases

76 *Law No. 28 of 22 December 1962 - Somali Citizenship, 22 January 1963*, available from: www.refworld.org/docid/3ae6b50630.html.

77 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016. See Section 4.3.5 See note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019. See Page 16 See note 5 above.

78 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report" May 2013, See note 62 above.

where applicants originated from either Bangladesh or Palestine. These contexts are extensively discussed in separate sections (see sections on 'nationality law in practice' and 'admissibility' respectively). The second scenario in which COI was used by decision-makers, was to refute the authenticity of an applicant's documentary evidence. COI was not gathered beyond this in any other cases to inform the Home Office decision.

UNHCR notes the limited availability of country information on statelessness. This made information less accessible to decision-makers, who were as a result, required to take more proactive steps to gather COI. However, no requests for COI where it was otherwise lacking were made to the Country Policy and Information Team (CPIT) in any cases audited. There were seven cases where UNHCR deemed that COI could have assisted the Home Office in establishing the credibility of material facts.

Of particular concern were four cases concerning Zimbabwe where the applicant purported to have been refused a Zimbabwean passport. The most recent Home Office report containing information of relevance to statelessness however dates back to 2012.[79] It appeared that the decision-maker had not reviewed this guidance, but if they had, concerns would have been noted about the revocation of citizenship of persons who fail to return to Zimbabwe for a five-year period and that this situation has previously led to enquiries by the UK Foreign Office to Zimbabwean lawyers.[80] This should have instigated a need for the decision-maker to undertake their own specific enquiry about the updated country context via CPIT as directed by the Home Office Policy.

In another case the applicant claimed that his parents arrived in Iraq as refugees from the Iranian revolution circa 1979 and that he was born in Al Tash Camp in Iraq. He stated that his mother had died and father had been missing since 2004 and that he had no Iraqi ID as this was not provided in the camp, which was disbanded in 2004. He then lived near the border with Syria, where there were no authorities in place to examine his nationality. He claimed that his parents had Iranian IDs but he could not prove that he was their son because his birth was not registered. In the statelessness leave refusal letter, the Home Office cites a paragraph from his asylum claim which found him to be an Iranian Kurd. No COI was cited. A review by UNHCR of available Home Office COI relevant to this applicant's case, and which directly addresses the citizenship situation for Iraqi refugees, was only available in a note dated 2007 which states that for individuals in this applicant's situation **'in numerous instances, both the Iraqi and Iranian Governments dispute their citizenship, rendering many of them stateless"**.[81] However, no updated request to CPIT was made to help inform the decision-maker's decision.

RECOMMENDATION:

- Relevant Home Office Country of Origin information reports should include a section on nationality and citizenship so that decision-makers in the stateless team have information on the updated country situation to draw on in order to make accurate decisions. UNHCR would recommend the Home Office prioritise countries where individuals with the most applications for statelessness leave originate.
- In the absence of country of origin information, decision-makers should more readily undertake requests for information on specific countries contexts via the Country Policy and Information Team (CPIT), as they are directed to do in the Home Office policy. This approach could also be used to ascertain information on determining how a State is likely to apply their nationality law to an individual applicant in practice.
- The Independent Advisory Group on Country Information (IAGCI) should commission an evaluation of UK Home Office Country Information Products on 'nationality and citizenship' to assess the content and quality of country information and guidance notes produced by the Home Office and relied upon by decision makers. This will give a better picture of where the gaps lie.

79 United Kingdom: Home Office, "Country of Origin Information Report – Zimbabwe" 13 July 2012, available from: www.refworld.org/docid/538591d64.html.
80 Ibid. See Section 30 – Citizenship and Nationality
81 United Kingdom: Home Office, "Country of Origin Information Report – Iran" 4 May 2007, page 166, available from: www.refworld.org/docid/465be2b72.html.

4.3.2 Determining the material facts of the claim

It is for the decision-maker to first identify all the claimed facts of a case and to distinguish which are material to the claim and which are not.[82] Examples of a material fact in a statelessness claim include a claimant's personal circumstances, for example where an applicant was born or the nationality of their parents, and/or evidence concerning the laws and other circumstances in the country in question. This is not exhaustive and the material facts will depend on the nature of the claim to be stateless.

The review of cases noted that when an applicant was granted statelessness leave, a 'grant minute' was used. This form has subheadings, which provide a structure for the decision-maker to follow including a section named 'material facts'. Whilst this form is not comprehensive in comparison to the fully structured approach used in asylum cases in the UK, it nonetheless leads the decision-maker to begin their decision by identifying the material facts of the claim. Where cases were refused statelessness leave however, this type of form was not used. Instead a variety of structures to these letters were used including headings such as 'reason for statelessness' 'basis of claim', 'evidence' 'findings'. In other cases no headings were used. It was often not clear which elements of the applicant's claim were considered material and therefore, how these went on to be considered as part of the overall credibility assessment.

In one case, there was a focus in the refusal letter on elements of the applicant's circumstances which appeared immaterial to the determination of statelessness. The decision-maker chose to address the applicant's mode of travel to the UK and whether he was employed in Dubai as reasons to refuse statelessness leave. It was not obvious how these elements were considered relevant to the decision-maker's determination. It was stated:

> **"...it is accepted that you may well have lived in Dubai, however, it is noted you have failed to provide sufficient evidence to demonstrate that you were not merely employed either lawfully or unlawfully. You failed to provide an adequate explanation as to how and why you were brought to the UK. Moreover, the fact that you worked in Dubai (legally or not) does not render you stateless".**

In two further cases it was asserted by the applicants that their countries of origin, Nigeria and Zimbabwe, excludes anyone who has applied for or been granted asylum from applying for travel documents from the relevant embassy. However, in both cases the material facts associated with the applicant's previous protection claims were not established.

In the first case the applicant stated that she made a postal application for asylum in the UK in 2000, for which she is still awaiting a decision. The Home Office refusal letter states that:

> **"you claim that you submitted a postal application for asylum in April 2000 and you are still awaiting for a response from the Home Office, however we have no record of this asylum record."**

In refusing the application, the Home Office asserted that details of previous asylum claims were not divulged by the Home Office to the authorities of other countries in the making of any application for travel documentation and that therefore the Zimbabwean embassy would not know about the applicant's previous asylum application in order to refuse her documents. However, even if the Home Office did not consider an asylum application was in fact submitted or recorded, no assessment is made as to whether the embassy could have found out about it through other means, for instance, because the applicant may have provided this information of their own accord.

In the second case the applicant asserts that:

> **"I was a victim of trafficking and I submitted an application to the Home Office Humanitarian Protection on that purpose. In line with International Law as a failed asylum seeker; Nigeria embassy will refuse me with Nigeria Passport."**

According to CID it appears that the applicant had not made an asylum or Humanitarian Protection claim or had a consideration on this basis, but rather made an application via the NRM as a victim of

82 Material facts go to the core of the claim and are of direct relevance for the determination of one or several of the requisites of the relevant definition - UN High Commissioner for Refugees (UNHCR), *"Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report"* May 2013, See page 42, See note 62 above.

trafficking. The Home Office made no finding on this point, but similarly refused the applicant on the basis of the aforementioned guidance stating that details of previous asylum claims are not divulged by the Home Office to the authorities. However, even if the Home Office had acknowledged that the applicant's previous application related to trafficking and not to asylum, there should nevertheless be consideration as to whether this may mean the applicant is perceived as having made an asylum application by the Nigerian authorities.

In both these cases therefore, the Home Office did not fully consider a claimed material fact, and in particular the reasons given by the applicant for being unable to re-document. This could have impacted on the final decision reached because if the state authorities in question consider it to be an asylum claim, this may impact on the applicant's ability to re-document and therefore their entitlement to statelessness leave may change.

4.3.3 Assessing the credibility of each material fact

Decision-makers are required to assess the credibility of the facts determined to be material. Each presented material fact should be assessed in light of all the relevant evidence obtained pertaining to that fact and through the lens of the applicable credibility indicators, taking into account the applicant's individual and contextual circumstances and the reasonableness of any explanations provided by the applicant with regard to potentially adverse credibility findings.[83] UNHCR's review found a number of shortcomings in the quality of credibility assessments made as discussed against relevant standards in this section.

Close and rigorous scrutiny

The assessment of the credibility of the asserted material facts must be carried out through close and rigorous scrutiny. This means, for instance, that the applicant should be able to present his or her case to the full, that all the evidence provided must be considered, and that decisions should be based on both material evidence presented by the applicant, including his or her statement, and the available information on the situation in the country.[84]

A lack of close and rigorous scrutiny in decision-making in the cases audited was noticeable in relation to written and oral testimony of an applicant. This type of evidence is clearly listed as a form of evidence in Home Office policy and UNHCR guidelines.[85] However, UNHCR's review revealed there was a tendency to dismiss an applicant's written statements included in their application without considering it as evidence. This was most evident in four cases where the applicant testified to having been in contact verbally with the relevant foreign authority and that they had tried but failed to obtain the State's refusal to document them in the form of a formal individualised response in writing. Decision-makers did not acknowledge or take the applicant's oral evidence into account and dismissed it without giving it weight.

In one illustrative case the applicant claimed that she had been in contact verbally with the Nigerian authorities stating:

> **"The commission categorically and vividly stated to me... A person who has claimed asylum whether granted or refused is not entitled to a travelling document from the state of previous residence in accordance with international law".**

She said she was awaiting written confirmation of her conversation from the Nigerian authorities, but that to date this had not been forthcoming. In the refusal letter the Home Office gave no weight to the testimony of the applicant stating:

> **"you have failed to provide any evidence to corroborate your claim that you are unable to renew this passport".**

83 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report" May 2013, See note 62 above.

84 Ibid. Page 49

85 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, Section 4.3.1
Documentary and testimonial evidence, see note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, See page 15, See note 5 above.
UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Paragraphs 84 and 87. See note 2 above.

It is critical that decision-makers are aware it is not necessary to provide documentary or other evidence in support of every material fact asserted by the applicant. The statements of the applicant constitute evidence capable of substantiating an application and should be assessed with regard to credibility.[86] However, these decisions appeared not to recognise this and indeed the reasoning in the written decisions implied that applicants were expected to corroborate asserted material facts with documentary or other evidence, for example, where the decision-maker stated "you have failed to provide any evidence" in relation to a material fact.

The 2016 Home Office Policy further provided detail on what to do when an enquiry with a State is either met with silence or if a State refuses to respond. It advises that decision-makers should take into account how States normally respond to these requests: **"In cases where a State has previously routinely responded to similar queries…a lack of response can usually be taken as evidence that the individual is not known to the State"**. It, however, also states that decision-makers "must not make any automatic assumptions as to the result of another State's failure to respond". This approach is also reflected in the new 2019 policy.[87]

Therefore, there needs to be consideration by the decision-maker as to whether a lack of response from a relevant State can be considered evidence and what weight should be given to this evidence to determine a material fact. Weight should be attributed according to how long the applicant has been waiting as well as how the State in question usually responds to these requests. In these same four cases decision-makers failed to identify that a lack of response from a State was evidence to consider in their decision, and it was dismissed outright. The use of COI would have been particularly pertinent in these cases, but this was not sought (see section on COI). In one case for example an applicant provided extensive explanation of their attempts to renew an expired passport, but had a lack of response from the relevant State. The refusal letter did not engage with this and simply stated:

> **"The fact that you cannot obtain a passport or travel document does not mean you are not a national of a country".**

Notably, in two further cases, sympathetic consideration was given to testimonial explanations regarding the lack of a response from the relevant State, in accordance with the UNHCR Handbook.[88] In these two cases, this evidence appeared to be considered material to the claim with weight given to it. In one of these cases the applicant's representative explained that several attempts had been made with the Somali authorities and on all occasions were fruitless. The decision-maker appears to accept this lack of response as a material fact to establish statelessness, but from the written decision, it was not possible to deduce the weight attributed to it alongside other relevant circumstances and evidence, as it was not mentioned in the grant letter. In another case, authorities in Cameroon did not respond to enquiries from the applicant made in 2010. This lack of response, combined with an analysis of nationality law, resulted in a grant of leave.

It was unclear from the circumstances of the cases, whether the applicant's individual and contextual circumstances had been taken into account. In these two cases, it was positive that the absence of evidence was not used to refuse the claim. However, in all cases, UNHCR would encourage decision-makers to determine whether an explanation for lack of evidence is satisfactory by assessing the credibility of any explanation offered in accordance with the credibility indicators and taking into account the relevant factors. A finding that an explanation for a lack of evidence is unsatisfactory should mean that the decision-maker considers that the evidence is available and at the applicant's disposal but has not been submitted. It was not clear from the cases reviewed that this approach had been taken.

The 2016 Home office policy on lack of evidence from a State is broadly reflective of the approach set out in the UNHCR Handbook which states: **"Conclusions regarding a lack of response should only be drawn after a reasonable period of time"**. This was changed to "a protracted period" in the 2019 Home Office Policy.[89] No timescale is provided as a guide for decision-makers to inform their decisions in this scenario. UNHCR suggests aligning this with the length of time in which a first instance decision in the statelessness determination procedure should preferably be issued, therefore, 6 months, or up to 12 months in exceptional circumstances. This also ensures the procedure does not prolong the period of time spent by an applicant in the SDP.

86 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report" May 2013, See note 62 above.

87 Home Office Policy Guidance "Stateless leave", 30 October 2019, Page 21, See note 5 above.

88 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Paragraph 94 See note 2 above.

89 Home Office Policy Guidance "Stateless leave", 30 October 2019, Page 21, see note 5 above.

Credibility assessment based on the entirety of evidence available

In determining whether to accept or reject a material fact presented by the applicant, the decision-maker must take into account all relevant evidence which confirms, supports, refutes, or otherwise bears on the asserted material fact. Decision-makers should be careful not to reach conclusions on the credibility of each material fact in isolation.[90] The concept of looking at information "in the round" is reflected in UK national guidance on fact-finding in the asylum context.[91] This section details two areas of decision-making identified from this audit in which the assessment of credibility was carried out solely with reference to one element of the applicant's claim and where the decision-maker ignored or failed to seek available reliable evidence that bears on that fact.

Nationality law in practice

UNHCR advises that statelessness determination **"cannot be settled through analysis of nationality laws alone as the definition of a stateless person requires an evaluation of the application of these laws in practice."**[92] This approach is reflected in Home Office policy.[93] Where an analysis of nationality law was applied to the cases reviewed, there was a tendency for decision-makers to undertake a formalistic analysis of the application of nationality laws of a country, without consideration of how the law applies in practice to the individual circumstances of the case. Therefore, nationality law on the papers, was privileged by decision-makers above other evidence to establish the material fact that the applicant is or is not a national of a State in question.

This is exemplified in the aforementioned case of the applicant claiming to have no Iraqi ID and whilst his parents had Iranian IDs he could not prove that he was their son because his birth was not registered. The Home Office statelessness leave refusal letter uses information given during his stateless interview in which the applicant said his father was Iranian and that he considered himself to be Iranian. On this basis the Home Office state:

> **"According to Iranian citizenship laws this would make you Iranian".**[94]

The Home Office did not consider evidence of State practice concerning the recognition of Iranian nationality for Iranian Kurds. The applicant was ultimately refused on the basis solely of a formalistic assessment of Iranian nationality law, without an assessment of how this law applied to the individual circumstances of the applicant in practice – as informed by COI. It was used to conclude that the applicant could obtain Iranian nationality.[95]

Where an individual such as this applicant has never come into contact with a State's competent authorities, UNHCR guidance states that: **"In such cases, it is important to assess the State's general attitude in terms of nationality status of persons who are similarly situated…if the individual belongs to a group whose members are routinely denied identification documents issued only to nationals, this may indicate that he or she is not considered as a national by the State".**[96] Iranian Kurds born in Al Tash Camp, where this applicant claims to have been born, are routinely denied identification documents.[97] This suggests that in practice, the Iranian authorities may not apply nationality law to recognise the applicant as an Iranian national. In this case, consideration should have been given to the applicant's ability to access Iranian citizenship in practice. This would be achieved by investigating State practice in this area, what evidence that applicant would need to prove his nationality, if he had the ability to do this, as well any relevant country information, before reaching a decision.

The audit identified three further cases of applicants claiming to be Bihari where a 2008 *Sadaqat Khan*

90 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report", May 2013. Section 2.7 - Credibility assessment based on entire evidence. See note 62 above.

91 Home Office Asylum Policy Instruction "Assessing credibility and refugee status" 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf.

92 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Paragraph 83, See note 2 above.

93 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016 Section 4.6.1 ,See note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, Page 18 'Applying the 'not considered as a national' element' See note 5 above.

94 Referring to Article 976 - *Iranian citizenship law*

95 Ibid.

96 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 38, see note 2 above.

97 United Nations High Commissioner for Refugees (UNHCR) "Iranian Kurd refugees - different destinies and destinations" 2004 www.unhcr.org/uk/news/latest/2004/11/41a734bd4/iranian-kurd-refugees-different-destinies-destinations.html

judgment which found all members of the Urdu-speaking community to be nationals of Bangladesh is relevant.[98] In one of these cases, the legal representative in the cover letter to the application argued that in practice this judgment made no difference to his or her client stating:

> **"the decision is only applicable to those Biharis actually residing in Bangladesh and makes no reference to displaced Biharis in other parts of the world [emphasis added]".**

The representative also stated that the grant of Bangladeshi citizenship is conditional upon the applicant proving their birth and residence in Bangladesh which their client was not in a position to do.

The Home Office refusal letter stated in response that:

> **"This is not the case. The US State Department report found that the ruling of 18 May 2008 applied to Biharis living in the country, but made no finding specifically regarding those living outside of Bangladesh [emphasis added]."**

The decision-maker was correct that the judgment is in fact silent on Biharis living outside Bangladesh. However, the silence underlines the importance of a thorough consideration of wider Bangladesh nationality law to determine how it would apply to the three cases individually and therefore whether these applicants would be entitled to Bangladeshi citizenship.[99] Accordingly, in these cases, a refusal was made, but where more information about the applicant's family history via a stateless interview would have assisted in determining the material facts of the case and therefore informing the statelessness leave decision.

Previous asylum claims

UNHCR is concerned by two cases in which significant weight was placed on determinations made by the Immigration Judge from previous asylum appeals, but where there is new evidence


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that calls these findings into question. The evidence was not considered in the round or the key issues assessed in context. Indeed in one case the sole basis of the stateless decision was the determination made by the Immigration Judge at the appeal stage in which the judge found it "more likely than not he is a citizen of Bangladesh." In this case, the asylum refusal letter was heavily copied and pasted into the statelessness leave refusal letter and no new analysis was provided.

No weight was given to new evidence submitted by the applicant since the asylum claim was determined, which included a response from the Bangladesh High Commission confirming that the authority would not document him. It was only upon administrative review that this new evidence was eventually considered (see section on Administrative Reviews).

Evidence of credibility from previous asylum claims can be drawn upon for the statelessness determination[100], but UNHCR advises that these should not result in a predetermined assumption about credibility.[101] Careful consideration must be given to the weight to be placed upon previous determinations by the Immigration Judge in light of the evidence regarding the applicant's nationality available to the judge at the time. Such determinations should not be used as the sole basis of denying the applicant status as a stateless person.

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98 Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008, available from: www.refworld.org/cases,BAN_SC,4a7c0c352.html.

99 The Citizenship Act of 1951 and the Bangladesh Citizenship (Temporary Provisions) Order of 1972 Article 2, pursuant to which the Urdu-speaking community in Bangladesh were found to be Bangladeshi citizens requires that the applicant's father or grandfather was born in the territories now comprised in Bangladesh and was a permanent resident on the 25th day of March, 1971 or that the applicant themselves was a permanent resident on this date and continues to be resident. Article 2A of the same order confirms that for a person to whom Article 2 would have ordinarily applied but for his residence in the UK shall be deemed to continue to be a permanent resident in Bangladesh.

100 Home Office Policy Guidance "Stateless leave", 30 October 2019, page 10, see note 5 above.

101 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report" Page 39, see note 62 above.

RECOMMENDATIONS

- Decision-makers should be trained, as stipulated by Home Office policy, to identify and consider all the available evidence, including both oral and written, in their determination of a material fact and how to attach appropriate weight to each piece of available evidence.
- Home Office Policy should clarify how a lack of response from a State should be treated, especially in the absence of other evidence. UNHCR suggests a period of time be specified as to how long a decision-maker should wait before making a decision on a case. This should be 6 months or up to 12 months in exceptional circumstances.
- Decision-makers should be trained on how to assign weight to a lack of response from a request for information from a national authority when the approach is initiated by either the Home Office or an applicant themselves.

4.3.4 Application of credibility indicators

Credibility indicators should be applied in assessing statelessness as outlined in the UNHCR Handbook.[102] This provides a list of credibility indicators including sufficiency of detail, consistency between oral and written statements, consistency of the applicant's statements with those of witnesses, consistency with country of origin information and the plausibility of statements. However, the Home Office Policy does not address the issue of credibility meaning decision-makers are not guided directly in this regard.

In the cases audited, the credibility of the applicant's account arose most predominantly where there was little or no documentary evidence available because the applicant claimed to have never held legally accepted identity documentation. In these type of cases there is a need to rely to a greater degree on an applicant's testimony[103] making the credibility assessment critical to the determination of statelessness. In a number of these cases, negative credibility findings were reached by the decision-maker without an appropriate assessment of credibility indicators.

Credibility guidance requires decision-makers to consider whether the applicant is 'plausible' and not to base a credibility finding on subjective assumptions or speculation.[104] In one case, the decision-maker did not take into account reasonable explanations from the applicant to address an apparent inconsistency. In this case, negative credibility findings were reached on the applicant's claimed visit to the BHC to seek clarification on his nationality status where he reported he was told that he did not qualify for re-documentation. The decision-maker concludes in the refusal letter that:

> **"There are...some serious credibility issues with your case which have cemented the belief that you are not a Bihari...you have never been to the Bangladesh High Commission....This [visit to the consulate] has been completely fabricated in order to enhance your claim to be a Bihari."**

The legal representative in this case noted in the application written statement that the applicant had attended the BHC in person. However, the solicitor appears to have confused the applicant's in-person visit with a telephone interview meaning the content of the application was not fully accurate. The applicant had attempted to explain this relatively minor discrepancy highlighted above in his stateless interview, but this was ignored by the decision-maker. Further, there were reasonable explanations for this apparent internal inconsistency in the applicant's testimony because the applicant had clearly stated at the beginning of the interview that he had not fully understood what was written in the statelessness application because there was no interpreter present when a solicitor wrote it on his behalf, meaning a mistake could have been made. In addition, on a review of the whole case file it was apparent that the applicant had indeed undertaken

102 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, paras. 101 – 107, see note 2 above.

103 Ibid, Paragraph 101, See note 2 above.

104 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report", para. 177, See note 62 above.

a telephone interview with the BHC, six years earlier, organised by the Home Office themselves for the purposes of documentation whilst the applicant was then in detention. However, this was not addressed in the evidence identified and assessed to inform the decision (See more in section on gathering evidence).

Credibility guidance also requires that the decision-maker assess whether the level and nature of the detail provided by the applicant reflects what would reasonably be expected from someone with the claimed individual contextual circumstances. It also requires the decision-maker to assess the consistency of the applicant's account.[105] In one case the applicant stated in his application that he was not absolutely certain which country he was originally from and that he was abducted at approximately aged five years old and taken to live in the middle east, where he worked on a camel farm. He claimed to have no contact with or knowledge of his family. Further, he claimed to only ever have had a first name and did not know his date of birth. The applicant's testimonial explanations were internally consistent, lacking discrepancies or contradictions. His inability to provide evidence of nationality was consistent with the passport application he had made to the Bangladesh authorities as part of his statelessness leave application and his testimony had remained entirely consistent in his interactions with the Home Office dating back to 2013 when he was previously interviewed for the purposes of re-documentation. The applicant's individual circumstances were not assessed against credibility indicators to determine if they were reasonable and indicative of a genuine personal experience, whilst the consistency of the applicant's account appeared not to have been adequately considered.[106]

In this case, if after due consideration of the applicant's statements and all other evidence available, an element of doubt nevertheless remained, the decision-maker in this case should have considered whether it is appropriate to apply the principle of the benefit of the doubt[107]. This reflects recognition of the considerable difficulties applicants and decision-makers face gathering evidence to support the claim.

4.3.5 A structured approach to decision-making

State practice observed by UNHCR shows the need for a structured approach to ensure that the principles underpinning credibility assessment are fulfilled and the credibility findings are objective and impartial.[108] To address the shortcomings identified in decision-making in the SDP, UNHCR considers that certain key steps should be taken during the credibility assessment, and guidance should be taken from the asylum context. This structured approach must be underpinned by a focus on the material facts presented by the applicant. UNHCR has identified the following key steps in the credibility assessment:

1. **In cooperation with the applicant, gather the information to substantiate the application.**
2. **Determine the material facts of the application**
3. **Assess the credibility of each material fact giving due consideration to credibility indicators.**
4. **Accepted and rejected material facts; The decision-maker should state in the written decision all the material facts that have been accepted as credible and will inform the assessment of statelessness, and all the material facts that have been rejected as not credible, as well as the reasons underpinning these findings of facts.**
5. **Consider whether to apply the benefit of the doubt: For each remaining material fact about which an element of doubt remains when on the whole the statements are coherent, plausible and consistent.**
6. **Finally, the decision-maker should analyse the accepted material facts of the case against the definition of statelessness to make a determination.**

The use of templates and tools for the preparation of written decisions has the potential to assist decision makers to properly address the required elements of the analysis in a more focused and well-structured way. It must be stressed, however, that proper training in the use of any such tool – whether used for the purposes of interviewing or decision-making – is vital.

105 Ibid. page 149. UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, see Section 9, See note 2 above.
106 Ibid. Page 260
107 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 108, see note 2 above.
108 Ibid.

RECOMMENDATIONS

- The Home Office should develop a template which encompasses a more structured approach to credibility assessment in order to assist decision-makers in structuring their decision making.
- The 2019 Home Office Policy should be amended to refer to UNHCR guidance on credibility in statelessness determination (Paragraphs 101 – 107) which should be utilised by decision-makers when credibility concerns arise in statelessness leave applications.
- Training should be provided to decision-makers in the stateless team about the types of credibility issues which may arise in statelessness cases and the relevant standards and guidance for assessing these.
- The Quality Assessment Framework and marking standards for statelessness leave applications should have a dedicated question to monitor the use of relevant credibility indicators in assessing statelessness applications. Despite a suggestion from UNHCR during the development of this framework, this has yet to be added.
- Decision-makers should receive training about how to appropriately use information from previous asylum claims and/or additional immigration history, so that this information is used to complement other available evidence and is consistently assessed.

5. ADMISSIBILITY

Image © UNHCR/Greg Constantine

If an applicant is determined to be stateless, they can still be refused leave to remain, because the UK Immigration Rules, as amended in 2019, require in Paragraph 403(c) that an applicant "has taken reasonable steps to facilitate admission to their country of former habitual residence or any other country but has been unable to secure the right of admission".[109] The Home Office 2016 Policy and the subsequently updated 2019 policy clearly indicate that admissibility in this context equates to "permanent residence" in the relevant country.[110]

5.1 ADMISSIBILITY UNDER UNHCR'S HANDBOOK ON PROTECTION OF STATELESS PERSONS

UNHCR's Handbook on Protection of Stateless Persons considers the question of admissibility in those situations where "protection is available in another State".[111] In this situation, UNHCR advises that an assessment should be undertaken as to whether a stateless person has a **"realistic prospect"** of obtaining such protection elsewhere and that the criteria for assessing this must be "**narrowly construed**". The UNHCR Handbook notes that a stateless person can only be considered admissible to another State in two limited circumstances, where the stateless person:

a. **"is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality" OR**

b. **"enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible".[112]**

Under a) UNHCR considers that individuals must be able to avail themselves of a procedure that is easily accessible, both physically and financially, as well as one that is simple in terms of procedural steps and

109 The Immigration Rules changed during the course of this audit of cases and this will be discussed in detail later in this chapter. The cases in this audit were reviewed under Immigration Rules which applied at the time. Para, 403c then required that the applicant: "is not admissible to their country of former habitual residence or any other country."

110 Home Office Policy Guidance "Stateless leave", 30 October 2019 See pages 4, 5, 6, 7, 12, 14, 17 and 27. See note 5 above.

111 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 154, see note 2 above.

112 Ibid. see note 2 above.

evidentiary requirements. Moreover, the acquisition/reacquisition procedure must be swift and the outcome guaranteed because it is non-discretionary where prescribed requirements are met.[113]

Under b), UNHCR's view is that an individual's ability to return to a country of previous habitual residence must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State. Permission to return to another country on a short-term basis would not suffice.[114]

Paragraph 150 of the UNHCR Handbook states that recognition of a stateless person under the 1954 Convention triggers the "lawfully staying" rights detailed in Paragraphs 136-137 of the UNHCR Handbook. These should include a right to residence, work, healthcare and social assistance. The status of a stateless person under the national law of the country of admissibility should also reflect applicable provisions of international human rights law as highlighted in paragraphs 140-143 of the UNHCR Handbook.

5.2 HOME OFFICE CONSIDERATION OF PALESTINIANS AS STATELESS

Of the 36 files reviewed, the use of the admissibility provision Paragraph 403(c) was considered appropriate by the Home Office in five cases. In all five cases the individuals originated from Palestine, three were granted and two refused statelessness leave.

In all five cases, positive practice was observed in that the decision-maker assessed whether the applicant was stateless before considered if they were admissible. This is in line with the UNHCR Handbook which requires that a determination of statelessness must take place prior to any consideration of which State is to provide protection to the stateless person.[115]

In all five cases, the applicants were accepted as being from Palestine based on evidence from a previous asylum claim where either a judge or decision-maker had accepted this as a material fact and no new evidence had come to light to suggest otherwise. On this basis, decision-makers sourced Country of Origin Information[116] which states that: "The great majority of Palestinians are stateless". This information was used to conclude in all cases that the applicant was stateless and fulfills the required criteria under Paragraph 401 of the Immigration Rules. This reflects Home Office guidance which confirms that for the purposes of statelessness determination in the UK, Palestine is not considered as a state.[117]

113 Ibid. para. 155, see note 2 above.

114 Ibid. Paragraph 157. see note 2 above.

115 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 117, see note 2 above.

116 Home Office guidance "Occupied Palestinian Territories Operational Guidance Note v4" 19 March 2013, see page 34 Section 3.15 Statelessness and the right of re-entry www.refworld.org/pdfid/5149944f2.pdf.

117 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016 Section 4.5.1, see note 33 above. This was subsequently reflected on page 18 of Home Office Policy Guidance "Stateless leave", 30 October 2019, see note 5 above.

5.3 HOME OFFICE CONSIDERATION OF ADMISSIBILITY

The Home Office determined admissibility in the cases originating from Palestine reviewed, on the basis of a Country of Origin report on the Occupied Palestinian Territories[118] which outlines a process of re-documentation using information from an April 2010 letter from the Palestinian General Delegation Office (PGDO) in London to the then UK Border Agency. This asserts that Palestinians with an ID number should be able to confirm that number via friends or family living in Palestine and can then apply for a passport by Power of Attorney. This is set out as below:

> *A Palestinian (who is eligible i.e. from the OPT and with ID number) living in the UK can apply for a Palestinian Passport by Power of Attorney, where the relevant nominee currently resides in the OPT. The person concerned makes an application at the Palestine General Delegates Office (PGDO) in London. Having confirmed that the person is Palestinian and has an ID card number the PGDO issues a Power of Attorney Form which must be signed by the applicant. Because the individual concerned has to sign the Power of Attorney form, UK Border Agency cannot make an application on their behalf. The Power of Attorney form is then sent by the nominee to the nominated person in the OPT. The person nominated in the Power of Attorney then applies on the applicant's behalf at the relevant office in the OPT. The travel document once issued (we understand this may take only a couple of days) will be sent to the UK to the applicant, or if directed the Palestine General Delegation, London.*
>
> II *[94a] (p2).*

The Home Office therefore placed a requirement on applicants who stated they have in the past held a Palestinian ID number and have friends or family in Palestine, to use a Power of Attorney mechanism to re-document in order to facilitate their return.

In the three cases granted statelessness leave, the applicant was considered inadmissible to Palestine because it was accepted they were unable to obtain the necessary travel documents to return to Palestine and that therefore they are not admissible. It was accepted that the applicant had no ID number and no family or friends existing in Palestine who would be able to act as power of attorney.

In two of the five cases reviewed, although the applicants were accepted as stateless under Paragraph 401, they were considered to be admissible to Palestine under paragraph 403(c) and therefore refused statelessness leave. One of these applicants appeared to indicate that he believed his family to still be in Palestine but he had lost touch with them, was unable to contact them and was unaware of their whereabouts. In the other case, a review of the applicant's entire file, suggested that the only family he had left in Palestine was a maternal uncle, who was now living in a country in North Africa and who he had not heard from him from for over ten years. According to their applications, both applicants had made attempts to re-document with the Palestinian Mission (formerly the PGDO) which had failed. One applicant had made two attempts at voluntary return to Palestine via the International Organisation for Migration which failed due to issues with documentation. The Home Office concluded in these cases, as one refusal letter states:

> **"it is considered that you have failed to provide sufficient evidence of attempts made to try and contact family members in order to obtain documents to return.... It is considered that you are admissible to the Occupied Palestinian Territories."**

This approach appears to suggest decision-makers considered "admissibility" in these cases solely with regard to the ability to "re-enter" another country,

118 Country of Origin Information Report (COI) "Occupied Palestinian Territories" 15 May 2012 Available from: www.ecoi.net/file_upload/1226_1338382764_optcoimay12.pdf.

without reference to the applicant's ability to enjoy "permanent residence" as outlined in the policy. Returning a stateless person to a country regardless of whether they are able to acquire/ reacquire nationality or are a permanent resident of a country of habitual residence undermines efforts to ensure that stateless persons are not returned to a country without an adequate level of protection. UNHCR considers that in order for the Home Office to find a stateless person admissible in another State based on the Power of Attorney mechanism described, there has to be a "realistic prospect" of "immediate" return and further, the "lawfully staying" rights stipulated in the 1954 Convention would need to be guaranteed through permanent residence. In order to establish this, in the two abovementioned cases, the Home Office would need to provide credible evidence of practice concerning the use of such a Power of Attorney described above in obtaining Palestinian passports, and on the ability of Palestinians to access the above mentioned rights in Palestine in addition to assessing the individual circumstances of the case at hand.

UNHCR is of the view that a shared burden of proof should be applied to the determination of admissibility. This is because, as with statelessness determination, contact with foreign authorities to request specific information will usually be required to determine if the stateless person has a realistic prospect of either acquiring nationality or enjoying permanent residence in a country of previous habitual residence. UNHCR recognises that in many cases, States will only respond to such enquiries when initiated by officials of another State.[119] The applicant will need to cooperate by being truthful, providing as full an account of his or her position as possible and submitting all evidence reasonably available.

Leave to remain in exceptional circumstances

In the UK, determination of statelessness followed by a refusal of leave to remain results in the applicant having "immigration bail" under Section 61 of, and Schedule 10 to, the Immigration Act 2016. This often imposes restrictions on an individual including reporting regularly to an immigration official, restrictions on where a person can live, and restrictions on work and study, putting them at risk of destitution. Therefore, despite being recognised as stateless under paragraph 401 and facing significant barriers to return, these applicants will not be able to access "lawfully staying" rights conferred to them by the 1954 Convention.

With a view to address this, the UNHCR Handbook states that safeguards are necessary to prevent an individual being left without leave to remain anywhere and to ensure that any special circumstances justifying a residence permit are properly examined.[120] With this in mind, the UNHCR Handbook permits States to provide a stateless individual who has the possibility of reacquiring their former nationality or access to permanent residency in another country, some form of transitional immigration status to allow the individual to remain briefly in the territory while making arrangements to move to the other State.[121] The UNHCR Handbook recommends that this can be extended temporarily where admission/readmission or reacquisition of nationality does not materialise through no fault of the individual.[122] UNHCR therefore suggests that some form of protection could be provided in exceptional circumstances by the Home Office in cases where an individual has been found to be stateless for the purposes of Paragraph 401, but in which a decision on admissibility may be delayed due to investigation by both the applicant and/the Home Office.

Recent changes to Immigration Rules on admissibility

During the course of this audit, there was a change to the existing "admissibility" requirement in the UK Immigration Rules Paragraph 403(c), which introduced new wording. Of note is that paragraph 403 contains two new requirements: that the applicant **"(e) has sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and (f) … in the case of a child born in the UK, has provided evidence that they have attempted to register their birth with the relevant authorities but have been refused."**

As is highlighted throughout this audit, in some cases, the foreign competent authority will not respond with clarity or at all to an enquiry or will require evidence of identity that the applicant does not have and cannot obtain. UNHCR is particularly concerned by the lack of clearly set criteria as to when an applicant has failed to re-establish

119 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Para. 97. See note 2.
120 Ibid, see footnote 101.
121 Ibid. Paragraph 159.
122 Ibid. Paragraph 160.

their nationality under Paragraph 403, and it is suggested that future monitoring of cases takes into consideration whether or not this new rule can accommodate the evidential challenges faced by applicants in evidencing their claim. Similar concerns apply with respect to 403(e) and the need for confirmation from national authorities that an attempt to register a birth has been "refused".

The rule changes also miss an opportunity to clarify an important point about the meaning of "admissibility" to align it with UNHCR's position that an individual's ability to return to a country of previous habitual residence must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention.

RECOMMENDATIONS

- The Immigration Rules should be amended to reflect the UNHCR Handbook when considering the admissibility provision. They should read:

  "An applicant will be deemed admissible to their country of former habitual residence if he or she:

  - is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality OR;
  - enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible"

- The Home Office Policy on Statelessness and applications for leave to remain should, alongside this rule change, include a specific section to address admissibility in detail which sets out a position in line with the UNHCR Handbook.
- The admissibility 'test' requires a standalone question in the Home Office's marking standards for the Quality Assurance Framework on statelessness leave applications, in order to better monitor its application. Despite a suggestion from UNHCR during the development of this framework this has yet to be included.
- A form of leave to remain should be provided in exceptional circumstances by the Home Office in cases where an individual has been found to be stateless for the purposes of Paragraph 401, but in which a decision on admissibility may be delayed due to investigation by both the applicant and/or the Home Office.

6. GENERAL GROUNDS FOR REFUSAL

Image © UNHCR/ Greg Constantine

Where an applicant may satisfy the category of the Immigration Rules that they have applied under, they may yet still be refused leave where there is evidence in their background, behaviour, character, conduct or associations[123] which satisfies Part 9 of the Immigration Rules – the General Grounds for Refusal. The Immigration Rules specify at Part 9[124] that there are two types of general grounds of refusal of leave to enter or remain in the UK. The type of refusal which applies, depends on the grounds being considered.

Mandatory grounds for refusal fall under rule 322(1)[125] and discretionary grounds for refusal fall under rule 322(2).[126] The Home Office policy guidance in respect of the application of rule 322 of the Immigration Rules[127] is clear that a decision maker "must consider" whether there are grounds for either type of refusal, and whether an application for leave can be refused under the category the person has applied. Additionally, it is UNHCR's view that the guidance[128] also confirms that decision makers **"must consider if there are any human rights grounds"** when deciding to apply Part 9 of the Immigration Rules.

The Home Office Stateless Leave policy refers to Immigration Rule 404(c) which directs the Secretary of State to refuse leave to remain if any of the grounds set out in paragraph 322 of general grounds for refusal apply. In the cases reviewed by UNHCR, the application of this rule affected those applicants for statelessness leave who had a history of offending and whose applications were therefore correctly considered under Part 9 of the Immigration Rules.

There were five cases in the audit in which the Home Office considered that the applications for statelessness leave gave rise to mandatory general grounds for refusal. In all five cases there was no substantive consideration of the assessment of statelessness under rules 401-403[129] of the Immigration Rules and there was no subsequent substantive consideration as to whether or not there were any human rights grounds that needed to be considered. Instead, the Home Office proceeded directly to refuse the applications under rule 404(c) on the sole basis that the matters fell to be refused under the mandatory general grounds for refusal; there being no discretion available to the decision maker to do otherwise.

123 Home Office Guidance "General Grounds for Refusal Section 1" 11 January 2018, see note 15 above.

124 UK Immigration Rules "Part 9: Grounds for Refusal", available from: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal.

125 Ibid. Rule 322(1).

126 Ibid. Rule 322(2).

127 Home Office Guidance "General Grounds for Refusal Section 4" 11 January 2018, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674001/GGFR-Section-4-v29.0EXT.PDF.

128 Ibid, page 4

129 UK Immigration Rules "Part 14: Stateless Persons" 401-403, see note 4 above.

6.1 SUBSTANTIVE CONSIDERATION OF STATELESSNESS

In four of the five cases, the applicants were subject to a signed deportation order at the time of their application for statelessness leave, and because of this the applications were refused in light of rule 322(1B).[130] In UNHCR's view, paragraph 404 of the Immigration Rules appears to require that the decision-maker undertake a substantive assessment of the applicant's claim for statelessness leave *prior* to assessing whether or not their application would fall to be refused under paragraph 322 of the Rules (General Grounds for Refusal). Indeed – this reading of the rules is required, in order to avoid encountering the situation where a person who is stateless, and to which general grounds for refusal apply, cannot be returned, thereby remaining in indefinite detention and limbo in the UK. However, in all four of these cases, the decision was taken that the applicants immediately fell for refusal under Immigration Rule 404(c)[131] because paragraph 322(1B) applied[132] with no substantive consideration given to their claim to be a stateless person. In UNHCR's opinion, four of these cases demonstrated clear indicators of statelessness.

In one case, the applicant was born in Angola but his birth was not registered. After his asylum claim was negatively determined, there were seven attempts by the Home Office to contact the Angolan embassy. A note on CID states that a conversation with an official at the Angolan embassy concluded that he is not an Angolan national and that the Emergency travel document requests were 'not agreed'. This was reiterated in the applicant's written statement sent as part of his statelessness leave application. The applicant was handed a 12-month custodial sentence as a result of his attempt to leave the UK using a forged ID card. He was subsequently served with a signed deportation order.

In another case, the applicant was born and raised in the UK, although his Ugandan mother was not British or settled at time of his birth. His mother made an application for ILR on which the applicant was named as a dependent. Her application was granted, but the decision on his matter was refused. That refusal was communicated to the applicant within the decision to issue a deportation order based upon the applicant's criminal history. The Home Office then attempted to deport the applicant and a documentation interview was facilitated at the Ugandan High Commission. The applicant was refused entry to Uganda upon deportation and was returned back to the UK. It was this failed deportation and the refusal of the Ugandan authorities to admit the applicant that led to his application for leave to remain in the UK as a stateless person. A note on file read:

> **"RL [Returns Logistics] met with Ugandan Officials last month to agree a way forward on cases where length of time spent in the UK and criminality are proving a barrier to documentation....it seems clear the Ugandan official retained strong views on the subject...they would not be accepting the return of any convicted national... the Ugandans will not change their current position".**

In another case, while the applicant was in detention, he attended two interviews with foreign authorities, namely Cote D'Ivoire and Nigeria. According to the notes on the file, both governments have refused to accept that the applicant is a citizen of their respective countries and have therefore refused to provide a travel document.

In the final case, whilst the applicant had a criminal record and had served a custodial sentence, he had not applied for ILR and he did not have a deportation order in place at the point he made his application for statelessness leave. The applicant was born in the UK and spent his entire life in the UK. The details of his father are not recorded on his birth certificate and his mother's nationality is recorded as 'Jamaican'. He was in fact considered to be British and at no time during his custodial sentence does it appear that he was treated as a foreign national offender.[133] The Home Office determined that the applicant fell under the provision of paragraph 322(1C(ii)).

130 UK Immigration Rules "Part 9: grounds for refusal" Rule 322(1), see note 124 above. It states: "(1B) the applicant is, at the date of application, the subject of a deportation order or a decision to make a deportation order."

131 UK Immigration Rules "Part 14, Stateless Persons" Rule 404(c), see note 4 above.

132 UK Immigration Rules "Part 9: grounds for refusal" Rule 322(1B), see note 124 above.

133 Note on CID, dated 24 July 2017 stated: "PNC is for a British Citizen."

The applicant had not applied for ILR and so the mandatory general grounds for refusal under rule 322(1C) are not applicable. Because rule 322(2) are discretionary provisions, UNHCR would in any event, expect the decision maker to review the statelessness application under paragraphs 401-405 substantively, prior to considering whether or not to exercise discretion in this matter.

UNHCR does not consider the approach taken in these cases to be correct and that instead the first question to be asked is whether or not a person is stateless. The determination process itself appears to require this when reviewing rules 401-404[134] in that a decision maker cannot determine a matter under rule 404 without first considering rule 403. Correspondingly, in order for there to be compliance with Article 1 of the 1954 Convention, applicants must be assessed as to whether they meet the definition of a stateless person, *before* an examination of the circumstances in which persons who fall within the scope of the definition are nonetheless excluded from the protections afforded by the treaty.[135]

Additionally, Rule 404 and Rule 322(1B) deal with refusals for applications for leave to remain. They do not relate to refusals for applications for recognition as a stateless person. It would therefore appear incorrect for decision-makers to be refusing to undertake consideration of an applicant's claim to be recognised as stateless under a provision that looks at a secondary question, that of leave to remain. The Home Office guidance on the application of Paragraph 322 is clear that consideration has to be given to whether or not a decision maker is able to refuse the application under the category the person has applied for. UNHCR is pleased to note that the updated statelessness leave policy now directs the decision-maker to **"still consider whether an applicant meets the definition of a stateless person under Paragraph 401"** in these cases.[136]

134 UK Immigration Rules "Part 14, Stateless Persons" see note 4 above.

135 As outlined in Article 1 (2) of the 1954 Convention

136 Home Office Policy Guidance "Stateless leave", 30 October 2019, see page 24, see noted 5 above.

6.2 CONSIDERATION OF HUMAN RIGHTS GROUNDS

The Home Office policy guidance in respect of the application of rule 322 of the Immigration Rules (HC395 as amended)[137] currently confirms that decision makers "must consider if there are any human rights grounds" when deciding to apply rule 322. UNHCR understands that the Home Office is in the process of amending policy in order to clarify its position in this respect, arguing that the reference to human rights in the current policy should be read narrowly as a qualification of the preceding paragraph i.e. in the context of an allowed appeal. Conversely, it is UNHCR's view that this direction has no clearly specified reliance on other paragraphs within this section of the policy and cannot be read as such.

Nevertheless, in the five cases where the Home Office refused the applications under rule 322, there was no subsequent substantive consideration as to whether or not there were any human rights grounds that needed to be considered. Stateless persons residing in UK territory must be treated in accordance with international human rights law. Human rights considerations are particularly relevant in the context of statelessness, because, as previously highlighted in this report, an individual who has been found to be stateless for the purposes of Paragraph 401, but does not qualify for statelessness leave is at increased risk of potential breaches of ECHR rights including a real risk of destitution and arbitrary detention. UNHCR is of the view that it is most efficient and expedient for the Home Office to consider human rights issues when applying general grounds, rather than expecting a stateless person to make a separate application on human rights grounds. UNHCR outlines that safeguards are necessary to prevent the individual being left without a form of leave to remain.[138] This suggests that some form of protection could be provided in exceptional circumstances by the Home Office in these cases.[139]

RECOMMENDATIONS

- The Home Office Policy on General Grounds should be amended to state that human rights must be considered when the Secretary of State refuses an applicant on general grounds. The Home Office should provide a form of leave to remain in these cases where it is considered that a refusal could lead to a potential breach of the applicant's human rights.
- The Home Office should identify and reconsider those cases where an error has been made historically with regards to the requirement to determine whether an applicant meets the definition of a stateless person under Paragraph 401 in cases where general grounds apply. This includes the five cases outlined in this section.

137 Home Office Guidance "General Grounds for Refusal Section 4" 11 January 2018, see note 127 above.

138 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, footnote 101, see note 2 above.

139 For example, this could be a discretionary form of leave. See section 3.4 of Home Office Asylum Policy Instruction "Discretionary Leave". 18 August 2015. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658372/discretionary-leave-v7.0ext.pdf.

7. PROCEDURAL CONSIDERATIONS

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SDPs should ensure fairness, transparency and clarity, and procedural guarantees are therefore fundamental elements. The due process guarantees that are to be integrated into administrative law procedures, including refugee status determination procedures, are necessary in the statelessness context and UNHCR encourages States to incorporate safeguards.

This includes the right to an individual interview, necessary assistance with translation/interpretation throughout the process, access to legal counsel, the right to appeal and that decisions are made and communicated within a reasonable time. The audit therefore considered these elements as part of the case reviews.

7.1 INTERVIEWS AND WRITTEN ENQUIRIES

UNHCR considers interviews to be a fundamental procedural guarantee which provide an important source of evidence in statelessness claims. As part of the process of establishing the material facts, the decision-maker should give applicants a right to be heard to address any issues that may result in adverse credibility findings. This requires that the applicant has the opportunity to refute, explain, or provide mitigating circumstances in respect of any evidence that appears inaccurate, contradictory, vague, implausible, or inconsistent. It would also include the opportunity to address any lack of evidence or concerns that evidence submitted is not authentic or reliable, whilst giving the applicant the opportunity to bring further evidence where appropriate.

The 2016 Home Office policy on interviewing in applications for statelessness leave stated: **"An interview will normally be arranged to assist the applicant to fully set out their case for being considered stateless"**[140] (this wording was changed to "An interview may be required" in the 2019 policy).[141] This is followed with: **"A personal interview will not be required if there is already sufficient evidence of statelessness, it is clear that the individual is not admissible to another country"** or **"where recent and reliable information including the applicant's previous evidence or findings of fact made by an immigration judge, have already established that the applicant is not stateless or is clearly admissible to another country."**

140 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, See section 3.4 "Interviewing policy and written enquiries". See note 33 above.

141 Home Office Policy Guidance "Stateless leave", 30 October 2019, see page 12, see note 5 above.

Of the cases reviewed in this audit seven were interviewed. Of the 530 cases UNHCR were given to select from to audit, only 10 had interviews conducted, an interview rate of just under 2%. The overall proportion of cases in which stateless interviews are conducted by the Home Office is unknown. In particular, UNHCR was concerned to review cases where interviews were not offered and the applications were refused.

Three cases were refused without interview on the basis of a paper only assessment of nationality law. Interviews in these type of cases could have facilitated the gathering of information from the applicant on how the national law was being applied in practice. In one of these cases, while the applicant had presented a passport identifying their Zimbabwean nationality, they claimed that this was not being honoured by the relevant competent authority. An interview could have gleaned more information as to why this may be the case. The applicant was not offered the opportunity to present their oral evidence and UNHCR was concerned to see the Home Office state:

> **"In conclusion, as you were born in Zimbabwe you are Zimbabwean by birth and not stateless as you claim."**

In four cases statelessness leave was refused in part or in whole on the basis of an adverse credibility assessment where a finding on the applicant's credibility had not been made through any previous applications such as asylum. In these cases, either documents submitted by the applicant were thought to be fraudulently obtained or the applicant was believed to have a different identity. No interview was offered in these cases. UNHCR recommends that decision-makers offer applicants an opportunity to provide explanations where an adverse credibility finding would otherwise be made.[142] This is for procedural fairness purposes and because it is very possible that an apparent inconsistency in the evidence provided by the applicant may be legitimately explained. Providing the applicant with the opportunity to clarify any apparent inconsistencies, omissions or implausibilities before a decision is made reduces the chances of a flawed credibility assessment.[143]

In four cases, interviews were offered but only **"at the applicant's own expense"**[144] because the application, according to Home Office analysis, **"raises no stateless issues."** Only one of the four applicants this was offered to, took up the opportunity for an interview with another explicitly turning down the offer because of the associated cost citing **"financial and health issues"**. Covering the cost of travel to an interview is a practical barrier for applicants, and asylum applications on asylum support as a comparison, receive a travel ticket in advance of their interview. The selection process for this interview offer was unclear, because other cases in the audit which similarly lacked substance and detail regarding the statelessness claim, were not offered an interview. It seems peculiar for the Home Office to be offering applicants an interview in cases where it was asserted that are "**no issues of statelessness**", but not offering interviews in all cases where the application on paper indicates a potential risk of statelessness.

As previously addressed in the section on burden and standard of proof, Home Office Policy provides for decision-makers to request missing information in writing to the applicant or their legal representative.[145] In two separate cases a general letter was sent to the applicant or their representative asking for more information and to explain why they believe they are stateless. This does demonstrate some willingness by decision-makers to assist the applicant in meeting their burden of proof and may be appropriate where applicants have not clearly set out a claim with any substance. However, the letters did not ask for specific details to fill missing gaps, but rather, the applicant was asked about the substance of the claim, even where in one case there was enough information in the application to further explore and interrogate. UNHCR is of the view that an interview would be more appropriate in these instances.

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142 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 105, see note 2 above.

143 UN High Commissioner for Refugees (UNHCR), "Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report, see note 62 above.

144 UNHCR assumes this relates to travel expenses.

145 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, Section 3.4. See note 33. Home Office Policy Guidance "Stateless leave", 30 October 2019, see page 12. "Stateless Interviews" which states "questions about evidence submitted as part of the application may be resolved through additional written communications." See note 5.

An interview may speed up the process of reaching a final determination, enhancing thereby the efficiency of the process because interview greatly assists in *either* concluding that a person is stateless *or* confirming that the concerned individual is, in fact, a national of a particular state. However, UNHCR understands that the Home Office reasoning not to interview in all cases is because of the resource constraints of interviewing and the applications received from people with unfounded applications. In order to address these concerns, UNHCR would be open to assisting the Home Office with the development of a process for accelerated case management within the statelessness determination procedure which may assist for manifestly unfounded applications. A UNHCR paper offers recommendations to States on accelerated and simplified procedures within the asylum context which could be analogously applicable here. This paper draws on existing practice of European States, and on UNHCR's experience in mandate refugee status determination, with a focus on specific models and tools that have proved efficient, flexible, and fair for processing manifestly well-founded and manifestly unfounded claims.

RECOMMENDATIONS

- The Home Office Policy should be amended to clearly stipulate that an interview is mandatory in all cases or, at the very least, in all cases in which a decision-maker is inclined to refuse an application for statelessness leave.
- An interview should not be offered at the applicant's own expense but travel should be paid for by the Home Office to ensure there is no practical barrier for applicant's access to attending an interview.
- Alongside the introduction of mandatory interviewing, the Home Office could consider the development of a process for accelerated case management within the Statelessness Determination Procedure. This would mean an interview may not be necessary in both manifestly unfounded and manifestly well-founded applications.

7.2 SPEED OF DECISIONS ON APPLICATIONS

The UNHCR handbook[146] recommends that it is undesirable for a first instance stateless decision to be issued more than six months from the submission of an application but that in exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months to provide time for enquiries regarding the individual's nationality status to be pursued with another State.[147] In guidance to decision makers, the Home Office Policy does not provide a specific time scale for the statelessness leave decision to be made.

In just under 30% of cases reviewed, 10 of the 36 cases, a decision was made by the Home Office within the UNHCR recommended six-month time frame. In five cases a decision was issued within the period of six months to one year of the application being made.

Good practice was observed in three cases where decisions were made promptly. For example in one case a first-tier tribunal judge found that the applicant was stateless, and on this basis the Home Office granted statelessness leave promptly in just over four months. In another case where vulnerability of the applicant was highlighted to the Home Office by the legal representative, a timely decision appears to have been made as a result. This application was made by a 20-year-old former unaccompanied child. His legal representatives argued that because he was supported by Social Services and this support was likely to stop when he turned 21 years old, that his case should be dealt with expeditiously as the applicant's lack of status would be a barrier to him accessing education, training, benefits and work. This appears to have prompted the Home Office to decide the case in just over 6 months.

However, in 22 cases, almost 63% of all cases audited, a decision took more than one year to issue. Two of these applications took more than two years to finalise. UNHCR notes that three of the cases taking more than a year to decide, appeared on paper as potentially straight forward because there were no obvious indicators of statelessness in the application form. Effective triaging in these cases could have helped resolve these matters more quickly, and alongside appropriate procedural safeguards such as interviews, these cases may have benefited from an accelerated statelessness procedure.

Not only do delays in decisions on statelessness leave applications have a negative impact upon the mental health of those awaiting a decision, but there is a potential risk of destitution too. This is because statelessness leave applicants are not entitled to support under Section 95 of the Immigration Act 1999[148] and generally do not have permission to work.[149] Stateless persons may be eligible for support under Section 4 of the Immigration Act 1999[150] whilst they are waiting for a decision on their application, but this is only if the applicant has had a previously refused asylum claim, and this will not apply to all stateless persons. This situation runs contrary to UNHCR guidelines which state that the status of those awaiting statelessness determinations must reflect applicable human rights standards and have assistance to meet basic needs.[151]

146 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Para. 74, see note 2.

147 Ibid, Para. 75

148 *Immigration and Asylum Act 1999*, Section 95 www.legislation.gov.uk/ukpga/1999/33/section/95.

149 The exemption to this would be if the applicant had permission to work before making the application.

150 *Immigration and Asylum Act 1999*, Section 95, See note 148.

151 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, Para. 146, see note 2.

RECOMMENDATIONS

- The Home Office should adequately staff the SDP to ensure that in the majority of cases decisions are made within 6 months and up to 12 months in exceptional circumstances. This timescale should be detailed in the Home Office policy.
- An effective triage system should be introduced to ensure that cases are dealt with appropriately and according to their urgency and complexity.
- Applicants in the SDP awaiting a decision on their claim should be eligible for support under Section 95 of the Immigration Act 1999 to ensure their basic needs are met and to prevent destitution.

Applications from children

Section 55 of the Borders, Citizenship and Immigration Act 2009[152] places a duty on the Secretary of State to safeguard and promote the welfare of children in the UK. UNHCR notes reference in the Home Office Policy to specific requirements that applications **"are dealt with in a timely and sensitive manner where children are involved"**.[153] In the audit, there were seven cases involving applications made on behalf of children as either main applicants or as dependants.

Decision making on children's claims was made at a quicker rate than for adults, with four of these cases decided within 6 months as per the policy. However, in one child's case which took two years to decide, there was evidence on file that the applicant's solicitor made several attempts to contact the Home Office about progress of the case in efforts to prompt a decision. The solicitor noted:

> **"great concern that it has been more than six months since she made her application"**

and requested:

> **"that her case be expedited to avoid further harm caused by her staying in limbo; able to access education, basic health, help from social services or engage in normal teenage activity...due to a lack of identity documents". The Home Office was also contacted by the applicant's local MP about the outstanding application.**

Furthermore, in one case, two of the three applicant's children (twins) were dependants on her application. The family were being supported by social services[154] and were under considerable financial and emotional strain at the time of the application and for the duration that the Home Office took to grant statelessness leave; which was just over three years. The Home Office were aware of the family's vulnerable situation as this was clearly set out in their statement and explained by their solicitor. It is of concern to UNHCR that a case involving two stateless children could take in excess of three years to decide and that the Home Office did not organise the interview in this case until nearly two years had passed since the initial application. It is unclear what caused such an extensive delay.

152 *Borders, Citizenship and Immigration Act 2009*, Section 55. Available at: https://www.legislation.gov.uk/ukpga/2009/11/section/55.

153 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016 Section 1.4 Applications in Respect of Children, see note 33. Home Office Policy Guidance "Stateless leave", 30 October 2019, page 6 see note 5.

154 Under *Section 17 Children Act* 1989 www.legislation.gov.uk/ukpga/1989/41/section/17.

7.3 AVAILABILITY AND IMPACT OF LEGAL ADVICE AND REPRESENTATION

Legal aid is not generally available for advising, representing or assisting someone who wishes to make an application for leave to remain as a stateless person, or to ask for an administrative review of a refusal. The legal aid exceptional case funding is potentially applicable for statelessness leave applications and best practice advices that applications are made to this procedure.[155] Regardless of this instruction, at present, UNHCR understands that very few solicitors are prepared to apply to the Legal Aid Authority for exceptional case funding matters unless there are clear reasons for doing so because the preparation work needed by a solicitor for preparing an application is not chargeable. Legal aid may be available to investigate or to bring an application for judicial review of a decision to refuse a statelessness application, providing the merits and means tests for legal aid are met.

The absence of legal aid for applications for statelessness leave has in some of the cases reviewed, contributed to a number of problems in the identification and assessment of cases. UNHCR is of the view that legal aid could not only assist applicants, but could also reduce the number of applications made without appropriate supporting evidence resulting in less need for follow up by the Home Office and/or Administrative Review therefore speeding up decision making. Legal aid could also help ensure fewer unmeritorious applications for statelessness leave because the individual could be directed to the correct procedure and their expectations better managed. The audit has, however, identified that even where a legal representative was available in the cases reviewed, in some cases, more training and awareness is needed amongst the legal community as to what type of evidence is required for an applicant to substantiate their claim to be stateless.

Impact of no legal representation

In 18 of the 36 cases audited, half of the sample, the applicant submitted their application without the assistance of a legal representative. In a number of these cases, the impact of the lack of legal representation is apparent. For example in one case the applicant said in his stateless interview that his application was written “by a woman who works in the internet shop.” On review of his entire Home Office file it is noticeable that the evidence from the applicant’s previous asylum claim was not submitted yet was very pertinent to his statelessness application. This included a letter from the relevant national authority that it will not re-document him as well as evidence of two attempts to voluntarily to his country of origin. Had the applicant had a competent representative, this information may have been found and submitted, potentially strengthening his application for statelessness leave. The application for statelessness leave was refused.

155 Immigration Law Practitioners Association (LPA) and University of Liverpool Law Clinic “Statelessness and applications for leave to remain: a best practice guide” 2016 www.refworld.org/pdfid/58dcfad24.pdf.

In another case which was refused statelessness leave, an applicant with links to two countries in West Africa, had no legal representative despite his vulnerability which included the loss of sight as well as serious mental and physical health conditions. The applicant represented himself and wrote a statement which predominantly highlighted his previous asylum claim with very little information about his claim to be stateless. He did not submit any evidence regarding any possible claim to either nationality and had not had access or requested access to demonstrate the long history on his Home Office file of repeated attempts by officials to re-document him to West Africa.

Potentially unfounded applications

In four of the cases in which the applicant represented themselves the information and evidence submitted suggested that statelessness leave may not have been the correct route for the individual, requiring the decision-maker to advise the applicant on alternatives. This scenario did not occur in any cases in which the applicant was represented.

In three of these cases, the application did not highlight any risk of statelessness, but instead indicated a fear of persecution. For example, in one case the applicant attached a witness statement detailing her fear of her husband because of domestic violence and threats from her family. The decision-maker in all cases correctly addressed the fear of persecution by advising the applicant that the stateless procedure does not cover protection issues and pointed the applicant to the asylum process. In the fourth case the applicant had entitlement to British nationality and had made the application for statelessness leave in error. The decision-maker responded to the applicant advising an application for British citizenship.

Legal representative's efforts to evidence a claim

In 18 cases audited, the applicants instructed a lawyer to assist them from the outset with their application for leave to remain as a stateless person. It is best practice for a solicitor to make every effort to collect evidence to support the statelessness application[156] and it is a requirement of the Immigration Rules that the applicant **"has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless"**.

Six of the seven cases granted statelessness leave in this audit were represented by a lawyer. There are examples where legal representation was particularly effective and necessary in demonstrating an applicant's lack of nationality and in meeting the thresholds for the burden and standard of proof required. For example, in one case the facts as presented by the applicant's solicitor were directly quoted in the Home Office's reasoning to grant letter, relating to how Greek Nationality law determines citizenship in the in the case of a lesbian couple because there is no paternal presumption. Furthermore, the applicant's solicitor later wrote with additional updated evidence about a question raised in the Greek parliament which specifically related to the applicant's case. This parliamentary question was directly referred to in the Home Office decision to grant of statelessness leave. In another case in which the applicant was represented, the solicitor's statement included relevant case law, details of the applicant's vulnerability, findings of fact and how the immigration rules apply to the case. The level of detail in the solicitor's representation assisted the Home Office in understanding the applicant's situation, ensuring that the decision-maker was able to make an informed and prompt decision.

However, in seven cases in which the applicant was legally represented, either very little, inappropriate evidence or no evidence was provided about the applicant's lack of nationality in order to substantiate the applicant's claim to be stateless. This meant that the applicant was unable to satisfy the burden and standard of proof required of them.

In one case for example, the Home Office refusal letter referred to a previous asylum claim in which the applicant's nationality was in question:

> **"Your nationality has been disputed by the Home Office [for]...over 4 years ago. Within this time you have had ample opportunity to provide any information relating to efforts you have made to establish your nationality, but you have not done so."**

156 Immigration Law Practitioners Association (LPA) and University of Liverpool Law Clinic, "Statelessness and applications for leave to remain: a best practice guide" 2016. See note 155 above.

The applicant was refused under paragraph 403(d). In this case, although it may have been very difficult for the applicant to obtain the required evidence, the application indicates that the solicitor had not sought evidence from the applicant to demonstrate what efforts he had made, and furthermore, if this avenue had been explored but had been unsuccessful, the solicitor had not explained to the Home Office why this evidence was lacking. The same issue was evident in another case, where the applicant's solicitor had seemingly not advised the applicant to approach any of the national authorities to which he had links and therefore no evidence to this regard was submitted. When asked by the decision-maker why the solicitor had not helped him to source this information he stated:

> **"I went to my solicitor three times and we have not discussed any contact with the embassy."**

This served to weaken the applicant's claim.

Best practice demands that a statelessness leave application is only made once the adviser has full knowledge of the applicant's previous immigration history.[157] The first step for a solicitor should therefore be to obtain the full Home Office file under subject access request procedures and files from any previous legal representatives. In one case this action by the solicitor may have benefitted the applicant. This applicant had submitted an application for a passport to the BHC, but the response to this application was unclear. Given the applicant's lack of identity documentation to present to the Bangladeshi authorities and the standard of proof required to prove statelessness, it would have been expedient for the solicitor to provide a more comprehensive statelessness leave application. A full review of the applicant's file during this audit revealed previous re-documentation efforts. Because this evidence was not detailed on the individual's application, the burden of proof was not fully satisfied.

In five cases, evidence submitted by the acting solicitor was either irrelevant or superfluous. In three cases the statement written by a solicitor focused solely or heavily on the applicant's private and family life. In one of these cases, evidence submitted by the solicitor included a letter from the applicant's primary school and NHS letters, neither of which were relevant to support a claim to be stateless and which were considered by the Home Office not to add any weight to the claim. In another case the legal representative focused solely on the applicant's asylum history. In another case the solicitor submitted six documents with the statelessness application which did not relate to the individual in question and instead named other unknown individuals. This did not allow the Home Office to consider the individual facts of the claim and was therefore disregarded. None of these five applications addressed the applicant's claim to be stateless in any depth demonstrating a lack of understanding or disregard by the solicitor about what is required for an applicant to prove their statelessness.

157 Ibid.

7.4 INTERPRETATION AND TRANSLATION SERVICES

In asylum claims, legal representatives undertaking legal aid work can instruct an interpreter or translator and then claim the fee generated from this under the disbursement part of their matter start.[158] For statelessness applications legal aid is not available unless the matter is complex and can be argued that it is a case suitable for exceptional case funding.[159] In two cases the lack of an interpreter had potentially impacted on the evidence gathered and submitted in the statelessness application. Applicants in these cases appear to have not fully understood the process of applying for statelessness leave or what had been said in their applications on their behalf. This may be because they were unable to access an interpreter for financial reasons, when a solicitor was completing their application. Questions answered during the course of the stateless interview revealed inconsistencies which prompted the decision-maker to check that the applicant had understood the content of their application. In one case the solicitor submitted information which was contradicted by the applicant in his stateless interview, creating credibility issues. The applicant clarified that he had not understood what had been written in the application because he cannot read English. In another case the applicant expressed that he did not have an interpreter when working with his solicitor. When asked if he understood what the solicitor had written in his application, he stated:

> **"I know what I said but not what was written. My English I don't think very good and I didn't have an interpreter... he could not understand me properly."**

RECOMMENDATIONS

- Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 should be amended to include assistance with applications under Part 14 of the Immigration Rules. Legal aid is a necessary part of an efficient procedure for determining statelessness and helps to ensure that the UK's legal obligations under the 1954 Convention and international human rights law are met.
- UK civil society should continue to develop and facilitate training for legal representatives on statelessness and its treatment in UK law and policy. This will help ensure that stateless persons on the UK territory are identified, that their applications for statelessness leave are of a suitable quality and that their representatives have met their duty to their client.

158 Standard Civil Contract, Specification Category, Specific Rules, Sections 8.68 – 8.7, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/308762/LAA-2013-immigration-and-asylum-specification.pdf.

159 Legal Aid Agency "Exceptional Case Funding Form and Guidance" available at: www.gov.uk/government/publications/legal-aid-exceptional-case-funding-form-and-guidance.

7.5 MODERN SLAVERY INDICATORS

Research indicates that statelessness is believed to put a person at greater risk of becoming a victim of human trafficking because it increases risk factors such as poverty, lack of education and the ability to deal with a sudden crisis. A combination of risk factors may push stateless persons to decide to migrate and take risks to be able to do so.[160]

In two of the stateless interviews reviewed in this audit, indicators of slavery, forced labour and human trafficking were raised, but appear, on a review of the paper file, not to have been picked up by the decision-maker. For example, one applicant described that she had been brought to the UK by a woman she believed at the time to be her mother on what she now understood to be a false passport and was abandoned in the UK. In the stateless interview some of her background and the way she has been treated came to light whilst the decision-maker attempted to establish where she was from. This included an explanation that she was never allowed out of the house except to "clean upstairs" and "serve men."

In another interview the applicant explained that he was abducted at approximately age five. His application detailed that he had been sold to a jockey master and was taken to a Middle Eastern country where he worked on a camel farm for many years without remuneration or time off. The application form also claimed he was brought to the UK on a false passport, but the exact document and method used was unknown to him. The jockey master then kept his passport and left him behind in the UK. The decision-maker asked a little about the applicant's work as a child, but not about his travel to the UK. Questions related to his experience in this regard could have raised more information and evidence about his vulnerability as a suspected victim of slavery and/or human trafficking.

Home Office staff have a duty to notify the Secretary of State of any individual encountered in England and Wales who they believe is a suspected victim of slavery or human trafficking pursuant to section 52 of the Modern Slavery Act.[161] It appears that these indicators were not further investigated. No referrals of the individuals to the UK National Referral Mechanism for victims of slavery and human trafficking were recorded on CID or the paper file, nor was there any record of a discussion about such a referral in the event that the individual did not consent. UNHCR is pleased to note that the updated 2019 Home Office policy on statelessness leave now highlights the nexus with modern slavery and directs decision-makers to the National Referral Mechanism[162] which was not reflected in the 2016 policy. In addition, the Home Office has informed UNHCR that Modern Slavery training (including identifying indicators and how to refer to the NRM process) is now mandatory for all stateless decision-makers. The nexus between statelessness and slavery or human trafficking in the UK context and the Home Office response to is an area which will need to continue to be monitored.

160 Laura van Waas, Conny Rijken, Martin Gramatikov and Deirdre Brennan, 2015 "The Nexus between Statelessness and Human Trafficking in Thailand". https://files.institutesi.org/Stateless-Trafficking_Thailand.pdf

161 *Modern Slavery Act*, Section 52, available from: www.legislation.gov.uk/ukpga/2015/30/section/52/enacted.

162 Home Office Policy Guidance "Stateless leave", 30 October 2019, see note 5 above.

7.6 ADMINISTRATIVE REVIEWS

There is no statutory right of appeal against the decision to refuse to grant leave as a stateless person. Unsuccessful applicants can, however, apply for an administrative review (AR), in accordance with paragraph AR2.3(c) of Appendix AR of the Immigration Rules. AR **"is the review of an eligible decision to decide whether the decision is wrong due to a case working error" as defined within Appendix AR of the Immigration Rules.**[163] AR allows the applicant to raise any permitted case work error[164] that they think has been made on the application. They include misapplication of rules, policy or guidance and incorrect calculation of the period or conditions of leave. If the Home Office agrees that the stated error has been made, the case is referred back to the statelessness team for a further decision, meaning that the original decision to refuse statelessness leave could be overturned.[165]

Applications for statelessness leave are legally and evidentially complex.[166] The UNHCR Handbook states that an effective right to appeal is an essential safeguard in an SDP and that an appeal must be possible on both points of fact and law.[167] In the UK, judicial review is the only judicial remedy available in statelessness cases. This mechanism does not focus on the facts of the case but instead challenges the lawfulness of the decision made.[168] Conversely, in a full appeal, the lawyer is able to provide evidence to challenge the lawfulness and merits of the Home Office decision, including witnesses, expert reports and legal argument. The applicant or their representative also has a greater opportunity to give oral evidence to explain their case to a judge who hears all the evidence and is making an independent decision including consideration as to if the decision falls outside the bounds of reasonable decision making. Although AR allows consideration of issues listed in Grounds of Appeal under Section 84 of the Nationality, Immigration and Asylum Act 2002,[169] it is more limited in that it relies on the identification of a case working error by a decision-maker internal to the Home Office. Similar observations specific to AR in the statelessness context have been made by the ICIBI.[170] UNHCR is therefore of the view that an appeal right in the UK SDP would be most effective in ensuring the correct decisions are made on eligibility under the 1954 Convention.

There were eight cases in the audit in which the applicant applied for AR. The overall proportion of decisions on applications for statelessness leave within the statelessness procedure in which an AR takes place is unknown, including the proportion of decisions which are overturned as a result. Therefore, it was difficult for UNHCR to determine a representative sample of ARs in this context. Nevertheless, whilst the sample used is small, it highlights the need for an effective remedy to incorrect decisions and the need for increased transparency including through enhanced publication of disaggregated statistics on AR in the statelessness context.

ARs where a substantive reconsideration of the decision was not undertaken

In two of the eight cases, the Home Office did not undertake a substantive reconsideration of the refusal of statelessness leave. In one of these two cases, this is because the AR was considered as being 'invalid' due to the AR being received out of time i.e. more than 14 calendar days from the date the decision was received. There was no information from the applicant's legal representative as to why the AR application was delayed. It is considered that this this decision was made in line with the AR guidance.[171]

In the second of these two cases the applicant applied within the time limit but asked for the Home Office to extend the time available so that he could seek a "solicitor to act on behalf of me."

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163 UK Immigration Rules "Appendix AR: administrative review" available from: www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ar-administrative-review.

164 AR2.11(a)-(d) and AR2.12 of Appendix AR of the Immigration Rules provide technical definitions of all case working errors.

165 The AR policy which applied at the time of case review for this audit was Home Office Administrative Review guidance, *"How to consider an administrative review application"* 2017. The Home Office has since published a new AR policy, June 2019 Version 10, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806921/Admin-review-guidance-v10.0-ext.pdf.

166 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, paras. 20, 42, 62, 64, 85 and 102. See note 2 above.

167 Ibid. paras. 76 and 77.

168 Courts and Tribunals Judiciary "Judicial Review" www.judiciary.uk/you-and-the-judiciary/judicial-review/.

169 *Nationality, Immigration and Asylum Act 2002*, Section 84, available from: www.legislation.gov.uk/ukpga/2002/41/part/5/crossheading/appeal-to-adjudicator.

170 Independent Chief Inspector of Borders and Immigration (ICIBI) "An inspection of Administrative Reviews (May – December 2019)" See Section 11.5 www.gov.uk/government/news/inspection-report-published-an-inspection-of-administrative-reviews-may-december-2019.

171 Home Office Administrative Review Guidance, 2019, see note 165 above. See page 18 "Paragraph 34R: time limit." The decision-maker allowed two working days after the day on which it was posted for the applicant to receive the notice. The previous policy which applied at the time stipulated the same.

The applicant did not submit a full application explaining the case working errors he believed had been made in the refusal letter. In this case, there was 22 days between the application being submitted and a decision then being made by the Home Office. Nothing further was received from the applicant in that time, so the AR was concluded on the information provided in the application.

Notification of entitlement to administrative review

There was procedural failure by the Home Office to notify all refused applicants of the option for AR as required by the Home Office Policy.[172] In 14 cases of the 31 statelessness leave applications refused, the applicant was not notified of the option for an AR in their refusal letter. All but one of the applicants applying for AR had been notified of the availability of this option in their refusal letter, which indicates the importance of this notification, especially where legal advice on next steps may be unavailable. One applicant had not been notified and had initially missed the deadline for AR of the refusal to grant him statelessness leave.[173] He was subsequently advised by a solicitor and wrote to the Home Office contending that it would be unjust not to accept the out of time AR application, in line with the AR guidance,[174] when he was not in fact notified in the first place. This was accepted by the Home Office. The Home Office has since advised UNHCR that steps have been taken to rectify this omission, with the standard refusal template being used now including wording on the option for AR.

Assessment of case working errors by the Home Office

In six of the eight cases audited involving AR, more substantive consideration was given by the Home Office as to whether or not case working errors had occurred. In those six ARs, applicant's predominantly claimed that the original decision maker applied the Immigration Rules incorrectly[175] or failed to apply the Secretary of State's relevant published policy and guidance in relation to the application.[176]

In all six cases, the original decision to refuse the application was maintained. In only one case was a case working error identified correctly by the decision-maker. UNHCR otherwise observed that the decision-maker did not always give adequate scrutiny to all the issues raised by the applicant.

For example, in one case the AR application claimed that the Home Office had failed to consider all the evidence relevant to the original statelessness leave application, namely, a letter sent to the BHC by the applicant and a letter of response received from the BHC stating that they unable to provide the applicant with a Bangladeshi passport. The decision-maker undertaking the AR, noted this was not referred to in the original refusal letter and accepted that this was an error which prompted a new decision to be made. However, the internal Home Office note demonstrates a complacent attitude to the impact of the error on the decision under review. It states:

> **"The evidence is attached to a rep's letter... it is not referred to in the stateless refusal letter...Although it probably won't change the decision, as I've explained before we need to show that all evidence has been considered".**

In response to the AR application, the Home Office issued another identical refusal letter with a small additional paragraph about the new evidence - confirming that:

> **"(t)he issue of your nationality was fully considered at your asylum appeal when the immigration judge concluded it is 'more likely than not [you are] a citizen of Bangladesh'. Therefore on the balance of probabilities you are not considered to be an ethnic Rohingya Muslim."**

This decision was made despite the evidence submitted by the applicant that the BHC had refused to accept the applicant as being a citizen of Bangladesh; evidence which would appear to be relevant to establishing whether or not he was

172 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, Section 6.2, See note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, see page 26, see note 5 above.

173 An in-country request for administrative review of an eligible in country or border decision must be made within 14 calendar days after the date on which the person received the decision

174 Home Office Administrative Review Guidance, Version 10, 2019, see note 165 above.

175 UK Immigration Rules "Appendix AR: administrative review" Paragraph AR2.11(d). See note 163 above.

176 Ibid. Paragraph AR2.11(e).

a national of Bangladesh. This evidence called into question the aforementioned earlier decision of the Tribunal Judge that the applicant was not a national of Bangladesh - which should have caused the Home Office to review their reliance on that decision, rather than to cement it.
In another case reviewed the applicant stated:

> **"The decision-maker failed to demonstrate to me that he/she made any efforts to conduct research as necessary and make enquiries to seek further evidence or information from the Embassy".**

The applicant had attempted to satisfy the burden of proof by making their own enquiries with relevant national authorities. The applicant had given evidence to support his claim, that he approached both the Zimbabwean and Malawian authorities in an effort to re-document. In neither attempt was he successful in doing so. The AR decision notice erroneously stated:

> **"There is no specific requirement placed on the Secretary of State to assist you in your claims with the Malawian or Zimbabwean authorities."**

The AR decision-maker therefore failed to consider whether or not the Home Office had made relevant enquiries with the relevant competent authorities as is required in the Home Office policy and therefore whether a caseworking error had occurred.[177] The initial refusal letter was simply repeated without further scrutiny.

In another case, the solicitor highlighted in the AR application that the Home Office had omitted from the original Home Office decision the Home Office's previous failed attempt to re-document the applicant to return him to Bangladesh in a period of previous detention. The 2016 Home Office policy and the subsequent 2019 updated policy[178] states that previous enquiries made to national authorities to secure travel documents in relation to removal action following an asylum refusal may be relied upon in subsequent statelessness leave applications. This challenge by the solicitor in the AR application was not addressed by the decision-maker in the AR decision notice despite its apparent relevance to the decision on statelessness leave and it raising a potential case working error. This is the same error identified by UNHCR in the initial refusal letter highlighted in the 'Assessing and determining statelessness' section.

This resulted in case work errors highlighted by the applicant not being identified as such, similar errors being replicated in the AR decision notice as those made in the first instance decision and lastly, not all of the applicant's challenges being addressed in every case. Similar observations have been made previously by the Independent Chief Inspector's first report into administrative review processes.[179] This report found that in over half of the cases sampled, administrative review decisions did not apply adequate scrutiny to the issues raised by the applicant and displayed an over-reliance on the initial refusal decision letter.

Identification of additional case work errors

ARs undertaken on in-country applications do not entail a full reconsideration, but are limited to specific points raised by the applicant in their application, except, where in the course of that review **"it becomes clear [...] that the original decision contained errors which the applicant or representative has not identified"** the decision-maker **"must also correct these errors".**[180] In the cases reviewed, UNHCR identified errors that were present in the initial decision but not in the application for AR, which were not identified by the decision-makers in the course of their review of the application, as is directed by the Home Office AR policy.

For example, in one AR application the use of a specific legal judgment in the statelessness leave refusal letter as reason to assert that the applicant is not stateless was highlighted as "outdated" by

177 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, Section 4.2, see note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, see page 14, see note 5 above.

178 Home Office Policy Guidance "Stateless leave", 30 October 2019, See page 10 'Evidence from asylum claims'. See note 5 above.

179 Independent Chief Inspector of Borders and Immigration (ICIBI) "Report on a Re-inspection of the Administrative Review Process, July 2017 https://www.gov.uk/government/publications/inspection-report-on-a-re-inspection-of-the-administrative-review-process-july-2017

180 Home Office Administrative Review Guidance, Version 10, 2019, see note 165 above.

the applicant. In response to the AR application the Home Office stated:

> **"you have presented no evidence with your application that the Bangladesh Authorities have appealed or overruled this case law... Therefore, this case law has been accepted as current and still an accurate representation of Bihari citizenship in Bangladesh."**

However, whilst UNHCR acknowledges that the applicant had not clearly explained or highlighted the case working error, both the initial decision by the Home Office and the decision on review did not engage with the question of the application of this case law *in practice*. UNHCR observes that whilst this case law may still be current, the application in practice of this law is critical to consider, because Bangladeshi Citizenship law,[181] has specific requirements in order to prove entitlement to citizenship relating to family history and/or residence in Bangladesh. The Home Office Policy[182] states that establishing statelessness requires an analysis of how a State applies its nationality laws in practice and has applied them to the individual applicant. The application should have been reconsidered, however this was not identified as a case working error.

In another AR application concerning a determination as to whether the applicant was admissible to their country of former habitual residence, UNHCR observed that a case working error was made which had not been identified by the applicant. This concerned the lack of assessment in the initial decision as to whether or not, on admission to the country of previous habitual residence, the applicant would be securing "permanent residence" in line with Home Office policy.[183] This was not identified by the decision-maker as an error in the course of their review of the application and was therefore missed.

RECOMMENDATIONS

- Applicants to the statelessness procedure should have an effective right to appeal against a negative first instance decision. The appeal procedure should rest with an independent body.
- In the interim, the current AR policy and training material should be amended to make it clear that wider casework errors are to be identified and assessed through a full review, and that AR should not only focus on those case working errors highlighted by the applicant in the AR application.

181 *The Bangladesh Citizenship (Temporary Provisions)* Order 1972 www.refworld.org/pdfid/3ae6b51f10.pdf.

182 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016, Section 4.6.1, see note 33 above. Home Office Policy Guidance "Statelessness leave", 30 October 2019, see page 18 and 19, see note 5.

183 Home Office Policy Guidance "Statelessness and applications for leave to remain" 18 February 2016 See sections 1.4, 3.4 and 6.2 See note 33 above. Home Office Policy Guidance "Stateless leave", 30 October 2019, page 14 see note 5 above.

8. IMMIGRATION DETENTION

Image © UNHCR/Greg Constantine

Stateless persons generally do not possess identity documents or valid residence permits, so they can be at high risk of arrest and repeated and prolonged detention. They may also face prolonged detention because there are significant barriers to removal and they are unable to return to their country of origin, which could render detention arbitrary.[184]

Because of this risk, within the terms of reference for this audit, UNHCR requested examples of decision making on applications made whilst the applicant was in immigration detention in order to review how these cases were being assessed by the Home Office. Out of the 530 cases that were provided to UNHCR to select from for audit, the Home Office was able to specify just one case where an application was made from within detention. At the start of the audit, the stateless team explained that they were unable to identify people who have made their statelessness application whilst being detained because these cases were not flagged to on the Home Office systems to decision-makers in the statelessness team. A lack of known applications could also point to other barriers, which prevent or deter applications for statelessness leave being made from within detention. In more recent exchanges with the Home Office, it was highlighted that the Home Office's current practice is that statelessness applications should be flagged and considered when deciding whether or not to detain an individual. It is the Home Office's view that this approach would have contributed to the low number of applications made within detention and identified in this audit. UNHCR has requested further information with respect to the mechanisms in place to refer statelessness applications to the stateless team and is of the view that more research is needed into this area.

In the statelessness applications reviewed as part of this audit, 12 cases had been detained in immigration detention at a point during their immigration history. The application for statelessness leave was made following their release. Of these cases, five were in detention *after* the introduction of the SDP in April 2013 and were released due to difficulties obtaining documentation which had led to a decision that there was no realistic prospect of removal. Each exhibited a number of risk factors associated with statelessness. All had unclear or disputed nationality and were members of groups known to be at risk of statelessness,[185] one had been detained and

184 UN High Commissioner for Refugees (UNHCR), "Stateless Persons in Detention: A tool for their identification and enhanced protection" June 2017, See note 16 above.

185 Three cases were Biharis, one case was an individual born in the UK to a mother with unsettled status at the time of his birth, and one case was a Kurd from Iraq.

released twice, and one was detained for almost 18 months. Despite these indicators, the notes on file for detention reviews, suggest no identification of the risk of statelessness was apparent and therefore no assessment of the risk of statelessness was considered when undertaking detention reviews. Therefore, those at risk of statelessness were not referred from detention into the SDP. One factor may be that stateless detainees do not readily have access to information about the SDP or fully understand their nationality status, but more research again would be needed in this area.

It is unclear how many stateless persons are detained in the UK or for how long and individuals are not usually recorded as stateless when they enter detention unless they have previously been recognised as stateless.[186] The 1954 Convention casts an implicit procedural obligation on States to identify stateless persons within their jurisdiction because, unless stateless persons are identified, the rights conferred by the 1954 Convention would be rendered nugatory.[187] Indicators of statelessness should therefore be as important a consideration as the identification of other vulnerabilities during the screening process for detention.

Together with the International Detention Coalition, UNHCR has developed a Vulnerability Screening Tool[188] (VST) which is intended to help guide and inform decision-makers on the relevance of vulnerability factors to detention decisions and encourage early intervention. This tool includes consideration of statelessness as a specific vulnerability. UNHCR recommends that the Home Office consider adapting and applying the procedures and principles found in the VST for use in the UK, including assisting in the identification and referral of individuals at risk of statelessness.

RECOMMENDATIONS

- The Home Office should amend the "Adult at Risk in immigration detention" policy to expressly identify an individual's risk of statelessness as a factor that will weigh against detention on the basis that it is likely to indicate that there are no reasonable prospects of removal.
- The detention review form used to review cases in detention, should be amended to detail indicators of statelessness so as this information is available for the Home Office when considering whether to maintain detention.
- The Home Office should improve its training in respect of statelessness to ensure that officials and case progression panel members are able to identify indicators of statelessness, the appropriateness of immigration detention in these cases and the approach that should be taken to removal.
- Information should be provided to all detained persons to ensure that they are aware of the statelessness determination procedure and have access to the procedure at any time.

186 National Statistics "How many people are detained or returned?" February 2020. Available from: www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/how-many-people-are-detained-or-returned.

187 UN High Commissioner for Refugees (UNHCR) "Handbook on Protection of Stateless Persons" 2014, para. 8, see note 2.

188 UNHCR and International Detention Coalition "Vulnerability Screening Tool", 2016. Available from: http://www.refworld.org/pdfid/57f21f6b4.pdf.

9. CONCLUSION

Image © UNHCR/Greg Constantine

The introduction to the UK of a Statelessness Determination Procedure in 2013 was a critical step forward in ensuring that the UK meets its obligations to stateless persons under the 1954 Convention.

This is the first public audit of the Home Office approach to decisions made under the SDP. It was carried out under the Quality Protection Partnership, in close collaboration with the Home Office, with the aim of strengthening the quality and efficacy of the SDP. This report highlights the importance of the SDP in the protection of stateless people and points to some areas of positive practice, including a consistently proactive approach by decision-makers in the gathering of nationality law, which is a crucial element of decision-making in the determination of statelessness. UNHCR also points to a number of crucial shortcomings, which indicate that stateless persons may be falling through the cracks, and not benefiting from the protection to which they are entitled. UNHCR proposes key recommendations seen as crucial to improving the fairness, efficiency and transparency of the SDP. These include:

Approach to assessing and determining statelessness

The audit revealed areas of decision-making which require improvement. These most notably include the application by decision makers of the burden of proof (in particular the duty to 'assist' the applicant and when it is triggered), the correct identification of material facts, the use of credibility indicators and the consideration and weight given to different types of evidence.

UNHCR recommends a comprehensive revision and improvement of training for decision-makers working in the SDP.

Procedural deficiencies

The audit highlighted shortcomings in several procedural guarantees. These include the apparent limited use of stateless interviews, the timeliness of decisions and subsequent delays, a lack of legal aid to assist applicants with significant evidentiary and practical challenges and the lack of an effective review mechanism for refusals.

UNHCR recommends a number of changes to procedures in the SDP including mandatory interviewing of applicants and the introduction of a right of appeal and legal aid.

Application of the admissibility test

Analysis of cases where this test was applied, sheds light on the challenges of interpreting and establishing the concept of admissibility under the current rules. It is UNHCR's position that the current admissibility test is contrary to the object and purpose of the 1954 Convention because it appears to have unintended and adverse consequences for stateless persons, namely that there is a risk of them remaining without legal status in any country.

UNHCR recommends amending the current "admissibility" test in the UK Immigration Rules to ensure it is more narrowly construed, drawing from UNHCR's Handbook on Statelessness.

Persons at risk of statelessness in immigration detention

The audit found cases of people entering and leaving immigration detention who exhibited indicators of statelessness, where notes on the file suggest that no identification or assessment of the risk of statelessness was made by Home Office officials. This resulted in these people eventually being released from detention due to no realistic prospects of removal, suggesting they were subjected to arbitrary or prolonged detention.

UNHCR recommends that safeguards in assessing the risks of statelessness be strengthened though changes to detention training, policy and procedures.

An incorrect decision on a statelessness leave application is serious. It generates unnecessary financial and human costs such as repeated applications to the SDP or expensive judicial review proceedings and can leave stateless people left without legal status in any country. The system must be properly resourced, and applicants must be given the best opportunity to present their case.

Decision workers must apply rigorous scrutiny, procedural safeguards should be guaranteed, and the Immigration Rules and policy must be drafted in accordance with international best practice standards. UNHCR welcomes the opportunity to work with the Home Office to address the shortcomings identified and to support in the implementation of the recommendations.


UNHCR
The UN Refugee Agency