



European
Network on
Statelessness

PROTECTING STATELESS PERSONS FROM ARBITRARY DETENTION



IN THE UNITED KINGDOM

“ Detention made my mental health worse. It started when I got into immigration detention. There they do not care if you cry. Immigration detention is far far worse than prison because there is no time limit.

KIVI, A STATELESS FORMER DETAINEE, ORIGINALLY BORN IN DJIBOUTI BUT WHO GREW UP IN THE UNITED KINGDOM

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LIST OF ABBREVIATIONS

1954 Convention	Convention relating to the Status of Stateless Persons
1961 Convention	Convention on the Reduction of Statelessness
BOC	British Overseas Citizen
CRC	Convention on the Rights of the Child
DAC	Detained Asylum Casework
DFT	Detained Fast Track
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ETD	Emergency Travel Document
EU	European Union
FOI	Freedom of Information
HM	Her Majesty
HO	Home Office
IRC	Immigration Removal Centre
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
TBP	Toronto Bail Programme
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

INTRODUCING THE INTERVIEWEES

Yassin is a stateless Bidoon from Kuwait in his late twenties. He came to the United Kingdom in 2007 to seek asylum but his claim was refused. He married a European Union (EU) citizen and applied for leave to remain on that ground, but he was refused because he has no passport and the Home Office (HO) maintains that he could obtain Kuwaiti nationality. He contacted the Kuwaiti embassy and was told he cannot apply for citizenship. He has been in the UK on temporary admission for nine years. His solicitor is preparing a fresh asylum claim.

Otolo is in his mid-thirties and originally from Cote d'Ivoire. As a child, he had been abandoned by his parents and then trafficked into Senegal. He escaped to the UK where he was later arrested after wrongly being accused of having committed a robbery. He was acquitted but held for a total of six months in criminal and immigration detention. Attempts to deport him failed as neither Cote d'Ivoire nor Senegal would recognise him as a national. He has now been granted leave to remain based on his statelessness and is qualifying to become a security guard.

Peter is a man in his late fifties from Nigeria. He came to the UK about 20 years ago and made several attempts to obtain legal status, all of which failed. Without this, he was not allowed to work and was convicted for working illegally. After serving his sentence he spent nine months in immigration detention while attempts were made to remove him. He had signed up to return voluntarily to Nigeria but the Nigerian High Commission refused to accept him as a national. As Peter was born near the border of Nigeria with Cameroon, the HO approached the Cameroonian embassy. However, Cameroon also refused to recognise him as their national, saying he was Nigerian. When Peter was released from detention, he refused to leave because he had no place to go and wanted to return to Nigeria. He was left in the streets with no support. He was then re-detained again for three months because the HO wanted to bring him to the Nigerian High Commission one more time but he was again not accepted as a national. He has now a statelessness application but was refused on the ground that he could apply for Nigerian or Cameroonian nationality.

Kivi is a man in his late twenties who was born in Djibouti to an Ethiopian mother and unknown father. He was orphaned at a young age and grew up in the streets. He went to Belfast as a teenager looking for a better life. As a minor, he received limited leave to remain and support. On his immigration documents it was written that he was one year older than his real age and that he was Ethiopian. However, when he turned 18, the HO issued him an order to leave the UK. Kivi did not know where else to go, and remained in Belfast. Following a conviction for handling marijuana and spending two years in prison, he was in immigration detention for two consecutive years. During these two years the HO tried to deport Kivi to Djibouti or to Ethiopia but all attempts failed despite his willingness to cooperate. He was released on tag more than one year ago and he has been required to reside in the South of the UK. His eight-year-old daughter, a British citizen, is in a care home in Belfast and because of the curfew requirements he cannot visit her. His solicitor is preparing a statelessness application.

Anthony's mother was from Liberia and his father from Zimbabwe. He is in his mid-thirties. During the years of political unrest in Zimbabwe, he spent some time in South Africa and Mozambique. He then claimed asylum in the UK. His claim was rejected and following a conviction for making and possessing a false document, Anthony spent fourteen months detained under immigration powers. He signed up for voluntary return to Zimbabwe but the Zimbabwean authorities, without proof of identity, have refused to accept him as a national. He was released from detention following a judicial review proceeding which awarded him damages for unlawful detention. He made a statelessness application which was refused on the grounds that he has a deportation order pending. After being interviewed for this report, in May 2016 he was re-arrested when he went to report as part of his release conditions. The HO is now trying to assess whether he is a Nigerian national, based on some emails he had written while in detention, which hint that he could be from there, despite him claiming not to have any connection to it. He is married to a British national and his family has been separated by his detention. His wife suffers from mental health problems and his detention is exacerbating her condition.

John is a man in his mid-forties who was born in South Sudan to Liberian parents. When he was five years old, he and his family moved to Liberia. During the conflict in Liberia, he lost contact with his family and the military abducted and tortured him, also forcibly conscripting him as a child soldier. John fled to the Netherlands as a minor and lived there irregularly for many years. He then came to the UK where he had some friends and applied for asylum. His asylum claim was refused and he became destitute. He was convicted and sentenced to three years in prison for dealing in class A drugs. He regrets his crime, but he stated that without the right to work or support, he was so desperate that he did not have any other choice. In addition to his prison sentence, John spent three years in immigration detention, during which he had a number of interviews with the Liberian, Nigerian and Sudanese embassies, all of which denied that he is a national. Following a judicial review which challenged the lawfulness of his detention, John was awarded damages for the last six months of his detention which was deemed to be unlawful. However, he was only released on electronic tagging with a curfew. After a year and nine months he was detained again for six and a half months because he breached the curfew conditions in order to attend the funeral of his stillborn twins. After further attempts to remove him failed, John was released on tag once again. The curfew that has been imposed on him requires him to be at home between 9 pm and 7 am each day. He also has to report to immigration authorities once a week. He made a statelessness application which was refused on the grounds that he has a criminal conviction.

Ousman is a middle-aged man born in Guinea to a Guinean father and Gambian mother. Ousman and his family lived in Gambia before he came to the UK. In the UK he was convicted for working illegally and, after serving his one-year sentence, Ousman was subject to immigration detention for three and a half consecutive years. Despite his cooperation with removal efforts and the fact that neither the Guinean nor the Gambian embassy recognised him as a national, the HO kept making futile efforts to deport him while keeping him in immigration detention. He challenged the legality of his detention and was awarded damages for unlawful detention. His solicitor intends to make a statelessness application on his behalf.

Akram is a Palestinian in his forties who fled the West Bank and Iraq and then drifted through several countries before arriving in the UK. He lived in limbo for many years in the UK and spent two months in immigration detention after serving a conviction for possession of a false document. Akram was convicted after he turned himself into the police hoping that at least in prison he would have a place to sleep. After his release he made an application for statelessness leave and was granted protection. He is now married, has a family and works as a baker.

Okeke has always lived in the UK and was probably born in the UK although he has no birth certificate. He believes that his parents are British but he lost contact with them as a teenager after fleeing many years of domestic abuse. He is in his thirties. Okeke has faced a life of destitution and isolation in the UK due to the lack of documents and the abuse he suffered as a child. After serving a criminal conviction for theft, his immigration detention started in April 2016 as the HO sought to deport him. Despite being classified by the HO as a person of 'unknown nationality', they attempted to deport him to Nigeria on the basis that he has a Nigerian name. Okeke was released in August 2016 on the grounds that his detention was not reasonable anymore. His solicitor intends to make a statelessness application on his behalf.

Muhammed is a Sahrawi in his late thirties who came to the UK as a minor, hoping to find a better life than he had in a refugee camp in Algeria.¹ His asylum claim was refused and he has been detained for immigration purposes several times for a total duration of nearly four years over the past eighteen years. The last episode of immigration detention started in May 2015 despite the HO accepted that he is a Sahrawi and therefore that there are no prospects of removal. The immigration judge ordered his release only on the 15th of August 2016 (after several bail attempts) subject to the condition that he HO finds accommodation for him. It is unclear what measures if any, the HO was trying to take to remove him from the UK. His statelessness application was refused due to a prior criminal offence and he is being helped by a Non-Governmental Organisation (NGO) with his legal representation. Muhammed suffers from mental health issues.

1. INTRODUCTION



1.1 STATELESSNESS AND DETENTION

The increasing use of immigration detention, including for punitive purposes, and the criminalisation of irregular migration by a growing number of states, is a concerning global and European trend. This results in increasing numbers of persons being detained for longer than is necessary for any legitimate government purpose and/or for reasons that are unlawful. While arbitrary detention is a significant area of concern in general, the unique characteristics associated with stateless persons and those at risk of statelessness make them more likely than others to be detained arbitrarily, for unduly lengthy periods of time. As the European Court of Human Rights (ECtHR) held in *Kim v Russia*, a stateless person is highly vulnerable to be “left to languish for months and

years...without any authority taking an active interest in his fate and well-being.”² This is mainly because most immigration systems and detention regimes do not have appropriate procedures in place to identify statelessness and protect stateless persons. Against this backdrop, the ECtHR judgment on *JN v United Kingdom* in May 2016 is very disappointing. It concluded that the absence of a fixed time limit in the UK does not breach the right to liberty under Article 5 of the European Convention on Human Rights (ECHR). However, in this case the applicant was detained for more than four and a half years and the Court found that the authorities had not acted with due diligence to enforce his removal, which resulted in a violation of Article 5.³

All stateless persons should enjoy the rights accorded to them by international, regional and national human rights law. Their rights should be respected, protected and fulfilled at all times, including in the exercise of immigration control. The circumstances facing persons with no established nationality – including their vulnerability as a result of their statelessness and the inherent difficulty of removing them – are significant factors to be taken into account in determining the lawfulness of immigration detention. The process of resolving the identity of stateless persons and a stateless person's immigration status is often complex and burdensome. Lawful removal of such persons is generally subject to extensive delays and is often impossible. In many European countries, stateless persons detained for removal purposes are therefore vulnerable to prolonged and repeat detention. These factors in turn make stateless persons especially vulnerable to the negative impacts of detention. The emotional and psychological stress of lengthy—even indefinite—periods of detention without hope of release or removal is particularly likely to affect stateless persons throughout Europe.

It is evident that the failure of immigration regimes to comprehend and adequately address the phenomenon of statelessness, identify stateless persons and ensure that they do not directly or indirectly discriminate against them often results in stateless persons being punished for their statelessness. Thus, the European Network on Statelessness has embarked on a two-year project aimed at better understanding the extent and consequences of the detention of stateless persons in Europe, and advocating for protecting stateless persons from arbitrary detention through the application of regional and international standards. Among the outputs of this project are:

- A Regional Toolkit for Practitioners, on protecting stateless persons from arbitrary detention – which sets out regional and international standards which states are required to comply with and practitioners can draw on in their work;⁴ and
- A series of country reports investigating the law, policy and practice related to the detention of stateless persons in selected European countries and the impact of detention on stateless persons and those at risk of statelessness. These reports are meant as information resources and also as awareness raising and advocacy resources that we hope will contribute to strengthening protection frameworks in this regard. In year one of the project (2015), three such country reports were published on Malta, the Netherlands and Poland.⁵ In year two, this report on the UK and two others on Bulgaria and Ukraine were published.

1.2 RESEARCH OBJECTIVES, METHODOLOGY AND LIMITATIONS

The goals of this study are two-fold: i) filling an information gap on statelessness and detention in the UK; and ii) to serve as an advocacy tool to promote greater protection for stateless persons and those at risk of statelessness from arbitrary detention, including through improved identification and determination of statelessness. To this end, the present first chapter provides an overview of the research objectives and introduces the reader to the UK context. The second chapter is concerned with law and policy and existing (statistical) data on statelessness and detention. Then, chapter three identifies key issues of concern. The report concludes with a summary of findings and recommendations for improvement.

This study employs a varied methodology: a thorough desk review of the existing literature on both statelessness and immigration detention; statistical review of available quantitative data; interviews with legal professionals, NGOs and international organisations; and finally of course in-depth semi-structured interviews with stateless persons and persons at risk of statelessness who have themselves experienced detention in the UK. With regard to these interviews, it should be noted that no extensive legal analysis or fact check of each individual case was conducted. These stories and personal experiences are meant to inform and illustrate broader research findings.⁶ It should also be noted that HO policy-makers and case-workers working on immigration detention declined to be interviewed for the purposes of this report.

Due to significant recent changes in policy, case studies may refer to situations or practices which are no longer common in the UK. For this reason, we have – as much as possible – attempted to seek out interviewees whose experiences with detention are recent (i.e. within the past three years). The findings in this report are up-to-date as of September 2016.

Although some of the interviewees have been detained in penal institutions in the UK, our report and concerns raised herein relate only to administrative immigration detention practices; the situation of stateless persons and those at risk of statelessness in criminal detention is not examined. There are, after all, considerable differences between the two. As opposed to criminal detention, “administrative immigration detention is defined as a non-punitive, bureaucratic measure that is meant to effectuate border control, that is, to ensure that ‘unwanted’ migrants can be located and identified and cannot abscond while their expulsion is being prepared.”⁷ According to the United Nations High Commissioner for Refugees (UNHCR), detention is “the deprivation of liberty or confinement in a closed place” which the

individual “is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.”⁸

Detention of asylum-seekers on the sole grounds of having entered the country without prior authorisation violates international law. States should have “open reception arrangements and fair and efficient status determination procedures”⁹ in place.

Certain other administrative measures aim at restricting the use of detention. In the UK this occurs through the use of so-called ‘alternatives to detention’, which may for instance require a person to report regularly to immigration enforcement offices. This report also looks at these alternatives, including those which significantly restrict liberty, such as electronic tagging and monitoring, which is similar in purpose and impact with actual detention.

According to UNHCR, “there are workable alternatives to detention¹⁰ that can achieve governmental objectives of security, public order and the efficient processing of asylum applications.”¹¹ However some forms of alternatives to detention can involve several restrictions on movement or liberty, of which some can be classified as forms of detention.¹² For instance, while the UK considers electronic monitoring through wrist or ankle bracelets as an Alternative to Detention, UNHCR considers this to be a particularly harsh alternative, “not least because of the criminal stigma attached to their use,”¹³ that should be avoided as far as possible.¹⁴ UNHCR, which emphasises that detention should be a last resort and ‘liberty’ should be the default position, stresses that “Alternatives to Detention should not be used as alternative forms of detention; nor should Alternatives to Detention become alternatives to release. Furthermore, they should not become substitutes for normal open reception arrangements that do not involve restrictions on the freedom of movement of asylum-seekers.”¹⁵ The International Detention Coalition takes the position that electronic tagging is an alternative form of detention rather than an Alternative to Detention.¹⁶

Finally, this report considers the situation of several groups, although the dividing lines between them may at times be blurry. First and foremost, we concern ourselves with the situation of stateless people, defined in Article 1 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) as “a person who is not considered as a national by any State under the operation of its law.” This definition is part of customary international law and has been authoritatively interpreted in the UNHCR Handbook on Protection of Stateless Persons. Accordingly, “establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/appeal decisions that may have

had an impact on the individual’s status. This is a mixed question of fact and law.”¹⁷ Thus, it is not always a straightforward process to identify if someone is stateless or not. There will be people who appear to have a nationality, but actually are stateless, or whose statelessness becomes apparent over a period of time. For this reason it is also important to consider the situation of persons at risk of statelessness. In the immigration detention context in particular, the protection needs of those at risk of statelessness – which stem from their un-returnability – significantly overlap with those of the stateless. Other terms often used to describe similar or overlapping groups include the *de facto* stateless, unreturnable persons and those with ineffective nationality.¹⁸ By using the term ‘persons at risk of statelessness’¹⁹ this report does not box the individual in a category that is separate to statelessness, but rather shows that the individual is in a place of vulnerability that can escalate into statelessness.

1.3 STATELESSNESS AND DETENTION IN THE UK

The formal purpose of immigration detention in the UK is to ensure people remain within the state’s sight while the state is preventing unauthorised entry, preparing to remove persons from the UK or trying to verify their identity. For any undocumented person, both voluntary and forced removal usually require the cooperation of the authorities of the country of origin. Since there is not likely to be such a country willing to facilitate return in the case of stateless people, removal is notoriously difficult – if not intrinsically impossible. Their detention in many cases appears to be pointless and unlawful. Although reality is considerably more complex, it is this apparent contradiction that lies at the heart of this report: *Protecting Stateless People from Arbitrary Detention*.

Until recently, little to no research into statelessness had ever been conducted in the UK. This is not to say though that the issue had not presented itself: historically, the UK has actually generated statelessness on a number of occasions, for instance, going back to 1957 when the colony of Malaya gained independence and the ethnic Chinese residents of Penang and Malacca were granted the status of British Overseas Citizens (BOC), which with the British Nationality Act 1981 allowed them to come to the UK and register as British citizens after five years of residence. Hundreds of Malaysians took up the offer and moved to the UK in the 1980s and 1990s, but the immigration laws were toughened in 2002, denying the Malaysian BOCs any further opportunity to register as citizens.²⁰ Confusion over implementation followed and meant that many continued to apply to become British citizens, after having renounced their Malaysian nationality. Some of these cases remain unresolved to-date. It is estimated that there are about a thousand of these cases pending in the UK.²¹

In any case, at present, most instances of statelessness in the UK are the result of migration. In 2011 the UNHCR and Asylum Aid published the report *Mapping Statelessness in the UK*, presenting recommendations on various issues including the identification and registration of statelessness, legal reforms necessary to comply with the United Nations (UN) Statelessness Conventions and the protection of stateless persons. The establishment of a formal statelessness determination procedure as a way of enhancing both identification and ensuring access to essential rights, was a key recommendation. The report also expressed concern at the risk of arbitrary immigration detention that stateless persons face.²²

Further to the publication of the *Mapping Statelessness* report and additional pressure from civil society, the UK adopted a statelessness determination procedure and made provision for the grant of leave to remain in the UK as a stateless person by new Immigration Rules which came into effect on 6 April 2013. The HO released Guidelines on 1 April 2013²³ to explain the policy, process and procedures for considering applications for leave to remain as a stateless person in the UK and updated these on 18 February 2016.²⁴

The UK is now one of the gradually increasing number of European states to have a statelessness determination procedure,²⁵ and has received praise for taking this step.²⁶ However, as further discussed in section 3.1, challenges remain both with regard to the content and implementation of this procedure.

2. LAW AND POLICY CONTEXT



2.1 INTERNATIONAL AND REGIONAL OBLIGATIONS PERTAINING TO STATELESSNESS AND DETENTION

The right to a nationality is an inalienable right enshrined in Article 15 of the Universal Declaration of Human Rights.²⁷ This right is reinforced by several other human rights instruments with provisions on the right to nationality, to which the UK is a state party: the 1966 International Covenant on Economic, Social and Cultural Rights,²⁸ the 1966 International Covenant on Civil and Political Rights,²⁹ the 1969 Convention on the Elimination of all Forms of Racial Discrimination,³⁰ the 1979 Convention on the Elimination of All Forms of Discrimination against Women,³¹ and the 1989 Convention on the Rights of the Child (CRC).³² In addition to upholding the right to a nationality, these treaties also provide the general international human rights framework that applies to everyone, including stateless persons. The UK is also a state party to the two UN Statelessness Conventions: the 1954 Convention³³ and the 1961 Convention on the Reduction of Statelessness (1961 Convention).³⁴ The former provides the internationally accepted definition of a 'stateless person' and a set of rights for stateless individuals and obligations for their protection.³⁵ The latter includes provisions on the prevention and reduction of statelessness. Other provisions for the prevention and protection of stateless people date back to treaties of the League of Nations that the UK is party to: the 1930 Hague Convention on Certain Questions Relating to the

Conflict of Nationality Laws;³⁶ the 1930 Protocol relating to a Certain Case of Statelessness;³⁷ and 1930 Special Protocol concerning Statelessness.³⁸ However, the UK did not sign two Council of Europe Conventions relevant to statelessness, namely the 1997 European Convention on Nationality³⁹ and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession⁴⁰.

The UK's implementation of administrative detention is governed by a variety of human rights treaties, including the 1950 ECHR,⁴¹ which specifically addresses immigration detention in Article 5 by providing that it is lawful only if used to prevent someone's illegal entry into the country or to effectuate removal.⁴² Article 5 also states that anyone detained must have access to a speedy review by a court of the legality of detention and that the detaining authority must establish the lawful basis and justification for the detention. It further requires that detention must be proportionate to its aim and that there must be a connection between the ground of deprivation of liberty and the place and conditions of detention.⁴³ Accordingly, detention for purposes beyond the scope of Article 5, such as the routine detention of persons of particular nationalities, triggers concerns of arbitrariness. For example, the UK's Detained Fast Track (DFT) procedure which was introduced in 2000 to deal with asylum claims that were considered to be suitable for a quick decision, usually within a few days, allowed for the routine detention of migrants originating from countries such as Sri Lanka, Pakistan and Nigeria.⁴⁴ Following a

series of judicial review challenges, in June 2015, the High Court ruled that this use of the DFT was unlawful and the HO temporarily suspended its operation.⁴⁵ This suspension remains in place as of September 2016. At its peak, this system facilitated detention of “one in four asylum seekers for the duration of their asylum claims and was registering 99% rejection rates in the assessment of these same claims.”⁴⁶ The decision of the High Court was appealed by Lord Chancellor in November 2015 but rejected. The judgment found the DFT to be “systemically unfair and unjust.”⁴⁷ In June 2016, the High Court passed a judgment in the case of *Hossain and Others v Secretary of State for the Home Department*⁴⁸ on the lawfulness of the Detained Asylum Casework (DAC) process introduced after the suspension of the DFT. The court ruled in favour of the claim that the Secretary of State had breached section 149 of the Equality Act 2010 in failing to have due regard to her public sector equality duty in considering asylum claims in detention. These included difficulties and errors related to the screening of vulnerable detainees in need of protection.⁴⁹

It is important to note that the UK has opted out of the 2008 EU Return Directive⁵⁰ which specifies safeguards for detainees such as a limitation on the period of detention (maximum period of six months, extendable up to total of eighteen months in exceptional cases on grounds of lack of co-operation or delays in obtaining documentation), humane and dignified detention conditions and a due diligence obligation on detaining authorities. The UK opted into the Reception Conditions Directive and the Asylum Procedures Directive which also regulate the detention of asylum seekers. The first states that when necessary, member states may confine an applicant to a particular place in accordance with national law.⁵¹ The second provides that member states shall not hold a person in detention for the sole reason that he is an asylum seeker and that there they have to guarantee the possibility of a speedy judicial review.⁵² These two Directives have been re-cast but the UK opted out of their latest versions.⁵³ In any case, it is questionable whether these Directives are of benefit to stateless persons unless they have also made an application for asylum.

It can therefore be concluded that there is no single international or regional instrument that explicitly addresses the detention of stateless persons, even though they should be protected under general principles of human rights law on arbitrariness, proportionality, necessity of detention and anti-discrimination. Furthermore, the UNHCR Handbook on the Protection of Stateless Persons, which is not a binding instrument but is an authoritative interpretation of international protection obligations towards stateless persons, comments on the detention of stateless persons very briefly as follows:

“Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for detention of such persons.”⁵⁴

The Handbook adds that “detention is therefore a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention.”⁵⁵ Importantly, the Handbook further recommends that “judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means.”⁵⁶

Whether or not the laws, policies and practices of the UK are in line with its international obligations and UNHCR’s guidance is up for examination in the next sections.⁵⁷

2.2 NATIONAL LAWS, POLICIES AND JURISPRUDENCE PERTAINING TO STATELESSNESS AND DETENTION

Most matters relating to the acquisition and loss of nationality in the UK are governed by the British Nationality Act 1981.⁵⁸ Generally, British nationality law provides that if a child is born on the territory of the UK, he or she is a British citizen if either parent is a British citizen or is settled in the UK,⁵⁹ would have been but for their death, or either parent is a member of the armed forces.⁶⁰

The UK is also under an obligation to grant British nationality to children born on its territory who would otherwise be stateless under Article 1 of the 1961 Convention and Article 7 of the CRC.⁶¹ The UK fulfils this obligation by providing that a child born in the UK who is and has been stateless since birth can register as a British citizen.⁶² The child must be under 22 years of age on the date of application and must have spent the five years preceding the application in the UK or, if mostly in the UK, with the remainder of the time spent in the British overseas territories, subject to a residence requirement of 450 days in that period.⁶³ There are additional protections for the children of British overseas territories citizens, British overseas citizens, and British subjects who would otherwise be born stateless, but it is outside the scope of this study to discuss these in detail.⁶⁴

The UK has not enacted any provision to implement its obligation under Article 32 of the 1954 Convention, which states that “Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every

effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings". Therefore stateless persons can only naturalise on the same terms as other non-nationals. This means that they are required to be settled and lawfully present in the UK for a period of three or five years (depending on whether or not they are married to/are the civil partner of a British citizen), with restrictions on time spent outside the UK during the qualifying period, and they must have had indefinite leave to remain for the most recent year and at the time of applying.⁶⁵ The fee to apply for British citizenship is currently £1,236,⁶⁶ which can be a barrier for low-income persons.⁶⁷

The acquisition of nationality through naturalisation is discretionary.⁶⁸ A discretionary grant of nationality, by definition, presumes that a state can grant its nationality, but can also reject an application on a number of different grounds which are open to interpretation. When discretion exists, only after the application has been approved and nationality conferred, can the individual be considered a national of that state.⁶⁹

In general, UK provisions on administrative deprivation of liberty are laid out in the Immigration Acts 1971 to 2016, according to which the only stated purpose for administrative detention is to examine someone's immigration status, facilitate removal⁷⁰ or deportation.⁷¹

With time, administrative detention has generally been increasingly relied upon to the point of becoming a central policy point feature of many asylum cases⁷² and immigration enforcement.⁷³ In particular, it has become routine practice to detain former foreign nationals who have served a prison sentence, if they have a deportation order that the HO seeks to enforce or if a decision to deport them is pending.⁷⁴ The power to detain is however limited by the availability of detention space, statutory provisions, human rights law, related jurisprudence⁷⁵ and HO policy in the Enforcement and Instructions Guidance which determines who and in which circumstances can be detained.⁷⁶ This policy states that detention must be used "sparingly" and for "the shortest period necessary", but there is no statutory time limit to detention.⁷⁷

Unfortunately, there are no signs that immigration detention will reduce any time soon: In July 2016, Robert Goodwill, the Minister of State for Immigration, announced the closure of Cedars pre-departure accommodation, which will be replaced by a new pre-departure accommodation near Gatwick Airport, as a discrete unit at Tinsley House immigration removal centre (IRC).⁷⁸

Responding to heavy civil society criticism and landmark judgments of the courts, the detention of families and children has undergone major changes since 2009/2010.⁷⁹ Although the 2010 government announcement that it would end the detention of children

has not been fully met, the number of children detained has significantly reduced and various improvements must be highlighted.⁸⁰ For instance, the Detention Centre Rules set out the conditions of detention for families and minors⁸¹ and provide that family members are entitled to enjoy family life except where restrictions are justified by interests of security and safety.

Two other positive changes that will be introduced with the Immigration Act of 2016 are the right to automatic bail hearings for those who have been in detention for four months, unless they are foreign criminal offenders, and a 72-hour time limit on detention of pregnant women.⁸² There are some concerns⁸³ that four months is too long a period to be detained before automatic bail hearings come into effect,⁸⁴ as well as regarding the exclusion of those who have previously committed criminal offences.

2.3 DATA ON STATELESSNESS AND DETENTION

The UK's data on stateless persons and detention is flawed and incomplete, as individuals are not usually recorded as stateless when they enter detention unless they have already been recognised to be so.⁸⁵ The stateless are often wrongly attributed a nationality or sometimes categorised as 'persons with unknown nationality'. Therefore the real numbers of stateless persons or those at risk of statelessness in detention are likely to be higher than the published figures.⁸⁶

The HO acknowledges that it is very difficult to track the exact scale and length of detention for migrants, due to a number of reasons which include: 1) the way the length of detention is calculated which takes into consideration "the date that a bed is allocated to an individual and the date that the bed is unallocated";⁸⁷ 2) gaps and errors in the statistics comprising the recording of overlapping periods of detention; 3) the exclusion of individuals detained in prisons,⁸⁸ short-term holding facilities or pre-departure accommodation from the statistics; and 4) the incorrect recording of detention closure date/time.⁸⁹

With respect to data regarding the applications for stateless status, between the introduction of the statelessness determination procedures on 9 April 2013 and 31 March 2016, a total of 1,592 applications were made, of which 39 were granted and 715 refused.⁹⁰ In other words, less than 47.36% of applications were decided in this period, with only a 5.2% success rate on decided applications.

According to HO statistics, the total number of persons in immigration detention at the end of 2015 was 2,607, of whom 2,337 were male. The number of children entering detention in year ending March 2016 was 110.24% lower than the previous year (144), which was a 90% decrease

compared with the beginning of the data series in 2009 (1,119).⁹¹ The total number of people entering detention increased by 7% in one year, from 30,364 in 2014 to 32,446 in 2015.⁹²

Bearing in mind the limitations of the available data, the published figures indicate that over the past six years, there has been a gradual increase in the number of stateless persons being detained,⁹³ of which adult men were the majority.⁹⁴ The data shows that while only seventeen stateless persons were detained in 2009, the

number went up to 45 in 2012 and more than doubled by the end of 2015 to 108. In terms of percentage, there was a small increase of 5.88% of stateless asylum and non-asylum detainees (= total detainees) from 2009 to 2010, while the differences between the years 2010 and 2011 (+144.44%), as well as 2014 and 2015 (+86.21%) indicate a drastic rise. Overall, the figures demonstrate that most stateless detainees were asylum seekers, and there has been a gradual increase of stateless asylum seekers in detention.

Table 1: People entering detention by ‘country of nationality’, sex, and age – Stateless person & other and unknown⁹⁵

Year	Country of nationality	Total detainees	Male	Female	Total adult detainees	Adult asylum detainees	Total child detainees	Child asylum detainees
2009	Stateless	17 ⁹⁶	15	2	17 ⁹⁷	14	0	0
	O/U*	33 ⁹⁸	27	6	30 ⁹⁹	2	3 ¹⁰⁰	0
2010	Stateless	18	18	0	18	17	0	0
	O/U	24	17	7	24	3	0	0
2011	Stateless	44	39	5	44	41	0	0
	O/U	23	21	2	23	4	0	0
2012	Stateless	45	44	1	45	41	0	0
	O/U	30	22	8	29	1	1	0
2013	Stateless	38	38	0	38	33	0	0
	O/U	29	27	2	27	12	2	0
2014	Stateless	58	53	5	58	55	0	0
	O/U	35	29	6	35	12	0	0
2015	Stateless	108	106	2	107	100	1	1
	O/U	37	37	0	37	9	0	0

*Other and unknown (O/U)

Table 2: Annual increase / decrease in percentages of detainees for the period 2009 - 2015¹⁰¹

Year	Country of nationality			
	Stateless		Other and unknown	
	Total detainees	Adult asylum detainees	Total detainees	Adult asylum detainees
2009	-	-	-	-
2010	5.88%	21.43%	-27.27%	50.00%
2011	144.44%	141.18%	-4.17%	33.33%
2012	2.27%	0.00%	30.43%	-75.00%
2013	-15.56%	-19.51%	-3.33%	1100.00%
2014	52.63%	66.67%	20.69%	0.00%
2015	86.21%	81.82%	5.71%	-25.00%

Few asylum seekers whose nationality was recorded as ‘other or unknown’ were detained during this period: while the number was below five from 2009 to 2012, it increased to twelve detainees in 2013 and 2014.

It should be noted that it is not evident why and how the category of ‘unclear nationality’ is being used by the HO as most of the people interviewed for this report who are at risk of statelessness and whose nationality is indeed unclear, were instead (wrongly) attributed a nationality by the HO. For instance, while Anthony has not been

accepted by the Zimbabwean embassy as its national, ‘Zimbabwean nationality’ continues to appear on his records. Peter, who has not been accepted as a national either by the Nigerian or Cameroonian authorities, continues to be recorded under ‘Nigerian/Cameroonian’. The very fact that the HO continues to maintain that Peter’s nationality may be Nigerian or Cameroonian, but does not categorise his nationality as ‘unclear’, sheds light on the internal inconsistencies at play.

HO statistics show that between 2010 and 2015, the average length of detention for all immigration detainees varied between 38.8 and 42.4 days.

During the same period, the length of detention of all detainees has increased, especially as far as the number of people detained for 29 days-2 months, 2-3 months and 3-4 months. In turn, the data also indicates a significant decline of detention in some categories (for instance 18-24 months and 24-36 months). However, the fact that someone can be detained for such a lengthy period raises serious concern.

In 2015, 910 people were detained for 6-12 months, 196 people were detained for 12-18 months and 59 people were detained for 18-24 months.

Table 3: Length of detention – Total detainees¹⁰²

Year	3 days or less	3-7 days	8-14 days	15-28 days	29 days – 2 months	2-3 months	3-4 months	4-6 months	6-12 months	12-18 months	18-24 months	24-36 months	36-48 months	48 months or more
2010	7,509	3,602	3,183	3,338	3,747	1,718	902	855	789	156	83	65	10	2
2011	6,525	3,941	3,984	3,800	4,265	1,837	920	891	642	164	94	87	24	7
2012	7,115	3,930	3,691	4,087	4,783	1,992	1,059	923	670	188	69	44	16	8
2013	7,740	2,883	3,442	4,486	5,625	2,688	1,293	971	653	145	55	36	8	5
2014	8,592	2,462	3,480	4,263	5,148	2,487	1,302	1,083	696	93	41	21	5	1
2015	9,086	2,449	3,747	5,250	6,115	2,597	1,424	1,315	910	196	59	28	11	2
2010	7,509	3,602	3,183	3,338	3,747	1,718	902	855	789	156	83	65	10	2
2011	6,525	3,941	3,984	3,800	4,265	1,837	920	891	642	164	94	87	24	7
2012	7,115	3,930	3,691	4,087	4,783	1,992	1,059	923	670	188	69	44	16	8
2013	7,740	2,883	3,442	4,486	5,625	2,688	1,293	971	653	145	55	36	8	5
2014	8,592	2,462	3,480	4,263	5,148	2,487	1,302	1,083	696	93	41	21	5	1
2015	9,086	2,449	3,747	5,250	6,115	2,597	1,424	1,315	910	196	59	28	11	2
Increase/ decrease per year (percentage %)														
Year	3 days or less	3-7 days	8-14 days	15-28 days	29 days – 2 months	2-3 months	3-4 months	4-6 months	6-12 months	12-18 months	18-24 months	24-36 months	36-48 months	48 months or more
2011	-13.10	+9.41	+25.16	+13.84	+13.82	+6.93	+2.00	+4.21	-18.63	+5.13	+13.25	+33.85	+140.00	+250.00
2012	+9.04	-0.28	-7.35	+7.55	+12.15	+8.44	+15.11	+3.59	+4.36	+14.63	-26.60	-49.42	-33.33	+14.29
2013	+8.78	-26.64	-6.75	+9.76	+17.60	+34.94	+22.10	+5.20	-2.54	-22.87	-20.29	-18.18	-50.00	-37.50
2014	+11.01	-14.60	+1.10	-4.97	-8.48	-7.48	+0.70	+11.53	+6.58	-35.86	-25.45	-41.67	-37.50	-80.00
2015	+5.75	-0.53	+7.67	+23.15	+18.78	+4.42	+9.37	+21.42	+30.75	+110.75	+43.90	+33.33	+120.00	+100.00

There is some publicly available data on the countries of origin of those detained for the longest periods, showing that the highest numbers come from Pakistan, India, Albania, Bangladesh and Nigeria.¹⁰³ In addition, data that we obtained through a parliamentary question show that people originating from several countries such as Congo,

the Gambia, Somalia, and Sudan are likely to spend extended periods in immigration detention despite removal to those countries being rare. The data received do not clarify where persons were ultimately removed to: i.e., the country of origin, another EU country under the Dublin Convention or a third country.

Table 4: Detainees held for 6-12 months and for 12 months or longer according to the country of nationality¹⁰⁴

Year	Country of nationality	Detainees held for 6 months to less than 12 months		Detainees held for 12 months or longer	
		Total detainees	Removed from the UK	Total detainees	Removed from the UK
2010	Congo	3	1	0	0
	Gambia, The	10	3	10	8
	Somalia	18	0	22	2
	Sudan	8	5	5	2
2011	Congo	0	0	0	0
	Gambia, The	8	0	8	4
	Somalia	13	0	26	6
	Sudan	6	3	2	0
2012	Congo	0	0	2	1
	Gambia, The	19	10	3	0
	Somalia	16	1	11	3
	Sudan	10	6	2	0
2013	Congo	1	0	0	0
	Gambia, The	10	5	10	7
	Somalia	6	0	11	1
	Sudan	3	0	1	0
2014	Congo	1	1	0	0
	Gambia, The	7	3	4	0
	Somalia	9	3	10	6
	Sudan	4	2	3	0
2015	Congo	0	0	1	1
	Gambia, The	20	1	6	3
	Somalia	12	0	17	7
	Sudan	3	0	2	0

There is no data on which nationalities experience most incidents of re-detention.

3. KEY ISSUES OF CONCERN



3.1 IDENTIFICATION & DETERMINATION PROCEDURES

The UK statelessness determination procedure¹⁰⁵ and its HO policy guidance¹⁰⁶ are aligned, with some key exceptions, to the guidelines presented in the UNHCR Handbook on Protection of Stateless Persons.¹⁰⁷ The following sections briefly explain the main provisions and how these work in practice.

3.1.1. Definition and scope

According to Paragraph 401 of the Immigration Rules, a person is recognised as stateless if he meets the requirements of article 1(1) of the 1954 Convention as a "person who is not considered as a national by any state under the operation of its law".¹⁰⁸ In addition, a stateless person must be in the UK, which excludes port applicants who have yet to enter the UK, and do not fall under paragraph 402 of the Immigration Rules.¹⁰⁹ Moreover, Paragraph 401(c) of the Immigration Rules is confusing in that it makes the exclusion clauses of the 1954 Convention part of the definition of who is stateless rather than saying that a person is stateless but excluded from protection. Specifically, Paragraph 402¹¹⁰ excludes from the definition Palestinians who are currently protected and assisted by the United Nations Relief and Works Agency for Palestine Refugees in the Near East

(UNRWA),¹¹¹ and all persons against whom there are serious grounds for considering that they have committed war crimes, crimes against peace or humanity, serious non-political crimes, or acts contrary to the purposes and principles of the United Nations.¹¹² This deviation from the 1954 Convention's approach can be of significant concern, as statelessness remains a juridically relevant fact in human rights terms, beyond the scope of the Immigration Rules or even the protection offered by the 1954 Convention. Failure to identify stateless persons who fall beyond the scope of the Rules or 1954 Convention can render them vulnerable to additional human rights violations. For example, a stateless person who has committed a serious non-political crime and served out his sentence, still has under human rights law, a right to not be arbitrarily detained. The failure to identify such persons as stateless due to this definitional flaw of the UK Rules can result in their arbitrary immigration detention.¹¹³

The Immigration Rules also set out additional grounds which serve as the basis for denying stateless persons a grant of leave to remain: under Paragraph 403(c) those admissible to their country of former habitual residence or any other country where they will have permanent residence,¹¹⁴ and under Paragraph 404 those against whom there are reasonable grounds for considering that they are a danger to the security or public order of the

UK.¹¹⁵ Under the former ground, a strict test is required in order to be excludable and the person must have secure residence and the rights normally attached to the nationality of that state.¹¹⁶ The latter ground envisages that the HO ‘must be satisfied’ that reasonable grounds exist, which is a lower burden of proof compared to the 1954 Convention’s exclusion clauses, and may raise concern that it can be used in cases where the HO considers the person undesirable.¹¹⁷ There is empirical evidence of a few cases decided under the previous HO Guidance, of refusals because applicants were considered admissible to a country of habitual residence and a few others on security or public order grounds, and there is a danger that these provisions can undermine the potential of the Immigration Rules to offer an appropriate remedy for statelessness in the UK.

3.1.2 Determination procedure

The HO intends statelessness determination procedures to take place after a person has made an asylum application and all appeals have been rejected¹¹⁸ although this is not part of the rules themselves and a person cannot be forced to make an application for asylum if they do not wish to do so.

Applications for statelessness must be made using a specific form (the ‘FLR(s) form’) which must be sent to the Statelessness Unit of the Asylum Office in Liverpool.¹¹⁹

The application form is cumbersome for persons who have lived and travelled in several countries and repetitive in some sections. Extensive details of family members must also be provided. The form is also only available in English, which restricts the ability of many applicants to fully understand and respond to the contents of the form. However, on the positive side, there is no fee to pay.

It is not easy for a stateless person to show that they meet the requirements of the Immigration Rules, particularly because doing so requires proving a negative, i.e., that one is “not considered as a national by any state under the operation of its law”.¹²⁰ Under the procedure, and contrary to UNHCR Handbook, which recommends a shared burden of proof, the burden of proof is on the applicant, who must provide all reasonably available evidence.¹²¹

In light of the difficulties that stateless persons may encounter in proving their case, the HO Guidance states that caseworkers must assist applicants in establishing the necessary evidence, whether by research or inquiry with foreign authorities, when they are genuinely cooperating but do not have the necessary resources or knowledge.¹²² However, in practice, lawyers told us that this does not always happen and that there are some problems also with the application of the burden of proof as the HO is not easily satisfied that someone has made genuine efforts to get his documents.¹²³ Concerning the

standard of proof, the civil standard of the balance of probabilities applies (i.e. more likely than not).¹²⁴ This is in conflict with the recommendation of the UNHCR Handbook, which sets forth a lower standard of proof, similar to asylum cases, in that the applicant shall establish to a reasonable degree that he is not considered a national of any state under the operation of its law.¹²⁵ Given that the standard of proof in asylum cases is lower than that under the statelessness procedure, there is also the added danger that any findings in previous asylum procedures related to nationality or lack thereof of applicants, may be deemed as not meeting the threshold of the higher standard of proof under the statelessness determination procedure.

While detainees are not barred from accessing the procedure, there are no specific provisions in place for those in immigration detention to facilitate their access to the procedure or to prepare their cases. This is clearly a problem, especially for those who do not have legal representation. This is also a missed opportunity, as a statelessness determination procedure is a tool which can be effectively used by detaining authorities to assess if persons subject to removal proceedings are stateless or not. Doing so would help the authorities make evidence-based judgments as to the removability of persons, which is relevant to the reasonableness and proportionality of any decision to detain.¹²⁶

The HO Guidance stipulates detailed rules on gathering and assessing evidence, including the types of proof that should be examined.¹²⁷ In particular, the assessment of a claim shall be based upon a mix of facts and laws which includes:

“ a) Evidence relating to the individual’s personal circumstances submitted as part of the application process, and b) evidence concerning the law and practice in the country in question, both with regard to the individual concerned, and also to the group (or groups) of individuals to which the applicant belongs.”¹²⁸

Written and oral testimonies of the applicant, replies of foreign authorities concerning an individual’s nationality, identity documents such as birth certificates, and expired travel documents can serve as proof.¹²⁹ Advocates and lawyers flagged that country of origin information on nationality laws and the assessment of state practice is not easily available and sometimes is not accurate.¹³⁰ The requirement to produce documentary evidence from embassies is also problematic, as many embassies do not provide written answers to such questions.

Normally, where the information provided is insufficient, caseworkers must interview the applicant (alternatively questions can be posed by writing). The HO Guidance states that applicants will not be interviewed and their case may be refused if recent and reliable evidence

(including the applicant’s own statements 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 for purposes of permanent residence and no evidence to the contrary has been provided”.¹³¹ However solicitors told us that some cases were refused and applicants were not interviewed even though there were no previous findings made by an immigration judge. Another significant concern is that under the procedure, those in immigration detention will not be interviewed.¹³²

Lawyers also identified difficulties in accessing the procedure. Generally “[t]he UK Government does not treat statelessness applications as applications for protection. There is no duty on immigration officers to take note or do anything when someone says they are stateless, unlike in asylum cases when someone says that they fear for their lives and the procedures are started.” Moreover, “[t]he application form could be improved. It does not direct people on what it is relevant, and it asks the same questions in different ways.”¹³³ Furthermore, most applications for stateless status have been pending for over one year, some nearly two years, which is due to lack of resources. While an application is pending, there is no right to work and only access to basic support under Section 4 may be available.¹³⁴ Given the timeline involved, one advocate stated that some stateless persons have preferred to make applications for leave to remain under other immigration categories, despite the cost involved and although the rights attached to such residence permits are less favourable than those for recognised stateless persons. Besides problems of access, another difficulty that has emerged in several cases is the incorrect temporal assessment of whether someone has a nationality. The HO in some decisions has refused applications on the grounds that the person was not stateless because they could acquire a nationality by making an application to the relevant authorities. However, the assessment of whether someone is a national should be made in relation to the time at which the statelessness application is made. Whether a person could acquire a nationality in the future is irrelevant.¹³⁵ This was also clarified in the Upper Tribunal rulings in *Semeda*.¹³⁶ To further complicate this matter, in another case the Upper Tribunal found that if a child is born in the UK to a foreign national and the child can obtain citizenship of the parent’s state by descent through birth registration, the child is ‘admissible’ to the parent’s state and not stateless and therefore excluded from protection under the HO Stateless Guidance.¹³⁷

3.1.3. Grant of leave to remain

Successful applicants and their families are granted leave to remain for an initial period not exceeding 30 months.¹³⁸ Family members can be granted leave to remain for the same period of time as the stateless person but they not are automatically recognised to be

stateless.¹³⁹ Each family member may undergo a separate determination procedure.¹⁴⁰ The rights attached to the permit include the rights to work, access state benefits (excluding homelessness assistance and permanent social housing), and healthcare. It is unclear if higher education will be accessible at home student rates. Importantly, those recognised to be stateless can apply for a travel document under the 1954 Convention. The residence permit can be renewed and an application for indefinite leave to remain made after a continuous period of five years residence in the UK.¹⁴¹ Generally, after a year of indefinite leave to remain, it is possible to apply for naturalisation.

3.1.4. Refusal of leave to remain

In the case of refusal, there is no right to appeal to the Immigration Tribunal and rejected applicants can only apply for internal administrative review, which is very limited in scope as it focuses only on casework errors, and is carried out by a team within the HO.¹⁴² The alternative is to bring judicial review after exhausting other possible remedies.¹⁴³ In such proceedings, the Administrative Court can declare whether a decision is lawful or not and, if necessary, it should return the case to the HO for reconsideration. Whilst legal aid is available for judicial reviews, one lawyer explained that as most statelessness applications are poorly prepared and they are not accompanied by key evidence, it is difficult to make a judicial review application even if a case has merits.¹⁴⁴ In a judicial review the court cannot re-assess the case holistically but is limited to examining whether the original decision is lawful, rational, fair, and sustainable in light of the evidence that was presented before the original decision-maker.¹⁴⁵ It is possible for applicants to re-apply for stateless status, and in some cases, it may be wiser to make a new application with new evidence than to pursue administrative and judicial review.

3.1.5. Access to free legal representation

Given that most stateless persons are unfamiliar with the law in the UK, which can be a barrier to access protection, the report investigates whether they can obtain free legal representation to prepare their cases.

Following major legal aid cuts in the last five years, free legal representation is now only available in the very limited circumstances of deprivation of liberty such as to apply for bail or modify bail conditions, in asylum, trafficking or in cases concerning human rights under the ECHR [subject to both an income and a merits test (a legal aid provider must assess a case to have at least 50 per cent chance to succeed)]. Therefore detainees face increasing obstacles to access legal aid. Bail for Immigration Detainees’ research in 2016 revealed that “[u]p to one quarter of detainees have never had legal representation” during detention. Moreover, “20% of

detainees hav[e] to wait a month or more to arrange an appointment at the free legal advice clinic in IRCs.”¹⁴⁶

There is no access to legal aid to deal with statelessness applications until the judicial review stage is reached. If the matter of statelessness arises before, solicitors working on statelessness matters can raise the issue in legally aided bail applications, or in asylum or human rights cases.¹⁴⁷ But care must be taken to not do any work that goes outside the scope of what legal aid covers, and a statelessness application cannot be made under the Immigration Rules with legal aid funding. However, some civil society organisations such as Asylum Aid and Bail for Immigration Detainees are taking the position that legal aid to prepare statelessness applications is available under exceptional funding for cases that would not normally fall under legal aid from the Legal Aid Agency. Their argument is that a claim of statelessness also relates to a person’s inability to exercise a meaningful private life under Article 8 of the ECHR and lack of access to legal aid would amount to a denial to access justice.¹⁴⁸ It must be noted though that some legal advisers do not have the capacity or are unwilling to make such applications, as doing so requires a significant amount of work which will not be paid if the case is not successful.

Nevertheless, even with the possibility of exceptional case funding, detained stateless persons may face difficulties accessing legal aid for assistance with a statelessness application. For most detainees, their only way to access legal advice is through a legal surgery in the detention centre. Certain legal firms are granted contracts to provide legal advice at legal surgeries, and they take on suitable cases for full representation.¹⁴⁹ Solicitors, NGOs and detainees report that legal advice surgeries are unable to meet demand and some people do not receive legal advice before being removed from the UK. Concern about the quality of legal advice provided to detainees have also been raised. Usually the solicitor running a legal surgery meets with a number of detainees and spends about 15-30 minutes with each to assess whether they can take on the case, which is clearly not enough to fully understand all the relevant issues. For example, Muhammed complained about the quality of legal advice he received and told us that he was unhappy with his solicitor because she did not understand his case. Indeed, in his case and two others we came across, solicitors applied for stateless status without dealing with the matter of revocation of deportation orders, and as a consequence the applications for stateless status were refused.

All the experts interviewed agree that lack of legal aid is a major problem which impacts on the length of detention and the outcome of substantive cases.¹⁵⁰ Forms are complicated, evidence is difficult to gather, travelling to detention centres for meetings is time consuming and in general representation of detained persons is allowed to

a limited number of law firms. It seems likely that there are stateless persons who are unable to access adequate legal representation because they are detained.

3.2 DECISION TO DETAIN AND PROCEDURAL GUARANTEES

The initial decision to detain under immigration powers is authorised by immigration officers and HO officials on behalf of the Secretary of State and does not require judicial authorisation.¹⁵¹ Specifically, the Immigration Acts¹⁵² provide powers of detention in order to examine someone’s immigration status, or to facilitate removal or deportation. According to the Enforcement Instructions and Guidance, which is the most important policy document on the powers of detention, there is a presumption in favour of temporary admission or release and, whenever possible, alternatives to detention should be used.¹⁵³

Under Section 61 of the Immigration Act 2016, though, the concepts of temporary admission and release will be replaced by immigration bail and will become effective with order of the Minister.

Normally, detention is considered *most* appropriate (a) to effect removal, (b) initially to establish a person’s identity or grounds for a claim; or (c) where there is reason to believe that the person will not comply with the conditions of temporary admission or release.¹⁵⁴ A number of factors must be taken into account when authorising initial or continued detention:

- The likelihood of the person being removed and, if so, the timescale for removal;
- Evidence of previous absconding;
- Evidence of previous failure to comply with conditions of temporary release or bail;
- Previous breach of immigration rules;
- Previous compliance with the requirements of immigration control;
- The person’s ties with the UK;
- The individual’s expectations of the outcome of the case (i.e., a pending appeal or representations that incentivises the person to remain in touch);
- Whether the person is under 18 years of age;
- Whether the person has been tortured in the past;
- Whether the person has a history of physical or mental illness.¹⁵⁵

Concerns about the assessment of these factors, and the decision-making process in general, were raised by experts and interviewees that took part in the research. For instance, one solicitor stated: “[T]he problem is that case-owners do not engage with cases...”¹⁵⁶ Four of the eight research participants told us that their case-owners authorised and maintained their detention even though it was clear that they could not be removed. They all

eventually obtained damages for unlawful detention. In the case of ex-offender migrants, research has found that unrealistic and un-evidenced assessments of risk of non-compliance or reoffending by the HO are being used to justify immigration detention upon completion of a sentence.¹⁵⁷ In this specific context, one problem is that the HO finds themselves considering release from criminal detention in an evidential vacuum: few migrants have any structured support in place to aid their reintegration. Most migrants leaving detention have only an address of friends or family or stay in housing provided by the government. Ex-offenders usually receive no preparation for release, and often miss out on probation support because their period of licence expires while they are in immigration detention.¹⁵⁸ For example, following a sentence for theft, Okeke was assessed to be at risk of reoffending and taken to an immigration detention centre where he had been awaiting an appeal against his deportation order. Okeke does not have any family or friends in the UK and has lived in the streets for over twenty years.

When a person is initially detained, they must be served with Form IS91R, which is a pro-forma document that identifies possible reasons for detention and factors supporting them.¹⁵⁹ The case owners have to complete the form by ticking boxes and identifying all possible reasons that apply to each case.¹⁶⁰ In criminal cases, the reasons are set out in a letter (the ICD 1913 or ICD 1913AD). Reliance on reasons not supported by the facts of the case may amount to an error of law affecting the legality of the detention. For instance, detention on the ground that removal is imminent despite it not being possible to be carry it out within a reasonable timeframe is unlawful.¹⁶¹

Once authorised, detention must be internally reviewed after 24 hours, seven days and 14 days, after which it must be reviewed every month¹⁶² as well as every time there is a change in circumstances relevant to the reasons for detention.¹⁶³ Detention reviews must be carried out by officials whose rank is specified in the HO Guidance. For instance, sensitive and complex cases, such those involving minors, are dealt with by senior officers.¹⁶⁴ The longer the detention period, the more senior the officer who has to extend it must be.¹⁶⁵ The Chief Inspector of Prisons expressed concerns about how these reviews are carried out.¹⁶⁶ In particular, he found that reviews are often cursory, the requirement that there should be reasonable prospects of removal is not always met, and between a third and nearly half of all detainees are then released.¹⁶⁷ In a related study on immigration detention casework, it was confirmed that many monthly reviews appear to be made as a matter of bureaucratic procedure and not as a genuine check on the progress of the case.¹⁶⁸ Interviewees said they did not believe that their detention was subject to active reviews. Anthony told us: “I saw my case-owner only once. The HO would send me

monthly progress reports but they always said the same thing, it looked like they were copied and pasted. I did not believe that my case-owner was progressing with my case.”

Detainees can request to be released on temporary admission or temporary release subject to a number of restrictions and conditions.¹⁶⁹ In practice, such requests are almost always rejected. If they have been in the UK for at least seven days, a detainee can apply for bail to the First Tier Immigration Tribunal. The grant of bail is discretionary and is usually subject to the provision of sureties and other conditions, and having accommodation.¹⁷⁰ If bail is refused, a new application can be made after 28 days unless the situation has changed significantly. Solicitors told us that the accommodation requirement is difficult for those who are destitute and have no ties in the UK. It is possible to apply to obtain basic accommodation from the government but the process can be particularly time consuming for those who have a criminal record as permission of probation officers and police checks are also required.¹⁷¹ Refusal of bail cannot be appealed.¹⁷² In addition to bail applications, detainees may be able to challenge the lawfulness of their detention in the High Court either by *habeas corpus* or judicial review. The first remedy challenges the power to detain whereas the second challenges the exercise of discretion to detain.¹⁷³ As noted above, under the 2016 Immigration Act there is automatic review by an immigration judge after four months of detention (and then every four months from a ‘relevant date’), but not for those who have criminal convictions.¹⁷⁴ The procedural fairness of a system which requires such a long time before an automatic review and excludes those who have served a criminal conviction from the automatic review must be questioned. While a previous conviction would be a factor to take into consideration when assessing the reasonableness and proportionality of continued detention beyond four months, it should not be the basis upon which such an automatic review of detention is denied especially if immigration related. Such denial undermines the notion that immigration detention is purely an administrative mechanism which serves one of two purposes and implies the existence of a further punitive purpose behind this practice in the UK.

Bail hearings do not act as an effective mechanism to keep the length of detention in check. While the Guidance for Immigration Judges over bail hearings states that “three months detention is ‘substantial’ and six months ‘a long period’ this is seldom referred to by the judges.”¹⁷⁵ In fact, “[o]bservation of 50 bail hearings where the applicant had been held in detention for three or more months, and for which the observers were able to record this item of information, the judge mentioned length of detention in only ten of them.”¹⁷⁶

3.3 LENGTH OF DETENTION

The UK is the only EU country not to have a statutory limit to immigration detention.¹⁷⁷

Although the HO policy states that immigration detention must be used ‘sparingly’ and for “the shortest period necessary”,¹⁷⁸ the absence of a statutory maximum time limit on administrative detention can result in people being detained for extremely lengthy periods.

The combination of the lack of a maximum time limit and of legal aid places stateless persons at heightened risk of arbitrary and unlawfully lengthy detention. Without a maximum time-limit, the only way out of detention for unremoveable persons, is often to apply for bail and challenge the legality of their detention, which many cannot do due to limitations in legal aid.

The risk of lengthy detention is exacerbated in the context of stateless persons or those at risk of statelessness particularly when the detaining authorities have failed to identify them as such and engage in futile efforts to obtain proof of their nationality and secure their removal. In such contexts, the failure of the authorities to recognise the specific challenge related to statelessness, or the non-cooperation of third country embassies, often results in the undue penalisation of the individual, who is subject to arbitrary and lengthy detention. According to lawyers and advocates, particularly problematic is the HO’s perception of non-cooperation by the individual in the process of removal when there is lack of documentation and attempts with the embassies to establish a person’s nationality are unsuccessful.

The psychological impact of being detained indefinitely is significant. Qualitative studies show that

“ the indefinite nature and uncertain outcome of detention led to feelings of hopelessness, loss of agency, and feelings of injustice. Ultimately this led to changes to detainees’ core values, their beliefs about themselves, and their ability to relate to others, which may be permanent and irrevocable.”¹⁷⁹

Among the interviewees, Ousman and Anthony told us that when they finished their criminal sentences they were surprised to find out that they would not be released and that immigration detention would start and that there is no time limit to that. Peter reported that he did not know what the absence of a time limit to immigration detention meant but that he learned from experience. At the outset, he was told that he would be detained to facilitate his removal but that it was unclear for how long. Peter and Ousman eventually even spent more time in immigration detention than in prison. Some of the interviewees explained that being detained in

prison is less traumatic than being in an IRC because at least you know when it is going to finish. It is a profound revelation that those interviewed by us who had experienced both criminal and administrative detention found the latter to be more difficult to bear, purely because they had no understanding of how long they would remain in detention, or indeed, why they continued to be detained when there was no reasonable prospect for their removal. It is important to recall that immigration detention should not serve any punitive purpose. However, the impact of indefinite detention on the individual clearly is punitive.

UK case law has established the principle that the power to detain is limited to a reasonable duration and by circumstances consistent with its statutory purpose and reasonableness.¹⁸⁰ In the seminal *Ex parte Hardial Singh* case, which was reaffirmed by the Supreme Court in *R (on the application of Lumba) v Secretary of State for the Home Department*,¹⁸¹ it was established that the Secretary of State may detain immigrants only for the purpose of removal, for a reasonable period to achieve that purpose, and if acting with due diligence and expedition in order to remove them. Immigrants should not be detained if it becomes apparent that removal will not take place within a reasonable period.¹⁸² Therefore, failure by an immigration officer to take the necessary action or to take it promptly would make the detention unlawful.¹⁸³ Moreover, the use of detention as a deterrent to irregular migrants or the practice of detention for persons originating from certain countries, such as Nigeria, Sri Lanka, and India, which was occurring through the fast track asylum procedures,¹⁸⁴ or of undocumented persons which was not for one of the mentioned purposes would be unlawful under domestic law and Article 5 of the ECHR.¹⁸⁵ Since *Hardial Singh*, there have been several cases in which the High Court found that long-term detention was in breach of established case law principles and had become unlawful.¹⁸⁶ For instance, in the case of *Mahmod* a ten-month detention to obtain travel documents to carry out removal was found to be excessive.¹⁸⁷ The question of what is a reasonable period is a question of fact and it depends on the circumstances of the case.¹⁸⁸ Generally, it is not necessary for the HO to be able to say how long it will take before a person can be removed or even to be certain that removal will take place.¹⁸⁹ The lack of cooperation with removal, and the risk of absconding and of committing further offences¹⁹⁰ are also relevant to assess the reasonableness of the length of detention and will be considered on a case-by-case basis.¹⁹¹ The Supreme Court considered the significance of accepting voluntary return to a home country in *R (on the application of Lumba)*,¹⁹² and held that:

“ It is necessary to distinguish between cases where return to the country of origin is possible and those where it is not. Where return is not possible for reasons which are extraneous to the person detained, the fact that he is not willing to return voluntarily cannot be held against him since his refusal has no causal effect.”¹⁹³

Although not all stateless persons will be unable to leave the UK voluntarily, they are likely to be able to show that return is not possible as they do not have the right to enter another state. However, several participants interviewed for the research were detained for significant periods even after it emerged that their claimed country of origin had either denied or refused to confirm that they were entitled to nationality and would therefore not admit them.

Even if a person refuses to depart voluntarily and this is the only reason why he cannot be removed, the Secretary of State does not have power to detain indefinitely.¹⁹⁴ This conclusion was confirmed in subsequent cases,¹⁹⁵ in accordance with the case law of the ECtHR.¹⁹⁶ These

judgments are consistent with the non-punitive nature of administrative detention – i.e. detention should not be used to punish those who refuse to cooperate. Accordingly, even a stateless person refusing to cooperate with return may not be held in detention any longer if return was not likely anyway.

The issue of the use of immigration detention was raised in recent Parliamentary debates. The government’s official reply has always been that its main purpose is to effect removal.¹⁹⁷ However the NGO Liberty argued that that does not appear to be the case and showed that “there is an inverse relationship between the likelihood that an individual will be removed and the length of time that individual has spent in detention.”¹⁹⁸ Indeed, the following Tables, based on HO statistics, show the percentage of persons who left detention because they were removed during 2013 by cumulative time spent in detention.¹⁹⁹ The Tables also demonstrate that the longer the detention, the less likely it is that the detention will end with removal from the UK.²⁰⁰

Table 5: Percentage of detainees leaving detention due to removal by length of time 2015²⁰¹

Length of detention	Total detainees	Removed from the UK	Percentage of detainees being removed from the UK
A: 3 days or less	9,086	5,039	55%
B: 4 to 7 days	2,449	549	22%
C: 8 to 14 days	3,747	1,891	50%
D: 15 to 28 days	5,250	2,216	42%
E: 29 days to 2 months	6,115	2,502	41%
F: 2 to 3 months	2,597	1,143	44%
G: 3 to 4 months	1,424	671	47%
H: 4 to 6 months	1,315	597	45%

In addition, the internal HO Policy Guidance on Country Returns Documentation reveals that removal without the person’s consent is impossible to several countries (e.g. Iraq, Iran, Syria and Zimbabwe),²⁰² but that even voluntary return to countries such as Burma and Senegal is generally unattainable if the individual does not already possess the right documents, and lengthy in others (e.g. Malaysia and Nigeria).²⁰³ For some states, such as Algeria, Iran, Eritrea, the Gambia, Ethiopia, Guinea, Kuwait, which are notorious for lengthy documentation processes, and having significant stateless populations, there is no information on the time that they would normally take to issue travel documents.

3.4 REMOVAL AND RE-DOCUMENTATION

Research done by civil society organisations and Her Majesty’s (HM) Chief Inspector of Prisons shows that significant numbers of people remain in immigration

detention “with no immediate prospect of removal because they have no travel documents. A dispute over nationality may be the only reason why a person is not removed”.²⁰⁴ For some detainees, especially stateless persons, it may be difficult to prove their identity and obtain travel documents, and nevertheless there is no cross over between the statelessness determination procedures and the assessment of the prospects of removal. Although a person without travel or identity documents is not necessarily a stateless person, they may be at very least, at risk of statelessness. The empirical evidence shows that statelessness may ensue if an undocumented person is not assisted by any embassies and recognised by them to be a national. In general, the following circumstances may cause problems during the process of obtaining documents from the embassies of the country of origin: (1) having mixed national parentage (i.e. Ethiopian and Eritrean); (2) when the person moved between two or more countries as a child; (3) having dual

citizenship; (4) revocation or renunciation of nationality; (5) lack of or poor diplomatic ties between the UK and the country of origin; (6) unwillingness or inability of an embassy to recognise or issue travel documents to their nationals, and especially those with criminal records.²⁰⁵ Furthermore, one complication is that most people are unaware of how they should pursue their re-documentation process to avoid being considered non-cooperating by the HO.²⁰⁶ It emerges from our interviews that interviewees generally believed that approaching the embassy of their country of habitual residence or perceived nationality is enough even if they do not obtain any reply or only obtain a verbal one, whereas the HO usually requires more concrete evidence of such attempts.

Denial of responsibility (or failure to respond within a reasonable time) of all relevant embassies should result in a person's release and them being considered to be stateless. Especially when the failure to leave the UK is not due to an individual's own (in)action, punishing them for their inability to leave is harsh and unlawful. People interviewed for this report wasted years attempting to secure travel documents, long after any realistic chance of their embassy's cooperation had faded and despite their genuine efforts to leave. All of them reported that they were required by the HO to contact the embassy of their country of origin more than once even though they had already been told that they could not be documented and their attempts appeared futile. One of them, Muhammed, a Sahrawi person who has been subject to detention several times for a total period of nearly four years, desperately stated "I am very frustrated about my situation. I contacted the Algerian embassy and went to get an appointment in person in 2013 and then again in 2015. The Algerian embassy confirmed that they know that I lived in a refugee camp in Algeria, that I was a

refugee, but they have nothing to do with me. They will not issue me travel documents to return and the HO knows this. As far as I know, the HO does not contest that I come from Western Sahara." Ousman, who spent three years in immigration detention, told us that when "I went to the second interview at the Guinean embassy I was asked why I was there again." He explained that the embassy official who had interviewed him already "said that they could not give me documents because I was not a national." These difficulties related to re-documentation demonstrate why it is important to assess statelessness and to impose a time-limit on detention while removal attempts are being made.

HO statistics also show that enforced removals to certain countries are notoriously difficult.²⁰⁷ In 2015 the total enforced removals (defined as removals occurring where it has been established that a person has breached immigration laws, has no valid leave to remain, and must leave the UK)²⁰⁸ to Eritrea was zero, to the Occupied Palestinian Territories one, and to Ethiopia two.²⁰⁹ Despite this, the detention for presumed nationals from these countries continues to occur. For instance, Akram from the Occupied Territories, spent two months in immigration detention.²¹⁰

The total voluntary departures to some countries are low as well, with the least persons going to Eritrea and the Occupied Palestinian Territories.²¹¹

Lastly, stateless persons who were forcibly removed or voluntarily departed returned to EU member states in the first place, followed by other or unknown destinations. None of the stateless persons who left the UK appear to have returned to their country of origin.²¹²

Table 6: Enforced removals²¹³ (from the UK and at the port of entry), and (voluntary) departures by country of nationality and destination – Stateless person

Year	Total enforced removals	Non-asylum: Home	Non-asylum: EU Member State*	Non-asylum: Other and destination unknown	Asylum: Home	Asylum: EU Member State*	Asylum: Other destination unknown	Total non-asylum refused entry at port and departed	Non-asylum: Home	Non-asylum: EU Member State	Non-asylum: Other and destination unknown
2004	9	0	4	3	0	1	1	100	0	83	17
2005	8	0	2	0	0	6	0	81	0	63	18
2006	8	0	3	0	0	4	1	54	0	38	16
2007	13	0	9	1	0	3	0	104	0	88	16
2008	2	0	2	0	0	0	0	70	0	62	8
2009	13	0	9	0	0	3	1	82	0	73	9
2010	5	0	2	0	0	3	0	39	0	36	3
2011	22	0	1	0	0	11	10	53	0	45	8
2012	11	0	1	0	0	7	3	61	0	53	8
2013	6	0	0	1	0	5	0	46	0	42	4
2014	10	0	1	0	0	8	1	54	0	50	4
2015	6	0	3	1	0	1	1	43	0	40	3

* if different

Year	Total voluntary departures	Non-asylum: Home	Non-asylum: EU Member State*	Non-asylum: Other and destination unknown	Asylum: Home	Asylum: EU Member State*	Asylum: Other and destination unknown
2004	4	0	1	0	0	0	3
2005	1	0	1	0	0	0	0
2006	1	0	0	1	0	0	0
2007	5	0	1	1	0	2	1
2008	0	0	0	0	0	0	0
2009	1	0	1	0	0	0	0
2010	2	0	0	0	0	0	2
2011	6	0	0	0	0	0	6
2012	6	0	0	0	0	0	6
2013	4	0	0	1	0	0	3
2014	6	0	0	2	0	0	4
2015	6	0	1	2	1	0	2

* if different

3.5 ALTERNATIVES TO DETENTION

Currently there is no international law definition of what constitutes an ‘alternative to detention’. According to the UNHCR, alternatives to detention are:

“ Any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. Alternatives to detention must not become alternative forms of detention, nor be imposed where no conditions on release or liberty are required. They should respect the principle of minimum intervention and pay close attention to the specific situation of particular vulnerable groups. The liberty and freedom of movement for asylum-seekers are always the first options.”²¹⁴

Some NGOs have defined alternatives more broadly as measures that allow migrants “to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.”²¹⁵ For more information on alternatives to detention at international level, readers are encouraged to look at the *Regional Toolkit for Practitioners on Protecting Stateless Persons from Arbitrary Detention*.²¹⁶

The UK has included the following alternatives to detention in its national legislation:

1. Reporting (this requires an individual to report to a HO reporting centre or the local police station.²¹⁷ The frequency of the reporting can vary from once a day to once a month or less);²¹⁸

2. Surrender of travel document (the HO or the police may retain a seized document if they believe that it would facilitate removal);²¹⁹
3. Residence requirements (an individual may be required to live at a specific address and obtain permission for any changes);
4. Release on bail (the amount of bail is assessed in light of the financial means of the individual and sureties, and should give an incentive to comply with the conditions for release);
5. Electronic tagging (this is the most coercive measure of all. It is not used for those under 18, pregnant women, the elderly and those with mental health issues);²²⁰
6. Release to a care worker or under a care plan (even in these cases, an individual has to comply with a number of restrictions which however take the person’s medical needs into consideration).²²¹

Like detention (but to a lesser extent) alternatives to detention also impose varying degrees of restrictions of liberty and movement which can only be justified on a continued basis if assessed on grounds of their ongoing necessity, reasonableness, proportionality and non-arbitrariness. Besides deciding whether to detain an individual, HO officials or HO officers are responsible for deciding whether to apply alternatives to detention in each particular case. Decisions to release on bail or under other conditions are taken by immigration judges or High Court judges.²²² As there is a presumption in favour of temporary admission or temporary release, alternatives to detention must be considered before a decision to detain is taken.²²³ In other words, an individual assessment has to be carried out as to whether there are grounds to detain and whether the same aims can be reached through a less coercive measure. In addition to

being necessary, alternatives to detention must be proportionate.²²⁴ For example, when applying reporting requirements as an alternative it is important to factor in the travel required to the administrative facilities or police station, the frequency (daily reporting poses greater challenges than weekly or monthly) and how non-compliance is sanctioned.²²⁵ Alternatives to detention are not subject to automatic reviews, and usually a lawyer has to request that they be removed. In practice, they are not closely monitored, which is a matter of concern given that their level of coerciveness and psychological impact can vary depending on the profile of the person and how they are being applied.²²⁶ Indeed, when we asked the interviewees their experiences with alternatives to detention, they all complained that there is no time-limit in the law as far as their application is concerned and that they do not feel that they are properly reassessed.²²⁷ Yassin stated “although I have not been in detention, I feel imprisoned in this country: I cannot go anywhere, and I have been on temporary admission for nine years”. Yassin is so frustrated that he recently said: “My solicitor told me to make a fresh asylum claim rather than a statelessness application because there are long waiting times for statelessness cases. But honestly I do not care about my case anymore. The HO knows that I am a Bidoon and nevertheless they keep refusing me protection. What kind of justice is this? What kind of human rights are there in this country? I thought I could have a better life here but that is not true”. Yassin’s experience is to be taken seriously, and acted upon.

The fact that significant numbers of migrants are detained and subsequently released on bail by the Immigration Tribunal raises serious questions about why they were detained in the first place, and whether alternatives to detention were seriously considered before a decision to detain was made.²²⁸ It is reported that “[f]rom April 2012 to March 2013, the First-tier Tribunal (Immigration & Asylum Chamber) received 11,976 applications for release on bail. Of these 4,302 (35,9%) were withdrawn before or during the hearing, meaning no decision was taken.”²²⁹ “Release on bail was refused in 5,010 of the cases heard, and granted in 2,591.”²³⁰

From the HO’s point of view the main challenges for using alternatives to detention are cost (for instance, availability of social housing for those who do not have an accommodation) and their reliance on the individual’s compliance.²³¹ However, financial barriers to the implementation of alternatives measures to detention may be discriminatory because they are ultimately based on the resources or lack thereof available to the individual.²³² In addition, the cost of monitoring using a radio frequency bracelet per month is £515, which represents a sixth of the cost of detaining an individual for the same period.²³³ Immigration detention is indeed the most expensive choice for the HO. From parliamentary

debates it emerged that between 2013 and 2014, the amount of running the immigration estate reached £164,4 million²³⁴ and the cost of detention of one person per year was £36,026.²³⁵ Moreover, the joint report by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration in 2015 made the following calculation: “At the end of the third quarter of 2014, fifty people had been detained in IRCs for between one year and eighteen months, twenty-two between eighteen months and two years, fourteen between two and three years, two between three and four years, and two people had been detained for more than four years.”²³⁶ This means that the cost of detaining these ninety individuals was at least £4.5 million, an average of just over £50,000 each.²³⁷ In turn, the amount of compensation due to unlawful detention paid by the UK Government almost reached £15 million between 2011 and 2014.²³⁸ By contrast, it is estimated that in 2015 there were approximately 60,000 people with reporting obligations, with a total cost of £8,6 million per year, and over 500 people on electronic monitoring.²³⁹

The HO has argued that there is a risk of non-compliance attached to alternatives to detention. However, studies show that this assessment is problematic.²⁴⁰ In any case, it appears that on a week-by-week basis about 95 per cent of individuals comply with their reporting restrictions.²⁴¹

The UK is the only EU country that uses electronic tagging on migrants, and particular concerns have been raised regarding this practice, as it is reported to be a cause of social exclusion and stress,²⁴² as well as physical discomfort, anxiety and social stigma.²⁴³ John for example, told us: “My former girlfriend was complaining that any time she saw the tag, she had the impression that I was a criminal. I feel embarrassed to have the tag. It is not comfortable to walk with it and I have to wear socks all the time otherwise my skin gets irritated.” Kevin, despite suffering from mental health issues, said that as part of the bail conditions he has to be tagged and comply with curfew between 10 pm and 7 am. He said that he is ashamed to have the tag and never wears shorts because people may think that he is a dangerous criminal. “It is very stressful because I do not know for how long I will be tagged and this is preventing me from visiting my eight-year-old daughter in Belfast. I asked my immigration case-worker to be accommodated near her but I was told that I do not even have the right to be in this country and my request was denied. I find the separation from my daughter the most difficult thing to handle. The way I lived with no family destroyed me and I did not want this to happen to my daughter as well. I want to be there for her. I would be happy if she could grow up with me. The HO is separating us, is pushing away the good things from me”.

From an international law perspective, tagging may violate Article 3 ECHR’s prohibition on inhuman or

degrading treatment due to the pain or psychological harm it can cause, especially if an individual has particular vulnerabilities, or as a result of constant surveillance. It could contravene Article 5 of the ECHR, as arbitrary 'detention in another form', if it obliges the individual to remain at a particular place all or most of the time and it is imposed for long periods of time. Moreover, tagging can violate Article 8 (right to private and family life) of the ECHR if it imposes restrictions that interfere with carrying out normal activities of a family life, or that reveal private information.

From the interviews conducted, it appears that tagging is mainly used together with curfew when someone has a previous criminal record and as one of the conditions for bail. In addition, in cases involving national security matters, tagging may virtually turn into house arrest. It is important to note that in the context of the widespread concerns regarding tagging as a practice, the International Detention Coalition takes the position that electronic tagging is an alternative form of detention rather than an alternative to detention because it "curtails liberty and freedom of movement, and consequently requires an extremely high threshold before application. As with other forms of detention, [electronic tagging] require[s] a high level of regulation and independent oversight, including prompt and regular judicial review and monitoring."²⁴⁴

In a few cases, lawyers have challenged the lawfulness and proportionality of the tag because it was imposed with a curfew which was not specifically assessed at the bail hearing.²⁴⁵ In the case of *Gedi*, the Court of Appeal found that the government has no power to impose a curfew either under powers for electronic monitoring or under general powers for conditions under the Immigration Act 1971.²⁴⁶ Since a curfew had never been imposed as a condition of bail by the Immigration Judge, the Court of Appeal declared that the curfew was unlawful in its entirety and as a consequence the claimant succeeded in his action. As stated by Sir Brian Leveson (President) and Lord Justice Grosse:

"[35] For our part, we simply do not accept that a right to impose a 'restriction as to residence' under paragraph 2(5) of Schedule 3 to the 1971 Act necessarily incorporates a right to impose a curfew. ...whether by electronic monitoring or by door-step visit, the authorities can be satisfied that oversight of the whereabouts of those subject to such a restriction is maintained. The requirement, however, imposes a specific level of restriction on what those subject to it can do: it is neither more nor less than that they must reside at the specified address...

[36] In addition, this curfew (at least in its initial period) was not being used to provide specificity to the residence requirement and did not, in reality, support that

requirement at all. The hours which, on any showing, it is common ground were imposed in April 2013 were between 18.00 and 22.00. Very many people will want to be out and about during the evening (rather than at home) and it is absurd to say that if an individual is absent from where he lives and sleeps between these hours, it means that he does not reside there."

Despite its many negative impacts, challenges to the application of tagging are rare because the risk is that the person could be detained again. According to one expert that we interviewed "[n]o one would refuse to be tagged instead of being detained."²⁴⁷

In conclusion, the use of alternatives to detention can benefit both the state and migrants, as on the one hand they are more cost-effective, and on the other they are less intrusive than detention, although that depends on how they are implemented, what objective is pursued by the state, and how transparent their use is.²⁴⁸ Moreover, the prospect of removal should always be assessed and periodically reviewed and alternatives that provide for temporary status should be contemplated in case one's expulsion is uncertain in the long-term, especially because non-compliance with alternatives to detention may trigger criminal consequences and detention again.²⁴⁹ In all cases, the presumption of liberty should prevail and the need for and lawfulness of *any* restrictions on liberty should be re-assessed on a regular basis.

Some EU countries have adopted more modern and less intrusive alternatives to detention than the UK which could be considered as good practices. For instance, in Sweden, Finland and Germany, among others, asylum seekers are housed in open accommodation centres while they undergo identification. Canada, in turn, "directs its officials to release individuals who are cooperating with efforts to establish their identity but whose identity cannot be established."²⁵⁰ In particular, the Toronto Bail Programme (TBP) should be highlighted as it aims to eliminate the 'financial discrimination' inherent in normal immigration bail systems, which is likely to disadvantage migrants who have no or limited resources and/or community or family ties.²⁵¹ In short, the TBP acts as the bondsperson for particular individuals who could not otherwise be released and enters into an agreement with the Canadian Board Service Agency Immigrations. The TBP conducts an intensive screening and interview with the individuals concerned to assess their suitability for supervision. The individual is then released to the 'supervision' of TBP on particular conditions. Individuals released to the TBP are provided with assistance on how to navigate the Canadian asylum, immigration and social services systems, including to find housing, and access healthcare, social welfare, and work (where permitted), or to file necessary paperwork. The TBP program has achieved considerable success in terms of its compliance rates. In 2009-10, of the 250-275 clients released, only

3.65 per cent absconded, which equals 12 persons.²⁵² The cost of the TBP is particularly attractive, as it has been estimated to be a mere 10-12 Canadian Dollars per person per day compared with the average cost in provincial jails being 179 Canadian Dollars per person per day.²⁵³ Similarly, in other countries, alternatives to detention with community support have achieved very high rates of compliance. For instance, in Hong Kong the compliance rate has been estimated to be 97 per cent.²⁵⁴ It is evident that properly implemented alternatives, in conjunction with fair asylum procedures, work because they enhance asylum-seekers' trust in the fairness of the process, which, according to an empirical study published by UNHCR, is the most important factor influencing asylum-seekers' cooperation with the authorities.²⁵⁵

Following these models, the 'Community Support Project' of Detention Action in the UK seeks to promote the development of broader alternatives to detention, and to move away from indefinite detention.²⁵⁶ The project focuses on young ex-offender migrants and involves 30 people between the ages of 18 and 30 per year, over a period of three years (from 2014 to 2017). The participants are recruited from among Detention's Action's clients and receive one-to-one support and training in skills but as they are not allowed to work or study, only volunteering or campaigning can serve as reintegration factors.²⁵⁷ The project has demonstrated its first positive results: "100% of the group have to date complied with the terms of their release, over the target level of 70%. None have absconded or failed to maintain contact with the Home Office."²⁵⁸ The results support the organisation's aim to show that through intensive case management, young ex-offender migrants, who are categorised as people with a high risk of re-offending by the HO, do not abscond or reoffend if engaged in reintegration support and activities.²⁵⁹

3.6 CHILDREN, FAMILIES AND VULNERABLE PEOPLE

In the last few years, spurred by civil society work, campaigns and case law, the government has made major changes with regard to the detention of families and children.²⁶⁰ Although in 2010 the government announced it would end the detention of children and this has not been achieved, some important improvements must be highlighted.²⁶¹

The Detention Centre Rules set out the conditions of detention for families and minors²⁶² and provide that family members are entitled to enjoy family life except where denial is justified by interests of security and safety.

The detention of families is generally used only in pre-departure accommodation and as a last resort.²⁶³ A child or family may be detained for more than 72 hours, or

seven days only in exceptional circumstances with Ministerial authorisation.²⁶⁴

The Immigration Act 2014 introduced additional limitations to the detention of unaccompanied minors, who can be detained i) for a maximum of 24 hours, and ii) where removal directions have been issued or are likely to be issued.²⁶⁵ They cannot be detained in an Immigration detention centre.²⁶⁶ At the end of 2015, HO statistics reported that there were no minors in immigration detention centres.²⁶⁷ However according to HM's Inspectorate of Prisons reports²⁶⁸ and some experts, in the last year a few minors were detained in immigration detention centres, albeit generally for short periods. One expert explained that these are mostly cases where the age is disputed.²⁶⁹

Besides minors, the Enforcement Instructions and Guidance recognises seven categories of persons "normally considered suitable for detention in only very exceptional circumstances":²⁷⁰ the elderly; pregnant women; persons suffering from serious medical conditions; persons suffering from serious mental illness; victims of torture; persons with serious disabilities; and victims of trafficking. Stateless persons are not included in this list. In addition, statelessness does not play any role in the decision to detain.

The 'Immigration Act 2016: Guidance on Adults at Risk in Immigration Detention'²⁷¹, which should help assessing whether an individual falls under one of the vulnerable mentioned categories, in reality lacks clarity and places undue importance on the type of evidence provided rather than the level of vulnerability or risk of harm. For instance, it gives only limited weight to a self-declaration of being at risk. Additionally, despite the existence of such Guidance, both stateless persons and solicitors reported that vulnerable people are often detained. For instance, Okeke, who suffers from mental health problems, explained: "I see a psychologist in detention once a week. They prescribed me more pills to sleep and avoid nightmares..." One expert said "I came across a Bidoon of 65 years of age who spent three months in detention. He was not eating, having difficulties going to the toilet..."²⁷² Peter and John, both victims of torture, have been detained for nine months and three years respectively, and they were re-detained for a few months despite their experience of torture being known to the HO.

An important safeguard for vulnerable migrants is the requirement that every detainee shall undergo a medical examination within 24 hours of their admission to a detention centre.²⁷³ However, a number of studies, judicial decisions and accounts of detainees and lawyers show that this rule is often not applied, sometimes deliberately, with the result that victims of torture may be detained in breach of policy.²⁷⁴ Moreover Rule 35 of the Detention Centre Rules provides that doctors in the

detention centre should bring anyone whose health is likely to be ‘injuriously affected’ by detention, survivors of torture and anyone suspected of suicidal intentions to the attention of the HO case-owners responsible for maintaining the detention.²⁷⁵ The case owners must consider and reply to the Rule 35 report as soon as possible and no later than the end of the second working day after being notified. Nevertheless, there are problems with the application of this protection as well. The Independent Chief Inspector of Borders and Immigration and the HM Inspectorate of Prisons has often criticised the poor quality of the medical reports and of the responses from HO case owners in these cases.²⁷⁶ In practice, most Rule 35 reports are prepared because the detainee declares they suffered torture. Even where Rule 35 reports are specific and detailed, detainees frequently receive only the most superficial response from the HO case owner.²⁷⁷ The experts that took part in the study confirmed these problems.²⁷⁸ Moreover, a HO audit found that only nine per cent of Rule 35 reports led to release.²⁷⁹ In a 2014 decision, the High Court concluded that Rule 35 reports “are not the effective safeguard they are supposed to be.”²⁸⁰ In several other cases, the courts decided that continued detention beyond a point at which a detainee should have been identified as unsuitable for detention, had a medical examination been carried out and communicated to the case owner, was unlawful.²⁸¹ Studies reveal “that it is often the detention environment itself that causes mental illness. Accordingly, it is the removal of people from closed detention that will have the most powerful effect in mitigating mental illness.”²⁸² Indeed, research all over the world has proven that detention has a negative impact on mental health, with increased symptoms of depression, anxiety, and post-traumatic stress disorder.²⁸³ Levels of self-harm and suicide have even been reported to be higher in immigration detention centres than in prisons.²⁸⁴ Peter confirmed that “detention made [him] depressed and anxious.” Ousman told us that while in detention he collapsed several times due to stress. This is an important factor when considering the added vulnerability of stateless people. As established above, stateless people are more likely to endure lengthy detention due to difficulties in removing them from the UK, which compounds the likelihood of suffering undue mental health-related harm.

In summary, the HO Guidance provides protection against continued detention of some vulnerable persons (apart from stateless persons). However, the evidence available shows several failings in the assessment process which impact on the necessity and proportionality of any decision to detain, as well as the obligation to protect from torture, cruel, inhuman or degrading treatment in accordance with Article 3 of the ECHR.

3.7 CONDITIONS OF DETENTION

People subject to immigration detention are generally detained in IRCs²⁸⁵ in the outskirts of towns and cities or, increasingly, prisons.²⁸⁶ Together, they constitute one of the biggest networks of facilities to detain migrants in Europe.²⁸⁷ The UK’s capacity to detain under immigration powers may be up to about 3,500 places.²⁸⁸ If the demand for detention spaces exceeds the available resources, individuals with lower priority cases (those with no prior criminal convictions) are released into the community.²⁸⁹ The fact that such ‘low priority’ detainees are deemed suitable for release when immigration detention space is full begs the question of why they are not considered for release under alternatives to detention programmes in the first place, given that detention should be a last resort.

Migrants in IRCs are subject to the Detention Centre Rules rather than the Prison Rules²⁹⁰ and they have many rights that are denied to prisoners, including mobile phones, incoming telephone calls, internet, on-site legal surgeries and easier access for their visitors.

Migrants can also be detained in up to 30 small temporary holding facilities at airports and in police cells, which raises concern as such facilities are not subject to the Detention Centre Rules nor the Prison Service Instructions.²⁹¹ In these short-term holding facilities, people may not be detained for more than five consecutive days, or seven if removal directions are proposed.²⁹²

The Detention Centre Rules 2001 set out minimum conditions of detention facilities, including the requirements that they have lightning, heating, ventilation and fittings that fulfil health and safety standards,²⁹³ and that the detainees have been provided with adequate clothing and necessary toilet articles for health and cleanliness.²⁹⁴ The average number of detainees per room differs from centre to centre and ranges from a single individual to a maximum of 12.²⁹⁵ Detainees must be provided with activities and educational programmes.²⁹⁶ However there is evidence that the rules are not always complied with. For instance, the residential units have been reported to be noisy and dirty, often austere, prison-like or run-down.²⁹⁷ Ousman complained that the toilet in Colnbrook cells does not have doors and he was ashamed to use it. Another problem is that of difficult access to the internet, or of little occupation during the day.²⁹⁸ Ousman explained that he was relieved when he was allowed to work in the kitchen of the detention centre because he needed “to calm down and not [...] think too much.” He was given a special work permit from the HO and he was paid £1 per hour, as paid work in removal centres is exempt from the minimum national wage.²⁹⁹ Peter said that he was relieved to be doing some tailoring at Morton Hall, but

when he was moved to Colnbrook he was not allowed to work and he does not know why. Peter told us “Colnbrook is a terrible place”. He added that “there are no human rights in immigration detention centres. I felt safer in prison. Once I was put in a cell with someone who suffered from mental health problems and tried strangling me. Another time I was put in a cell with a smoker and when I requested to be moved to another one, I was refused. On another occasion a man tried to sexually abuse me”. When we asked Peter whether he felt respected in detention, he laughed and said “What? SERCO officers [the security officers in the detention centres run by the private company SERCO] would bully the detainees and call us chimpanzees and make the monkey sound...” He also told us that they lost some of his property and he was not refunded for this despite having made a complaint. John too raised issues about complaint procedures. He had made a complaint because the HO wanted back the mobile phones that they had loaned to detainees. He succeeded in having 96 detainees sign a complaint against such a decision and in the end obtained permission to keep the mobile phones. However, he was later accused of organising a riot and then of having an altercation with another detainee. He claims both these accusations were untrue and believes he was being punished for having spoken up.

Transfers from one detention centre to another often occur, especially for those who are subject to prolonged detention. Frequent moves may create difficulties in accessing new or ongoing legal representation and keeping in contact with family, friends, support groups and sureties.³⁰⁰ Ousman told us that during his three and a half years in detention, he was held in various different removal centres. He found the transition from Dungavel in Scotland to Colnbrook extremely difficult because Colnbrook is built to Category B standards (such as Harmondsworth and Brook House), characterised by high security physical spaces.³⁰¹ Peter told us that he was moved after applying for bail, which made it extremely difficult for his surety to attend the bail hearing. Okeke, who was held in Colnbrook in London and then moved to the Verne in Dover, said that he had lost contact with his child as a result, and that communicating with his solicitor in London became very difficult.

According to HM Chief Inspector of Prisons’ reports and the participants of this study, transfers often occur at night,³⁰² with very little prior notice, causing confusion and distress to the detainees.³⁰³ The Shaw’s report adds that some of these transfers are unnecessary and raise questions not only with regard to the welfare of the detainees but also of their cost.³⁰⁴ Peter said that he would get very distressed when handcuffed to be moved from one detention centre to another and once he wet his pants.³⁰⁵ The proportionality of handcuffing those in administrative detention must be questioned. The use of excessive force in transfers and removals has also been

reported. Akram explained that during one transfer, he was handcuffed and his wrists became swollen and painful.

One particularly distressing measure that can be applied in an immigration detention centre is that of solitary confinement. There is no published criteria or available procedure to challenge it, but it is usually used either as a disciplinary measure or as a means to ensure order (i.e., to protect the detainee from self-harm). Written reasons must be provided to the detainee and notice must be given to the visiting community, a medical practitioner and the manager of religious affairs without delay.³⁰⁶ Ousman stated: “When I was taken to Colnbrook, they put me in isolation for five days for no reason. They told me that I could be in isolation for a week, and even longer if there were security reasons. It was very difficult. In isolation, you are locked in a cell for 23 hours a day.”

A number of interviewees also complained about the quality of the food, saying that “there was not enough choice, that it was the same every day and that it was bland”.³⁰⁷

On a positive note, solicitors and NGOs report that NGOs and visitors groups are usually allowed into the detention centres to meet with the detainees, and are thus able to monitor their treatment and provide some support.

In conclusion, there are various concerns that should be urgently addressed with regard to conditions of detention. It must be noted that the conditions of detention experienced by stateless persons are no different from those faced by other detainees. However, these conditions may be experienced for longer periods of time, as stateless persons are likely to be detained longer than others, and in some cases, the detention of stateless persons is very obviously unnecessary and therefore arbitrary as removal from the UK is very clearly not imminent.

3.8 CONDITIONS OF RELEASE AND RE-DETENTION

Release from detention may occur when a person has found a way to legalise his status or when it has become apparent that his removal is not imminent. In the latter case, alternatives to detention are usually applied and the person is released on ‘temporary admission.’ Temporary admission is not a lawful status in the same way that ‘leave to remain’ is. It does not imply legal stay, but it means the person is not breaching the law. Temporary admission does not give the right to work, study and many other rights attached to lawful status. Stateless persons generally are not eligible for support, except possibly Section 4 support under ‘Section 4’ of the 1999 Asylum and Immigration Act. Access to basic benefits under

Section 4 support³⁰⁸ is available only to refused asylum seekers who can show that they are destitute and they meet one of the following five conditions: (1) they are not fit to travel; (2) they have a pending judicial review; (3) there is no safe and viable route of return; (4) they are taking all reasonable steps to return to their home country (usually meaning that applicants are expected to apply for voluntary return); or (5) it would be a breach of their human rights not to give this support. In practice this latter category is used mostly where the asylum seeker has further representations outstanding.³⁰⁹ Therefore, stateless persons are not eligible to apply under Section 4 unless they have made a former asylum application which was refused. Support involves free accommodation and non-cash support through a card which can only be used at a limited number of designated shops (even if the designated shops are miles away from the person's accommodation and when they have small children). This card has a weekly value of £36.95 per person,³¹⁰ which is just above half the lowest level of income support provided by the government to unemployed persons.³¹¹ Given the lack of affordable housing in the London and Southeast of England, accommodation is usually offered in the North of the country. However, Section 4 support will be ending under the 2016 Immigration Act, likely with effect from April 2017. The new provisions state that people who make 'further qualifying submissions' under the Refugee Convention or the Qualification Directive will be supported under section 95 of the Immigration and Asylum Act 1999 in the same way as asylum applicants making an initial claim. Asylum seekers who reach the end of the process but face a 'genuine obstacle' to leaving the UK, such as unfitness to travel or lack of documents despite taking all reasonable steps to obtain them, may be supported.³¹² People who make further submissions on the basis that removal would breach article 8 of the European Convention on Human Rights protecting the right to private and family life, for example are excluded.³¹³ Furthermore, the 2016 Immigration Act will introduce a duty on the HO to ensure that destitute migrants in immigration detention are able to access accommodation to secure their right to liberty, but it is still unclear how this provision will apply.³¹⁴

When asked about the conditions of their release, interviewees generally had no idea on what grounds they had been set free, what temporary admission means, what they were expected to do next and how long their situation will persist. Peter for example, described how after his release he was given temporary admission and was left in the street. He told us that "it was the most difficult time in [his] life". Otolo was released from detention on temporary admission and Section 4. He was required to report twice a month to the HO centre in a different city from where he was dispersed. He was not allowed to work and had no money to pay for his train fare. He did not know how to comply and said that he was so desperate that "I went to the local police station asking

to contact the HO and tell them that I could not afford the trip. The police called the HO but they got angry at me for showing up like that. The second time that I did that, the HO was persuaded to change the reporting requirement to once a month". Other interviewees however told us that they were given fare or tickets for reporting purposes.

Temporary admission does not protect from re-detention. According to experts, re-detention seems to occur when immigration case workers present new facts or circumstances (for instance if they obtained travel documents or they believe they may be able to obtain them in the near future because they made an application to the relevant embassy) or because of breach of the release conditions and perceived risk of re-offending or absconding. This practice may make the total detention duration extraordinarily long especially for people who are difficult to remove such as stateless persons. For instance, Muhammed, Peter, Anthony and John have all been subject to multiple detention periods. Cycles of detention are a particularly important concern with serious implications for stateless persons, affecting their lives, family relationships and health.

Given that several stateless persons go through cycles of detention and may not be removed in the end, this practice of detaining them over years or leaving them on temporary admission is inhumane. In addition, given its cost for the government, and low marginal increase of cooperation and removals, particularly for stateless persons, detention is often unjustified.

Given the seriousness of this issue and the lack of information related to re-detention, we asked the HO for data on re-detention through a parliamentary question. However, the HO answered by stating that it would be too costly to answer this question. More research and information would be needed to understand the human costs of re-detention, and what should be done to protect vulnerable persons, including the stateless, from it.

4. CONCLUSION AND RECOMMENDATIONS



The issue of statelessness in the UK was little understood until 2011, when Asylum Aid and UNHCR published their report *Mapping Statelessness in the UK*³¹⁵ which was an important step in the push for the adoption of the statelessness determination procedures in 2013. The introduction of this procedure to identify stateless persons must be seen as a positive step. However, as set out in this report, the procedure contains some key flaws and limitations which must be addressed.

Precise data on the presence of stateless persons in administrative detention facilities remains elusive, mostly due to inaccurate registration of statelessness; challenges related to the scope and implementation of the statelessness determination procedure, the difficulties people face in accessing the procedure and in obtaining legal representation to do so. These structural and systematic failures to identify and protect stateless persons also mean that more stateless persons are likely to be subject to immigration detention, particularly because statelessness is not assessed as part of decision making processes related to removal and detention. The lack of a time limit and the decline of legal aid in the UK further exacerbate the problem. A few positive improvements should also be noted, such as the

reduction of detention of children and families (though the commitment to end child detention has not been met), and the recent introduction of an automatic bail hearing after four months of detention (though this is still an extremely long timeframe and persons with prior criminal convictions are excluded). While the use of alternatives to detention is positive, the failure to use alternatives in many cases, or to subject alternatives to regular and rigorous review and the imposition of tagging despite its severe impacts, remain matters of concern. Similarly, while some other countries are increasingly implementing more humane, community based alternatives, and despite the clear economic and human rights-related benefits of alternatives, the UK is yet to systematically do so and has not developed alternatives to the extent that it could.³¹⁶

In general, access to the statelessness procedure is still too limited especially for those in detention. Several cases are often perceived by decision makers from an ill-fitting asylum perspective, and often the situation of stateless persons is easily misunderstood. Of significant concern is the failure of immigration officers to take any action when they are or should be aware that a detained person is stateless (unlike in asylum cases) and to acknowledge the fact that in most cases of statelessness, return is

inherently impossible. Importantly, the statelessness procedure does not appear to be viewed by the UK authorities as a protection tool, but rather as a mechanism to regularise the stay of a small group of otherwise un-removable persons. This perspective must evolve in line with international human rights standards and guidance on the 1954 Convention, which emphasise state obligations to recognise and protect the human rights of stateless persons and ultimately end their statelessness.

Since detention may only be imposed as long as a clear prospect of removal exists, this implies a due diligence requirement to rule out statelessness prior to any decision to detain and to actively review the cases of detained persons for whom evidence of statelessness may become clear during detention. An effective approach to statelessness could play a crucial role to this regard, preventing the incarceration of persons whose return is *a priori* infeasible. Currently this discovery is often made many months or years *after* detention has already been imposed. The prospect of removal is too easily assumed to exist, and examination of personal circumstances – including the juridically relevant fact of statelessness – figure insufficiently or not at all in the decision to detain (e.g. requesting a person to visit the relevant embassies multiple times). The view to expulsion is also of central importance for the length of detention and use of alternatives to detention. Generally, the average duration of immigration detention in the UK is significantly higher than that of many other European countries.

This means that persons whose citizenship status is more complex, including those who are stateless or at risk of statelessness are more likely to be detained for disproportionately long periods. This is especially concerning where the inability to return is not due to one's lack of cooperation, but because of some embassies' systematic refusal to facilitate the return of their nationals. Indeed, UK authorities are aware of these 'difficult countries', and the time spent in detention by their citizens can be lengthy. What is more, in the case of several countries, long-term detention does not lead to any deportations. Here, administrative detention appears to have become punitive in nature; to act as a deterrent instead of a measure of supervision.

The provisions introducing the use of alternatives to detention are partially a positive feature. Current legislation does not specify the length of time for which alternatives to detention can be used. This is a matter of concern, especially with regard to electronic tagging, which can actually be viewed as an alternative *form* of detention. The curfew imposed by the HO on those who are tagged is particularly controversial, and the courts have determined that the HO has no authority to impose such curfews. The requirement that any future decision

to detain should clearly consider whether an alternative could be employed to reach a similar aim is almost never mentioned in the decisions. There is much room for improvement here. Also, a sound assessment of prevailing vulnerabilities is essential to ensure the proportionality of any decision to apply alternative to detention and to detain. Such assessments must be carried out at the outset of detention and also at regular intervals during the detention period. Statelessness may well be considered as one such vulnerability as it is a factor which increases the likely length of detention while reducing the likely success of removal attempts, in which case detention should not be imposed.

One of the most important contributions the UK government can make towards the lives of stateless people is to end what has often amounted to a lifetime of uncertainty. Without clear solutions, they will continue to fear repeated detention, while also being unable to return. Even when released, few stateless persons can envisage a solution to their plight, and they are often left to live aimlessly and invisibly on the margins of society. Actively utilising the threat of detention to enforce their cooperation to be removed is simply inhumane, but also mostly ineffective. As UNHCR has highlighted, "for detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances, proportionate and non-discriminatory."³¹⁷

Having made some meaningful reforms already, and with the recent statelessness determination procedure in place, the UK now can and should offer a durable solution based on human rights principles to all stateless people in the country.

Recommendations on identifying statelessness and the statelessness determination procedure

1. The UK's statelessness determination procedure should be transformed into a procedure through which successful applicants receive protection they are entitled to under international law (similar to the refugee status determination procedure).
2. Applicants under the statelessness determination procedure and stateless persons in other situations in which their rights are at risk (including in removal and detention contexts) should have access to legal aid so they may receive appropriate advice and representation.
3. All stateless persons and persons at risk of statelessness should have access to the statelessness determination procedure, including those who have previous criminal convictions. A past criminal record is irrelevant to a finding of statelessness under international law, and should not be the basis on which recognition of statelessness is denied. As with all criminal offenders, the criminal code – with its inbuilt procedural and substantive safeguards – should be the basis on which any risk to society posed

by a stateless former offender is assessed and regulated. Once statelessness is determined, and where appropriate, Home Office decision-makers should be afforded discretion to grant protection status to individuals with criminal convictions, including for 'administrative' offences such as possessing false documents and/or working illegally (offences which are likely to have been precipitated by their situation of being stateless and in limbo). At a minimum such individuals should be afforded a status that allows them to live in dignity which ensures full respect for their social, cultural and economic rights.

4. In order to enable the implementation of Recommendation 3 above, the definition of statelessness under the UK procedure should be brought fully in line with the 1954 Convention definition. As such, persons who fall under the exclusion clauses which limit access to protection under the 1954 Convention (but not human rights law), should not be viewed as falling beyond the scope of the definition of statelessness.
5. The UK statelessness determination procedure should be made more accessible. In particular, the application form to apply for stateless status should be simplified and offered in a variety of languages. This application form and notices announcing the procedure should be made freely available, including in immigration detention centres.
6. The burden of proof in the statelessness determination procedure should be shared between the applicant and the decision-maker, and the Home Office should utilise its resources to assist with evidentiary assessment – including with regard to securing responses to enquiries made of foreign states.
7. Additional resources should be dedicated to statelessness determination, expanding the size, reach, capacity and expertise of the statelessness determination team to avoid delays and improve the quality of decision-making.
8. Where necessary, Home Office procedures and policies relating to administrative detention should be updated, adapted and brought in line with the statelessness determination procedure. In particular, there should be a clear referral system (referenced in other relevant policies) to obligate immigration officers to refer persons who may be stateless or at risk of statelessness to the statelessness determination team.

Recommendations related to the decision to detain, ongoing detention and procedural guarantees

9. Statelessness is a juridically relevant fact in any decision to remove or detain and the implementation of such decision. Failure to adequately assess and consider statelessness, can render such decision arbitrary and disproportionate. Therefore, statelessness must be identified at the point of the

decision to detain and on a continued basis. In removal proceedings, where there is lack of clarity around the nationality of an individual, or there is reason to believe that an individual may be stateless or at risk of statelessness, such individual should be immediately directed to the dedicated statelessness determination procedure. Failure to do so is likely to render detention arbitrary.

10. The UK should not detain persons who have a statelessness application pending, unless there are clear and compelling reasons why detention is necessary and in accordance with international law in that particular case. The least restrictive alternative to detention should be used wherever possible.
11. Screening a person's identity, nationality, prospect of removal or deportation and vulnerability should be done thoroughly and in the earliest stage possible before a decision to detain is made. Applying detention when it could already have been determined that removal or deportation is unattainable is arbitrary. Immigrants serving criminal sentences in prisons should have their likelihood of deportation assessed during such time, not after having served their sentence. Documents that might become available in the future cannot justify detention in the interim. Detention should always be implemented as a last resort, after all alternatives (starting with the least restrictive) are exhausted. If the risk of absconding is high, alternatives to detention can be employed. To facilitate screening, checklists and guidance should be developed.
12. Immigration officers who make decisions to detain should be trained to identify risk of statelessness so such persons may immediately be referred to the statelessness determination procedure. They should also be trained to identify and act on other types of vulnerability on an ongoing basis. All decisions to detain should be subject to external and not only internal assessment and review.
13. Detention should be for the shortest period of time possible in every case. The government should follow the call by the All Party Parliamentary Group on Migration and introduce a 28-day maximum time limit on immigration detention to end unlimited detention in the UK.
14. Alternatives to detention should be reasonable, not be used indefinitely, and subject to active reviews. They should be subject to front-loaded case working that ensures that people should i) be treated with dignity, ii) be informed about the process and rights, as well as responsibilities and possible consequences for not complying with them, iii) be provided with adequate legal advice, iv) receive material support to be able to live in the community, and v) have their cases individually managed. The use of electronic tagging and curfew as an alternative to detention should be reviewed in line with recent court judgments. Migrants and asylum-seekers should be

empowered and programmes and partnerships should be built between Government and civil society. The Home Office should investigate, develop and pilot community-based alternatives similar to those used in other jurisdictions.

15. Conditions of detention should at all times comply with the UK's international obligations and ensure that detainees are safe, secure, in a clean and sanitised environment, productively occupied, have access to educational and recreational facilities and to religious and cultural expression. Detainees should have adequate access to lawyers, NGOs, the UN, religious organisations, visitors and monitoring groups. When placing individuals in detention, the proximity of facilities to their families and communities must be taken into consideration and subsequent transfers should be minimised and justified at all times.

Recommendations related to removal, release from detention and re-detention

16. Efforts at re-documentation should be subject to reasonable limitations, both in terms of time and the number of embassy presentations. After repeated rejections or prolonged non-response, statelessness should be assumed – and all corresponding rights and benefits granted. People must not end up as victims of a state's reluctance to facilitate return.
17. The law should contain clear provisions outlining the criteria for repeated detention and imposing a limit to the number of times it may be applied as an instrument to facilitate return. The total cumulative period of detention should be recorded and information made publicly available. Detention should not be used as a means to enforce cooperation with removal. Punishing non-cooperation in this way is contrary to the administrative nature of immigration detention.
18. Past efforts to deport should be considered more strongly in any decision to re-detain or to grant bail, both by the immigration-case-owners and by the immigration courts.
19. Bail should be automatically reviewed more frequently than every four months and detainees with past criminal records should not be excluded from this automatic review process.
20. All released detainees (who could not be removed within a reasonable period of time), should be granted at least a temporary legal status with corresponding rights – including the right to work and access social welfare - relevant to their situation. Documentation which protects them from re-arrest and detention should be provided in all cases, at least until meaningful new facts or circumstances have arisen.

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ANNEX



Table 1: Stateless leave applications by month of application³¹⁸

Application	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2013				8	39	42	34	16	27	19	13	20	218
2014	16	22	18	17	20	84	28	49	49	32	76	67	478
2015	149	157	70	47	33	37	32	35	37	64	52	45	758
2016	33	51	54										138
													1,592

Table 2: Percentage of detainees leaving detention due to removal by length of time³¹⁹

Percentage of detainees leaving detention due to being removed from the UK in 2015, by length of detention

3 days or less	55%
4 to 7 days	22%
8 to 14 days	50%
15 to 28 days	42%
29 days to 2 months	41%
2 months to 3 months	44%
3 months to 4 months	47%
4 months to 6 months	45%
6 months to 12 months	40%
12 months to 18 months	42%
18 months to 24 months	37%
24 months to 36 months	32%
36 months to 48 months	27%
48 months or more	0%

Table 3: Total enforced removals by country of destination³²⁰

Country of destination	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Afghanistan	350	489	434	550	435	704	942	985	518	496	398	87
Eritrea	0	1	1	3	2	1	0	0	0	1	0	0
Ethiopia	5	20	34	37	29	16	18	10	11	6	3	2
Iran	63	111	102	122	137	77	65	62	27	18	9	23
Iraq	5	26	56	133	374	405	274	72	55	99	42	36
Occupied Palestinian Territories	1	1	0	2	0	0	4	1	0	1	0	1
Somalia	16	4	7	11	20	22	13	12	7	8	35	36
Syria	40	33	40	18	10	10	27	6	1	0	0	0

Table 4: Total voluntary departures³²¹

Country of destination	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Afghanistan	244	445	542	434	441	497	527	415	364	257	135	97
Eritrea	0	0	0	6	10	8	1	1	5	1	0	3
Ethiopia	15	32	62	95	134	85	90	185	77	106	78	96
Iran	189	300	402	421	422	358	165	183	158	183	182	133
Iraq	433	793	1,736	428	533	747	303	292	382	327	236	166
Occupied Palestinian Territories	5	8	4	26	10	24	9	7	5	0	1	1
Somalia	16	18	41	27	16	13	8	13	9	11	1	2
Syria	2	26	72	55	26	28	53	36	18	4	4	1

ENDNOTES



¹ "Between the Spanish withdrawal from Western Sahara in 1976 and the Moroccan occupation of this area in 1979, an estimated 110.000-155.000 Sahrawis sought refuge in Algeria. Most of these individuals continue to reside in four camps near Tindouf, in southern Algeria. They have been stateless for about 40 years, and have no rights to their land. Furthermore, because Algerian citizenship is derived exclusively from the father, children of an Algerian mother and a refugee father are not eligible for Algerian citizenship." The International Observatory on Statelessness, *Algeria*, available at www.nationalityforall.org/algeria [accessed 12 July 2016]

² *Kim v Russia* [2014] Application no 44260/13 (ECtHR) para 54

³ *JN v United Kingdom* [2016] Application no 37289/12 (ECtHR); UK Human Rights Blog, *Unlimited Immigration Detention and the Right to Liberty - the Round-up* (24 May 2016), available at <https://ukhumanrightsblog.com/2016/05/24/unlimited-immigration-detention-and-the-right-to-liberty-the-round-up/> [accessed 25 June 2016]; European Convention for the Protection of Human Rights and Fundamental Freedoms (amended) [1950] ETS 5, art 5

⁴ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* ['Regional Toolkit for Practitioners'] (December 2015), available at www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf [accessed 22 September 2016]. Further information is available on the ENS website, available at www.statelessness.eu [accessed 26 May 2016]

⁵ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention in Malta* (November 2015), available at www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Malta.pdf [accessed 22 September 2016]; European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention in the Netherlands* (November 2015), available at www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Netherlands_summary.pdf [accessed 22 September 2016]; European Network on Statelessness, *Protecting Stateless*

Persons from Arbitrary Detention in Poland (November 2015), available at www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Poland.pdf [accessed 22 September 2016]. These reports are also available as summary reports, both in English as in Dutch and Polish respectively. See ENS, *Protecting Stateless Persons from Arbitrary Detention*, available at www.statelessness.eu/protecting-stateless-persons-from-detention [accessed 22 September 2016]

⁶ Some of the interviewees' accounts were however checked against their immigration file and discussions with their representatives.

⁷ G Noll, 'Rejected asylum seekers: The problem of return' (1999) 37(1) *International Migration*, at 268

⁸ UN High Commissioner for Refugees (UNHCR), *Detention Guidelines, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* ['Detention Guidelines'] (2012) para 5

⁹ UN High Commissioner for Refugees (UNHCR), *Beyond Detention. A Global Strategy to Support Governments to End the Detention of Asylum-seekers and Refugees 2014-2019* ['Beyond Detention'] (2014) at 5

¹⁰ The UNHCR defines Alternatives to Detention not as a legal term, but as a matter of any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. United Nations High Commissioner for Refugees (UNHCR), *Detention Guidelines* at 10

¹¹ UN High Commissioner for Refugees (UNHCR), *Beyond Detention* (2014) at 5

¹² UN High Commissioner for Refugees (UNHCR), *Detention Guidelines* (2012) at 10

¹³ UN High Commissioner for Refugees (UNHCR) and Office of the High Commissioner for Human Rights (OHCHR), *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons. Summary Conclusions* (11-12 May 2011) para 21, in UNHCR, *Detention Guidelines* at 24

¹⁴ *Ibid* at 24

- ¹⁵ UN High Commissioner for Refugees (UNHCR) and Office of the High Commissioner for Human Rights (OHCHR), *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons. Summary Conclusions* (11-12 May 2011) para 19, in *ibid* at 24
- ¹⁶ International Detention Coalition, *There are Alternatives. A Handbook for Preventing Unnecessary Immigration Detention* (May 2011) at 22, 73
- ¹⁷ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons* [‘UNHCR Handbook’] (2014), available at www.unhcr.org/53b698ab9.pdf [accessed 23 September 2016], para 23
- ¹⁸ See UN High Commissioner for Refugees, UNHCR Handbook (2014), highlighting that care needs to be taken when using the term ‘de facto’ as this term is not one which brings with it, any protection under international law. *Ibid* para 7
- ¹⁹ This report defines a ‘person at risk of statelessness’ in accordance with the Regional Toolkit for Practitioners by the European Network on Statelessness, as an individual who is either not stateless, but who can become stateless over a period of time; or whose statelessness will become evident over a period of time. See European Network on Statelessness, *Regional Toolkit for Practitioners* (2015) at 7
- ²⁰ L Fransman, *British Nationality Law and the 1981 Act* (Fourmat Publishing 1982) at 67–68, 70–71; I MacKinnon, *Malaysians left ‘stateless’ in UK after passport gamble backfires*, *The Telegraph* (Bangkok, 13 October 2009), available at www.telegraph.co.uk/news/worldnews/asia/malaysia/6316612/Malaysians-left-stateless-in-UK-after-passport-gamble-backfires.html [accessed 24 May 2016]
- ²¹ L Choo Chin, ‘British overseas citizens and the British colonial legacy’ (2014) 41(2) *Malaysian Journal of History, Politics & Strategic Studies*, at 1; I MacKinnon, *Malaysians left ‘stateless’ in UK after passport gamble backfires*, *The Telegraph* (Bangkok, 13 October 2009), available at www.telegraph.co.uk/news/worldnews/asia/malaysia/6316612/Malaysians-left-stateless-in-UK-after-passport-gamble-backfires.html [accessed 24 May 2016]
- ²² Asylum Aid and UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in the UK* (November 2011) at 104
- ²³ Home Office, ‘Stateless guidance. Applications for leave to remain as a stateless person’ [‘2013 Guidance’] (1 April 2013) V1.00
- ²⁴ The 2013 Guidance was amended quite extensively following a review of the procedure, feedback from UNHCR, and consultation with representatives and NGOs. For instance, one novelty is that it makes reference to the difficulties which women may face in obtaining documents due to discrimination. Furthermore, the new Guidance states that individuals can be removed using an Emergency Travel Document (ETD) even if their claim to statelessness has not been considered because and ETD can be accepted as evidence they are re-admissible to a country of formal habitual residence. Home Office, ‘Asylum Policy Instruction. Statelessness and applications for leave to remain’ [‘Stateless Guidance’] (Version 2.0, 18 February 2016), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0_EXT_.pdf [accessed 26 May 2016]
- ²⁵ France, Hungary, Italy, Latvia, Kosovo, Spain and Turkey have statelessness determination procedures in place. They vary in terms of their nature (administrative or mix of administrative and judicial procedure) and subordination of the corresponding national body (unrelated or partly unrelated to the asylum authority). UN High Commissioner for Refugees (UNHCR), *Good Practices Paper No 6: Establishing statelessness determination procedures to protect stateless persons* (2016) at 16–18
- ²⁶ See Asylum Aid, *Asylum Aid Briefing Note on the Introduction of a UK Stateless Determination Procedure effective from 6 April 2013*, available at www.asylumaid.org.uk/statelessness-and-a-change-to-immigration-rules/ [accessed 20 May 2016] and A Mahecic (ed) L Dobbs, *UNHCR hails move by United Kingdom to end legal limbo for stateless people* (UNHCR, 9 April 2013), available at www.unhcr.org/5163ec646.html [accessed 20 May 2016]
- ²⁷ Universal Declaration of Human Rights (adopted 10 December 1948, entered into force 23 March 1976) 999 UNTS 302, art 15
- ²⁸ The UK signed the Convention on 16 September 1968. It was ratified on 20 May 1976. UNTC, *International Covenant on Economic, Social and Cultural Rights*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en [accessed 5 February 2016]; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3
- ²⁹ The UK signed the Convention on 16 September 1968. The ratification followed on 20 May 1976. UNTC, *International Covenant on Civil and Political Rights*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en [accessed 5 February 2016]; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
- ³⁰ The Convention was signed on 11 October 1966 by the UK. It was ratified on 7 March 1969. UNTC, *International Convention on the Elimination of All Forms of Racial Discrimination*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en [accessed 5 February 2016]; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195
- ³¹ The Convention was signed on 22 July 1981 and ratified on 7 April 1986 by the UK. UNTC, *Convention on the Elimination of All Forms of Discrimination against Women*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [accessed 5 February 2016]; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 18 September 1981) 1249 UNTS 13
- ³² The UK signed the Convention on 19 April 1990. It was ratified on 16 December 1991. UNTC, *Convention on the Rights of the Child*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en [accessed 5 February 2016]; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3
- ³³ The 1954 Convention was signed on 28 September 1954 and ratified on 16 April 1959 by the UK. UNTC, *Convention relating to the Status of Stateless Persons*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en [accessed 5 February 2016]; Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (henceforth ‘1954 Convention’)
- ³⁴ The UK signed the 1961 Convention on the Reduction of Statelessness on 30 August 1961 and ratified it on 29 March 1966. UNTC, *Convention on the Reduction of Statelessness*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en [accessed 5 February 2016]; Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175
- ³⁵ Stateless persons enjoy a number of rights also under other general human rights treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, as well as a number of other regional human rights treaties, such as the European Convention of Human Rights, but the 1954 Convention and the 1961 Convention remain the cornerstone for the protection of stateless persons. In particular, the general human rights treaties, while applicable to anyone, do not take into consideration the particular vulnerability that stateless persons face.
- ³⁶ The Convention was ratified on 6 April 1934. It entered into force on 1 July 1937. UNTC, *Convention on Certain Questions relating to the Conflict of Nationality Laws*, available at <https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=513&chapter=30&lang=en#2> [accessed 5 February 2016]; Convention on Certain Questions relating to the Conflict of Nationality Law (adopted 12 April 1930, entry into force 1 July 1937) 179 LNTS 89 (No 4137)
- ³⁷ The Protocol relating to a Certain Case of Statelessness was ratified on 14 January 1932 by the UK. The Protocol entered into force on 1 July 1937. UNTC, *Protocol relating to a Certain Case of Statelessness*, available at <https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=512&chapter=30&lang=en#2> [accessed 5 February 2016]; Protocol relating to a certain case of Statelessness (adopted

- 12 April 1930, entry into force 1 July 1937) 179 LNTS 115 (No 4138)
- ³⁸ The UK ratified the Special Protocol concerning Statelessness on 14 January 1932. It entered into force on 15 March 2004. UNTC, *Special Protocol concerning Statelessness*, available at <https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=511&chapter=30&lang=en> [accessed 5 February 2016]; Special Protocol Concerning Statelessness (adopted 12 April 1930, entered into force 15 March 2004) (No 40153)
- ³⁹ European Convention on Nationality [1997] ETS 166
- ⁴⁰ Convention on the Avoidance of Statelessness in relation to State Succession [2006] ETS 200
- ⁴¹ The UK signed the Convention on 4 November 1950 and ratified it on 8 March 1951. It entered into force on 3 September 1953. Council of Europe, *Treaty Office, Treaty list of a specific State. United Kingdom*, available at www.coe.int/en/web/conventions/home/-/conventions/treaty/country/UK?p_auth=OrDI0vPo [accessed 9 February 2016]. Another relevant provision is Article 9 of the International Covenant on Civil and Political Rights, which states that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” While it does not explicitly state the grounds for detention permissible in the immigration detention context, the concept of arbitrariness has been developed in a manner which prohibits detention that *inter alia* does not fulfil a legitimate purpose and is not proportionate or reasonable. The examination of whether a person is stateless or at risk of statelessness is a juridically relevant fact in making the decision to detain in a manner which complies with Article 9. For a fuller analysis of the relevant regional and international instruments, see European Network on Statelessness, *Toolkit for Practitioners* (2015) at 8-11
- ⁴² “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.” European Convention for the Protection of Human Rights and Fundamental Freedoms (amended) [1950] ETS 5, art 5(1)(f). See European Network on Statelessness, *Toolkit for Practitioners* (2015) at 14.
- ⁴³ European Network on Statelessness, *Regional Toolkit for Practitioners* (2015) at 13
- ⁴⁴ The decision to fast-track an asylum case and detain was made when very little is known about the person’s situation as there was no proper screening (apart from determining the person’s nationality), see I MacDonald and R Toal, *Immigration Law and Practice* (8th edition, Butterworths Law 2014) at 1671. As a result, people with complex cases, including victims of torture, trafficking, gender-based violence, were regularly detained. Following a major expansion of bed-space in 2013, almost one in five asylum-seekers, around 4,500 asylum-seekers per year, were put through the Fast Track. The Home Office refused 99 per cent of asylum claims which they placed on the Detention Fast Track. See Detention Action, *The State of Detention* (October 2014) at 22; Detention Action, *Fast Track to Despair* (October 2011) at 12. Many asylum-seekers found themselves unrepresented at appeal, and had to navigate a complex and fast-paced appeals process in a language they often did not understand. In 2012, 59 per cent of asylum-seekers in Harmondsworth were unrepresented at the first appeal. Only one per cent of them won their appeals, compared to 20 per cent of those with a representative. January-September 2012, Statistics from Freedom of Information (FOI) requests by Detention Action, FOI/76942 and FOI/80225; Detention Action, *The State of Detention* at 22
- ⁴⁵ These cases included, for instance, *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors* [2015] EWHC 1689 (Admin); “Recently the system has come under significant legal challenge, including on the appeals stage of the process. Risks surrounding the safeguards within the system for particularly vulnerable applicants have also been identified to the extent that we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT. In light of these issues, I have decided to temporarily suspend the operation of the detained fast track policy.” HC, Written Statement (HCWS83) ‘Home Office. Written Statement made by: The Minister of State for Immigration (James Brokenshire). Asylum’, available at www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-07-02/HCWS83/ [accessed 1 September 2016]
- ⁴⁶ Detention Action, *The end of the track for the DFT* (12 November 2015), available at <http://detentionaction.org.uk/the-detained-fast-track-the-end-of-the-road> [accessed 1 September 2016]
- ⁴⁷ *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, para 49
- ⁴⁸ *Hossain and Others v Secretary of State for the Home Department* [2016] EWHC 1331 (Admin) at 157-166; see also Equality Act 2010 (as amended), s 149
- ⁴⁹ Unnecessarily lengthy and indefinite detention, particularly where it adds to vulnerability and impacts on mental health and wellbeing can trigger the right to freedom from torture, cruel, inhuman or degrading treatment or punishment. European Network on Statelessness, *Regional Toolkit for Practitioners* at 24-28; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 2, 11; European Convention for the Protection of Human Rights and Fundamental Freedoms (amended) [1950] ETS 5, art 3. For a discussion on groups of vulnerable people in immigration detention, see section 3.6 of this report.
- ⁵⁰ Directive 2008/115 of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals
- ⁵¹ Directive 2003/9 Council Directive of 27 January 2003 laying down minimum standards for the reception of asylum seekers, art 7
- ⁵² Directive 2005/85/EC Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, art 18
- ⁵³ G Denholm and R Dunlop, *Detention under the Immigration Acts. Law and Practice* (Oxford University Press 2015) at 208-209
- ⁵⁴ UNHCR, *Handbook* para 112
- ⁵⁵ *Ibid* para 113
- ⁵⁶ UNHCR, *Handbook* para 114
- ⁵⁷ European Network on Statelessness, *Regional Toolkit for Practitioners* at 8-10
- ⁵⁸ British Nationality Act 1981 (as amended)
- ⁵⁹ *Ibid* s 50(2) provides that references to a person being “settled in the United Kingdom... are references to his being ordinarily resident in the United Kingdom...without being subject under the immigration laws to any restriction on the period for which he may remain.” Further provision as regards being settled in the UK is made by the *ibid*, s 50(3)-(4)
- ⁶⁰ *Ibid* s 1 (1), (1A)
- ⁶¹ For an analysis of the scope and content of Article 7, see Institute on Statelessness and Inclusion, *Addressing the Right to a Nationality through the Convention on the Rights of the Child: Toolkit for Civil Society* (June 2016), available at www.statelessnessandhumanrights.org [accessed 29 August 2016]
- ⁶² *Ibid* sch 2, para 3
- ⁶³ *Ibid* sch 2, para 6
- ⁶⁴ See L Fransman, A Berry and A Harvey, *Fransman’s British Nationality Law* (3rd edn, Bloomsbury Professional 2011) at 375
- ⁶⁵ British Nationality Act 1981 (as amended), s 1
- ⁶⁶ Fees include the handling and processing of applications (not refundable in case of refusal or withdrawal) and a citizenship ceremony (refundable in case of rejection or withdrawal). The amount must be paid in the moment of lodging the application. If the full fee or biometric data is not provided, the application will be rejected as invalid, and the applicant is charged with an administration fee of 25 Pounds. See Home Office, ‘Fees with effect from 18 March 2016 for citizenship applications and the right of abode’, available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/507609/Master_Fees_Leaflet_2016_03_08_v0_3.pdf [accessed 7 May 2016]
- ⁶⁷ Asylum Aid and UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in the UK* at 433

- ⁶⁸ C A Batchelor, 'The 1954 Convention Relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonization' (2004) 22(2) *Refugee at 37*
- ⁶⁹ "[T]he fact that an individual does fit the category of persons who, with reference to the law, is normally granted nationality does not mean that that a particular person was granted such status, as there may always be exceptions to the legislation, variances between the written word and the implementation of the law, or inadvertent actions on the part of either the individual or the State which result in a failure to acquire nationality. Thus, consultations with the State concerned are imperative for verification of nationality status." C A Batchelor, 'Statelessness and the Problem of Resolving Nationality Status' (1998) 10(1-2) *International Journal of Refugee Law at 156, 171*
- ⁷⁰ The term 'removal' is used to indicate expulsion for breach of immigration laws.
- ⁷¹ The term 'deportation' means expulsion under section 3(5) and (6) of the Immigration Act 1971 (as amended) in cases where the Secretary of State has decided that it is conducive to the public good to remove someone from the UK. In: Denholm and Dunlop, *Detention under the Immigration Acts at 25*
- ⁷² Immigration detention was used as a normal part of the asylum determination process for claims that appeared to be able to be decided quickly in the fast track asylum procedures. However the fast track procedures are not being used anymore.
- ⁷³ MacDonald and Toal, *Immigration Law and Practice at 1620, 1624*
- ⁷⁴ The UK Borders Act 2007 (as amended) introduced automatic deportation for a large number of offences, and expanded the powers to detain while the decision to deport is made or after it has been made and enforcement is sought. MacDonald and Toal, *Immigration Law and Practice at 1621*. In particular, under Section 32 of the UK Borders Act 2007 (as amended), the Secretary of State has an obligation to make a deportation order in respect of a person who is not a British citizen who has been convicted in the UK of an offence and sentenced to either: (a) period of imprisonment of at least 12 months; or (b) a period of imprisonment of any duration for a particularly serious offence (as specified under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (as amended) (c. 41). Even if the 'automatic' statutory presumption does not apply, the Secretary of State can still consider that deportation is conducive to the public good, and make a deportation order on that basis. The person would then have to rely on human rights grounds in order to resist deportation: generally asylum, Article 3 (prohibiting torture, inhumane and degrading treatment) or Article 8 (the right to respect private and family life) of the ECHR or asylum. Some immigration related offences fall under the automatic deportation provisions, such as entering the UK without a passport (see Section 2(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (as amended)) or working illegally (see Section 21 of the Immigration, Asylum and Nationality Act 2006 (as amended)).
- ⁷⁵ See, for instance, *R v Governor of Durham Prison, Ex parte Singh* [1984] 1 All ER 983, [1984] 1 WLR 704, [1983] Imm AR 198; *R (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12; *The Queen (Babbar) v SSHD* [2016] EWHC 148 (Admin)
- ⁷⁶ UK Visas and Immigration and Immigration Enforcement, 'Enforcement instructions and guidance. Chapters 46 to 62: detention and removals. Chapter 55: detention and temporary release' (12 September 2016)
- ⁷⁷ UK Visas and Immigration and Immigration Enforcement, 'Enforcement Instructions and Guidance. Chapters 1 to 10: immigration offences and breaches. Chapter 5: entry in breach of a deportation order' (15 September 2016) ch 55.1.3
- ⁷⁸ Parliament, *Cedars pre-departure accommodation: Written statement - HCWS114* (21 July 2016), available at www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-07-21/HCWS114/ [accessed 2 September 2016]
- ⁷⁹ *R (on the application of S) v Secretary of State for the Home Department* [2007] EWHC 1654 (Admin), [2007] All ER (D) 290
- ⁸⁰ MacDonald and Toal, *Immigration Law and Practice at 1648-1649*
- ⁸¹ Detention Centre Rules 2001, SI 2001/238, r 11
- ⁸² HL Deb 10 May 2016, vol 771, cols 1652-1673, Immigration Act 2016 (as amended)
- ⁸³ Alison Harvey and Mikhail Karnik, for instance, emphasize that "[i]ndividuals who are detained pending deportation may not benefit from this safeguard which gives cause for concern since this group of immigration detainees experience the longest forms of indefinite detention without judicial oversight. These provisions may affect how challenges to instances of lengthy detention are brought." A Harvey and M Karnik, 'Public law problems arising from the Immigration Act 2016' (ILPA 2016), available at www.ilpa.org.uk/data/resources/32318/16.07.14-Public-Law-Problems-arising-from-the-Immigration-Act-2016-PLP-conference-paper.pdf [accessed on 29 August 2016], para 66
- ⁸⁴ Immigration Act 2016 (as amended), sch 10, s 11(1)(b)
- ⁸⁵ The Home Office lists stateless people as a separate category under 'country of nationalities' within its immigration statistics. According to the HO, statelessness exists in the case of an individual being: (1) a Kuwaiti Bidoon; or (2) recognised as such under article 1 of the 1954 Convention relating to the status of Stateless Persons. Home Office, 'User Guide to Home Office Immigration Statistics' (26 November 2015) at 17
- ⁸⁶ See also Asylum Aid and UNHCR, *Mapping Statelessness in the UK at 28-60*
- ⁸⁷ Home Office, 'User Guide to Home Office Immigration Statistics' at 80
- ⁸⁸ As well as Immigration Removal Centres, individuals can be detained under immigration powers in prisons. The immigration statistics published in November reveal that, as of 29 September 2014, 425 people were detained in prisons in England and Wales for immigration purposes, the first time that this figure had been routinely published. Prior to this statistical release, the figure of detainees held in prisons had been made available through answers to parliamentary questions. The 425 figure marks a notable decrease from previous available figures. In June 2014, there had been 790 detainees held in prisons, down from 957 at the end of 2013. Immigration Statistics, July to September 2014, HC Deb 16 June 2014, cW Written Question - 199157; HC Deb 12 December 2013, c319W, in A Joint Enquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* (2015), available at <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> [accessed 3 September 2016] at 69 (hereafter cited as 'All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention*'). See also letter from Sarah Teather MP (House of Commons) to James Brokenshire MP (Minister for Security and Immigration, Home Office) on 12 December 2014, available at <https://detentioninquiry.files.wordpress.com/2015/02/letter-from-sarah-teather-to-the-immigration-minister.pdf> [accessed 28 June 2016]. The Home Office does not publish information regarding how long detainees have been detained in prisons – in response to a parliamentary question in 2013 asking for this information, the then Immigration Minister Mark Harper replied that the information requested could only be provided at disproportionate cost. HC Deb 12 November 2013, c545W. However, Bail for Immigration Detainees have reported that, from a survey of detainees held in prisons, the average length of detention post-sentence is 115 months. Bail for Immigration Detainees, *Denial of Justice: the Hidden Use of UK Prisons for Immigration Detention. Evidence from BID's Outreach, Legal & Policy Teams* (September 2014) at 17
- ⁸⁹ Home Office, 'User Guide to Home Office Immigration Statistics' at 80
- ⁹⁰ Data provided by the Home Office (Statelessness Review Unit, Complex Case Directorate) to K Bianchini (ENS consultant researcher) in an email dated 21 June 2016 during research for the European Network on Statelessness report 'Protecting Stateless Persons from Arbitrary Detention in the United Kingdom' See Table 1 in Appendix. It should be noted that some stateless persons may not go through the statelessness determination procedures because they may have been given refugee status.
- ⁹¹ Home Office, National Statistics, 'Children Entering Detention' (26 May 2016), available at www.gov.uk/government/publications/immigration-statistics-january-to-march-2016/detention#children-

- entering-detention-solely-under-immigration-act-powers [accessed 28 September 2016]
- ⁹² Home Office, National Statistics, 'Detention', available at www.gov.uk/government/publications/immigration-statistics-october-to-december-2015/detention [accessed 4 July 2016]
- ⁹³ Home Office, 'User Guide to Home Office Immigration Statistics' at 17
- ⁹⁴ "Published data on people entering detention [...] have only been available since 2009." Ibid at 77
- ⁹⁵ Home Office, National Statistics 'Immigration Statistics. Detention tables - dt_01 to pr_01. Table dt_04: People entering detention by country of nationality, sex, place of initial detention and age' (25 February 2016), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.ods [accessed 13 March 2016]
- ⁹⁶ The category 'total detainees' sums stateless asylum and non-asylum detainees. Thus, the overall number appears higher.
- ⁹⁷ This category calculates stateless asylum and non-asylum seekers.
- ⁹⁸ The category 'total detainees' considers asylum and non-asylum detainees.
- ⁹⁹ This category combines asylum and non-asylum seekers.
- ¹⁰⁰ Minor non-asylum and asylum seekers are considered.
- ¹⁰¹ Home Office, National Statistics, 'Immigration Statistics. Detention tables - dt_01 to pr_01. Table dt_04: People entering detention by country of nationality, sex, place of initial detention and age' (25 February 2016)
- ¹⁰² Home Office, National Statistics, 'Immigration Statistics. Detention tables - dt_01 to pr_01. Table dt_06_q: People leaving detention by reason, sex, and length of detention' (25 February 2016), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.%20ods [accessed 13 March 2016]
- ¹⁰³ Home Office, National Statistics, 'Immigration Statistics. Detention tables - dt_01 to pr_01. Table dt_08: People leaving detention by country of nationality, reason, sex and age' (26 May 2016), available at www.gov.uk/government/publications/immigration-statistics-january-to-march-2016/detention#people-leaving-detention-by-nationality [accessed 26 May 2016]
- ¹⁰⁴ Data were gained through an inquiry posed by ENS to the UK government. The original table provided by the UK government can be accessed here: 'Table 37778 with 37779' (6 June 2016), available at <http://qna.files.parliament.uk/qna-attachments/520874/original/Table%2037778%20with%2037779.xlsx> [accessed 18 June 2016]; HC 23 May 2016, cW Written Question – 37778
- ¹⁰⁵ Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People; Home Office, 'Asylum Policy Instruction'
- ¹⁰⁶ See supra note 24
- ¹⁰⁷ UN High Commissioner for Refugees (UNHCR), *Handbook*
- ¹⁰⁸ Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, para 401
- ¹⁰⁹ Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, para 401
- ¹¹⁰ Ibid
- ¹¹¹ Although the wording of Article 402 suggests only those who are currently assisted by UNRWA are excluded, the policy imports requirements established in jurisprudence on Article 1D of Refugee Convention, which entails that the person left an UNRWA's area for reasons beyond their control. Home Office, 'Asylum Policy Instruction' para 5.1; Home Office, 'Country Information and Guidance Occupied Palestinian Territories (OPTs): Security and Humanitarian Situation' (Version 1.0, June 2015) para 2.1.11.
- ¹¹² Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, para 402; Home Office, 'Exclusion (Article 1F) and Article 33(2) of the Refugee Convention' (Version 6.0, 1 July 2016)
- ¹¹³ It should be noted that the Home Office Guidance on Statelessness at para 4.1 suggests that the definition of stateless person should be in line with the 1954 Convention and therefore Paragraph 401 of the Immigration Rules is internally inconsistent. This may be due to poor drafting, but it should be clarified and amended.
- ¹¹⁴ The 'Stateless Guidance' indicates that it means admissible with rights of permanent residence. See Home Office, 'Asylum Policy Instruction' 1.4 (last line), 3.4 (para 3), 6.2 (para 2)
- ¹¹⁵ The UK provisions wrongly conflate this ground to refuse leave to remain with Article 31 of the 1954 Convention which allows states to expel stateless persons lawfully in the territory on grounds of national security and public order.
- ¹¹⁶ Home Office, 'Asylum Policy Instruction' paras 5.1- 5.2
- ¹¹⁷ Ibid paras 5.2, 5.4
- ¹¹⁸ Home Office, 'Asylum Policy Instruction' para 1.2
- ¹¹⁹ Forms are available on the GOV.UK website. GOV.UK, Visas and Immigration, *Stateless, Apply to stay in the UK as a stateless person*, available at www.gov.uk/browse/visas-immigration/stateless [accessed 26 May 2016]; Immigration Rules (HC 251, 23 May 1994) (as amended) Part 1: leave to enter or stay in the UK, para 34
- ¹²⁰ Other difficulties include the lack of documents (many stateless persons do not have documents); difficulties interpreting some countries' nationality laws; tricky situations when a person should be treated as a citizen but the competent authority of the relevant state refuses to recognise them as such; and non-cooperation of other states.
- ¹²¹ Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, para 403(d)
- ¹²² Home Office, 'Asylum Policy Instruction' para 4.2
- ¹²³ Telephone interview with immigration solicitor (27 April 2016, UK)
- ¹²⁴ Home Office, 'Asylum Policy Instruction' para 4.2
- ¹²⁵ UN High Commissioner for Refugees (UNHCR), *Handbook* para 91
- ¹²⁶ European Network on Statelessness, *Regional Toolkit for Practitioners* at 9, 16
- ¹²⁷ Home Office, 'Asylum Policy Instruction' para 4.3
- ¹²⁸ Ibid para 4.3
- ¹²⁹ Ibid para 4.3.1
- ¹³⁰ Interview with N Al-Anesi, Kuwait Community Association (2 May 2016, London, UK); Interview with E Fripp, barrister (11 March 2016, London UK)
- ¹³¹ This applies even if the previous findings were made during the asylum procedures which have a lower standard of proof than statelessness cases. Home Office, 'Asylum Policy Instruction' paras 3-4
- ¹³² While there is no explicit provision which sets this out, lawyers who engage with the procedure have confirmed this practice to us. Telephone interview with immigration solicitor (27 April 2016, UK)
- ¹³³ Telephone interview with immigration solicitor (27 April 2016, UK)
- ¹³⁴ For a discussion on Section 4, see section 3.8 of this report.
- ¹³⁵ This is also the UNHCR's position. UNHCR, *Handbook* para 50
- ¹³⁶ "It observed [t]he question which should have been addressed, and answered, was whether the Libyan government recognised the Applicant as one of its nationals at the time when the decision was made." In *R (on the application of Sameda) v Secretary of State for the Home Department* (statelessness; Pham [2015] UKSC 19 applied) IJR [2015] UKUT 658 (IAC)
- ¹³⁷ *R (JM) v SSHD* (Statelessness: Part 14 of HC 395) IJR [2015] UKUT 00676 (IAC)
- ¹³⁸ Home Office, 'Asylum Policy Instruction' para 405
- ¹³⁹ Ibid para 6.4; Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, paras 410-411
- ¹⁴⁰ Home Office, 'Asylum Policy Instruction' para 3.5; Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, para 415
- ¹⁴¹ "[E]xcept that any period of overstaying for a period of 28 days or less will be disregarded." Immigration Rules (HC 251, 23 May 1994) (as amended) Part 14: Stateless People, para 407(c)
- ¹⁴² Immigration Rules (HC 251, 23 May 1994) (as amended), Appendix AR, AR2.3(c)
- ¹⁴³ Ibid
- ¹⁴⁴ Interview with E Fripp, barrister (11 March 2016, London, UK)
- ¹⁴⁵ The grounds for judicial review have traditionally been illegality, fairness, irrationality and procedural impropriety. These grounds should not be seen as exhaustive nor mutually exclusive. In an immigration context, judicial review proceedings are a request to the court to review the lawfulness of a decision made by the Secretary of State. Judicial reviews are a challenge to the way in which a decision has been made rather than the rights and wrongs of the decision. The grounds must take account of this and be properly particularised. The grounds should identify why the act of the Secretary of State is allegedly unlawful. The Law Society, *Immigration Judicial Review* (13 January 2016), available at www.lawsociety.org.uk/support-services/advice/practice-notes/immigration-judicial-review/ [accessed on 25 August 2016]. By contrast, in an appeal before the

- Immigration Tribunal, there are more grounds to challenge a decision. For instance, it is possible to argue both errors of law and facts. It is also possible to present evidence that was not previously submitted and argued facts that have arisen after the decision was made. GOV.UK, UK Visas and Immigration, *Appeals (modernized Guidance)* (28 January 2015), available at www.gov.uk/government/collections/appeals-modernised-guidance [accessed 26 August 2016]
- ¹⁴⁶ Bail for Immigration Detainees, *Up to one quarter of detainees have never had legal representation – BID* (15 March 2016), available at www.biduk.org/one-quarter-detainees-have-never-had-legal-representation-bid [accessed 30 May 2016]; P de Bruycker (ed), A Bloomfield, E L Tsourdi and J Pétin, *Alternatives to Immigration and Asylum Detention in the EU. Time for Implementation* (Odysseus Network, January 2015) at 113
- ¹⁴⁷ Interview with C Miller, solicitor (28 April 2016, Oxford, UK); Interview with A Harvey, Director of Immigration Lawyers Practitioners Association, ILPA (20 March 2016, London, UK)
- ¹⁴⁸ GOV.UK, Legal Aid Agency, *Legal Aid: Apply for Exceptional Cases* (8 December 2014), available at www.gov.uk/guidance/legal-aid-apply-for-exceptional-case-funding [accessed 28 June 2016]
- ¹⁴⁹ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 44-47
- ¹⁵⁰ Interview with C Miller; Interview with A Harvey; Telephone interview with immigration solicitor
- ¹⁵¹ UK Visas and Immigration and Immigration Enforcement, 'Enforcement instructions and guidance. Chapters 46 to 62: detention and removals. Chapter 55: detention and temporary release' ch 55.8
- ¹⁵² The regulation of detention for examination and admission of non-national to the UK is contained in the Immigration Acts 1971 to 2016.
- ¹⁵³ UK Visas and Immigration and Immigration Enforcement, 'Enforcement instructions and guidance. Chapters 46 to 62: detention and removals. Chapter 55: detention and temporary release' ch 55.1.1
- ¹⁵⁴ *Ibid* ch 5.1.1
- ¹⁵⁵ *Ibid* ch 55.3.1
- ¹⁵⁶ Interview with C Miller
- ¹⁵⁷ Bail for Immigration Detainees, *The Liberty Deficit: Long-term Detention and Bail Decision Making. A Study of Immigration Bail Hearings in the First Tier Tribunal* (November 2012); Detention Action, *The State of Detention* at 31
- ¹⁵⁸ Detention Action, *The State of Detention* at 34
- ¹⁵⁹ The reasons for detention reflect the factors influencing a decision to detain in the Enforcement Instructions and Guidance.
- ¹⁶⁰ Denholm and Dunlop, *Detention under the Immigration Acts* at 124
- ¹⁶¹ *R (on the application of Hatega) v Secretary of State for the Home Department* [2009] EWHC 1980 (Admin) [38]-[39]; Denholm and Dunlop, *Detention under the Immigration Acts* at 125-126. It should be noted that the HO Guidance states that as a guide 'removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.' UK Visas and Immigration and Immigration Enforcement, 'Enforcement instructions and guidance. Chapters 46 to 62: detention and removals. Chapter 55: detention and temporary release' ch 55.3.2.4.
- ¹⁶² *Ibid* ch 55.8 table 1
- ¹⁶³ *Ibid* ch 55.8
- ¹⁶⁴ *Ibid* ch 55.5.3
- ¹⁶⁵ *Ibid* ch 55.8
- ¹⁶⁶ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 17
- ¹⁶⁷ *Ibid*
- ¹⁶⁸ HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, *The Effectiveness and Impact of Immigration Detention Casework: A Joint Thematic Review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration* (December 2012) at 8; All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 17
- ¹⁶⁹ Immigration Act 1971, sch 2, para 21(2); Nationality, Immigration and Asylum Act 2002, s 62(3)(b)
- ¹⁷⁰ MacDonald and Toal, *Immigration Law and Practice* at 1708-1710
- ¹⁷¹ Conversation with solicitor (29 April 2016, Oxford, UK)
- ¹⁷² MacDonald and Toal, *Immigration Law and Practice* at 1708
- ¹⁷³ *Ibid* at 1695
- ¹⁷⁴ HL Deb 10 May 2016, vol 771, cols 1652 - 1673
- ¹⁷⁵ Parliament, *Home Affairs Committee* (11 October 2013), available at www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf [accessed 16 May 2016]; Tribunals Judiciary, *Bail Guidance for Judges Presiding over Immigration and Asylum Hearings* (Presidential Guidance Note No 1, 2012) para 19
- ¹⁷⁶ Parliament, *Home Affairs Committee* (11 October 2013); Close Campsfield Campaign, *Still a Travesty: Justice in Immigration Bail Hearings. Second report from the Bail Observation Project* (May 2013) at 46
- ¹⁷⁷ All Party Parliamentary Group on Migration, *Time For a Time Limit – Parliamentarians Call for a 28 Day Maximum Time Limit on Immigration Detention to be Introduced* (5 March 2015), available at www.appgmigration.org.uk/news/2015/time-time-limit-%E2%80%93-parliamentarians-call-28-day-maximum-time-limit-immigration-detention-be [accessed 18 June 2016]. 'The UK is one of only two countries within the EU not to take part in the [EU Returns] Directive [2008/115/EC]. The other country not to take part is Ireland, which has, nonetheless, set a time limit of 21 days.' All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 16
- ¹⁷⁸ UK Visas and Immigration and Immigration Enforcement, 'Enforcement Instructions and Guidance. Chapters 1 to 10: immigration offences and breaches. Chapter 5: entry in breach of a deportation order' ch 5.1.3
- ¹⁷⁹ Gatwick Detainee Welfare Group, *A Prison in the Mind: the Mental Health Implications of Detention in Brook House Immigration Removal Centre* (November 2012) at 5; G J Coffey, I Kaplan, R C Sampson and M Montagna Tucci, 'The Meaning and Mental Health Consequences of Long-term Immigration Detention for People Seeking Asylum' (2010) 70(12) *Social Science & Medicine* at 2070-2079
- ¹⁸⁰ MacDonald and Toal, *Immigration Law and Practice* at 1676
- ¹⁸¹ *R (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12
- ¹⁸² *R v Governor of Durham Prison, Ex parte Singh*, [1984] 1 All ER 983, [1984] 1 WLR 704, [1983] Imm AR 198; MacDonald and Toal, *Immigration Law and Practice* at 1708
- ¹⁸³ *Ibid* at 1680
- ¹⁸⁴ See section 2.1 of this report
- ¹⁸⁵ MacDonald and Toal, *Immigration Law and Practice* at 1680
- ¹⁸⁶ See for example *R (on the application of Sino) v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin)
- ¹⁸⁷ *Re Mahmood (Wasfi Suleman)* [1995] Imm AR 311
- ¹⁸⁸ *R (on the application of A) v Secretary of State for the Home Department* [2007] EWCA Civ 804, para 45
- ¹⁸⁹ *R (on the application of A) v Secretary of State for the Home Department* [2010] EWCA Civ 1112, All ER (D) 288; MacDonald and Toal, *Immigration Law and Practice* at 1682
- ¹⁹⁰ *R (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12
- ¹⁹¹ MacDonald and Toal, *Immigration Law and Practice* at 1683
- ¹⁹² *R (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, paras 122-128
- ¹⁹³ *Ibid* paras 127-128
- ¹⁹⁴ *R (on the application of Bashir) v Secretary of State for the Home Department* [2007] EWHC 3017 (Admin), [2007] All ER (D) 493 (Nov), para 20
- ¹⁹⁵ *R (on the application of Rostami) v Secretary of State for the Home Department* [2009] EWHC 2094 (Admin); see also *Sino v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin)
- ¹⁹⁶ *JN v United Kingdom* [2016] Application no 37289/12 (ECtHR) (holding that long periods of detention, in this case 3 years and a half, are likely to violate Article 5(1)(f) of the ECHR); *Mikolenko v Estonia* [2009] Application no 106645/05 (ECtHR) para 65. In *Mikolenko* the Court found that failure to carry out removal within a reasonable diligence and expedition was in breach of Article 5 of the ECHR. See also *Massoud v Malta* [2010] Application no 24340/08 (ECtHR) para 67. In *Massoud*, the Court looked at the way the Maltese authorities tried to remove the person to Algeria and they found them inadequate and in breach of Article 5.
- ¹⁹⁷ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 22. Based on comparative state practice study on a

- maximum period for detention of asylum-seekers, the UNHCR advocates for the shortest possible period of time. It further 'advises that individuals should be brought promptly to have their detention reviewed (within 24-48 hours) and thereafter subject to periodic reviews taking place every seven days until the one month mark, and thereafter every month until the maximum period is reached, assessing at all times the necessity of the continuation of detention.' (see also UN High Commissioner for Refugees, *Detention Guidelines*, Guideline 7, para 47(iv)). However, it stresses "that detention can generally be avoided." UNHCR, *Inquiry into the use of Immigration Detention. Written evidence to the Parliamentary Joint Committee* (2014) para 19
- ¹⁹⁸ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 22
- ¹⁹⁹ Home Office, National Statistics, 'Immigration Statistics. Detention Tables - dt_01 to pr_01.Table dt_06_q: People leaving detention by reason, sex and length of detention' (25 February 2016); Liberty prepared a similar chart for the year 2013. See All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 22.
- ²⁰⁰ Home Office, National Statistics, 'Immigration Statistics. Detention Tables - dt_01 to pr_01.Table dt_06_q: People leaving detention by reason, sex and length of detention' (25 February 2016); All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 22-23
- ²⁰¹ Home Office, National Statistics, 'Immigration Statistics. Detention Tables - dt_01 to pr_01.Table dt_06_q: People leaving detention by reason, sex and length of detention' (25 February 2016); see also Table 2 in Appendix
- ²⁰² Home Office, 'Country Returns Documentation Guide for Emergency Travel Documents November 2015' (21 December 2015)
- ²⁰³ Ibid
- ²⁰⁴ Bail for Immigration Detainees, *Travel Document Project. Cooperation and removability* (February 2012) at 2. The Chief Inspector of Prisons reports that there are delays with casework and decisions to detain are not clearly communicated and effectively reviewed. HM Chief Inspector of Prisons, *Report on an unannounced inspection of Campsfield House Immigration Removal Centre 11-21 August 2014* (Her Majesty's Inspectorate of Prisons 2015) at 14, 28; HM Chief Inspector of Prisons, *Report on an unannounced inspection of Dover Immigration Removal Centre 3-14 March 2014* (Her Majesty's Inspectorate of Prisons 2014) at 14, 30; HM Chief Inspector of Prisons, *Report on a full announced inspection of Dungavel House Immigration Removal Centre 9-20 February 2015* (Her Majesty's Inspectorate of Prisons 2015) at 14, 28-29; HM Chief Inspector of Prisons, *Report on an unannounced inspection of Haslar Immigration Removal Centre 10-11 and 17-21 February 2014* (Her Majesty's Inspectorate of Prisons 2014) at 28; HM Chief Inspector of Prisons, *Report on a full announced inspection of Morton Hall Immigration Removal Centre 4-8 March 2013* (Her Majesty's Inspectorate of Prisons 2013) at 10, 27
- ²⁰⁵ Bail for Immigration Detainees, *Travel Document Project, Nationality, Citizenship and Statelessness*, available at www.biduk.org/removability-cooperation/nationality-citizenship-statelessness [accessed 23 March 2016]
- ²⁰⁶ Bail for Immigration Detainees, *Cooperation and removability* at 5
- ²⁰⁷ See Table 3 in Appendix
- ²⁰⁸ "Deportations are a specific subset of departures which are enforced either following a criminal conviction or when it is judged that a person's removal from the UK is conducive to the public good; the deportation order prohibits the person returning to the UK until such time as it may be revoked." Home Office, National Statistics, 'Immigration Statistics. Removals and voluntary departures tables - rv_05 to rv_08_q. Notes' (25 February 2016), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/502028/%20removals3-q4-2015-tabs.ods [accessed 16 March 2016]; Home Office, 'User Guide to Home Office Immigration Statistics' at 85
- ²⁰⁹ Home Office, National Statistics, 'Immigration Statistics. Removals and voluntary departures tables - rv_05 to rv_08_q. Table rv_06: Removals and voluntary departures by country of destination and type' (25 February 2016), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/502028/%20removals3-q4-2015-tabs.ods [accessed 16 March 2016]
- ²¹⁰ Ibid
- ²¹¹ Ibid; see Table 4 in Appendix
- ²¹² Home Office, National Statistics, 'Immigration Statistics. Removals and voluntary departures tables - rv_05 to rv_08_q. Notes' (25 February 2016)
- ²¹³ Ibid
- ²¹⁴ UN High Commissioner for Refugees (UNHCR), *Options for Governments on Open Reception and Alternatives to Detention* (2015) at 1
- ²¹⁵ International Detention Coalition, *There are alternatives; Detention Action, The State of Detention* at 31
- ²¹⁶ European Network on Statelessness, *Regional Toolkit for Practitioners* at 23, 25-28, 31
- ²¹⁷ The legal basis can be found at paragraph 21 of Schedule 2 of the Immigration Act 1971 (as amended) (temporary admission or release), paragraph 29 of that schedule (bail pending appeal) and paragraphs 2 or 5 of Schedule 3 to that Act (release subject to restrictions pending deportation). In-country asylum applicants can be required to report under the application of section 71 of the Nationality, Immigration and Asylum Act 2002. Nationality, Immigration and Asylum Act 2002 (as amended)
- ²¹⁸ Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 91
- ²¹⁹ Immigration Act 1971 (as amended), s 46
- ²²⁰ A Bloomfield, 'Alternatives to Detention at a Crossroads: Humanisation or Criminalisation?' (2016) 35(2) *Refugee Survey Quarterly* at 29, 40-42; Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (as amended), s 36. It is important to note - as will be discussed below - that the International Detention Coalition and many other actors consider electronic tagging to be a type of detention and not an alternative to it.
- ²²¹ B Kankulu, *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies. National Contribution from the United Kingdom to the European Migration Network's Study* (Home Office, October 2014) at 5, 24-26, available at www.ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/28a_uk_use_of_detention_study_en_final.pdf [accessed 6 April 2016]
- ²²² Ibid at 5. The fundamental difference between temporary admission/release on restrictions and bail is that the former can be granted without the person concerned having to be detained, while the latter can only be granted once an individual has been detained and has applied for bail.
- ²²³ Ibid at 27, 30
- ²²⁴ Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 92
- ²²⁵ Bloomfield, 'Alternatives to Detention at a Crossroads' at 41
- ²²⁶ Ibid at 26, 40
- ²²⁷ Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 90
- ²²⁸ Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 81
- ²²⁹ Ibid at 81; HM Courts & Tribunals Service, HMCTS Presidents' Stakeholder Group, *Bail Management Information Period April 2012 to March 2013* (2013)
- ²³⁰ Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 81
- ²³¹ Kankulu, *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies* at 28
- ²³² Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 70
- ²³³ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 25
- ²³⁴ HC Deb, 24 November 2014, cW, in All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 21
- ²³⁵ Ibid
- ²³⁶ Home Office, National Statistics, 'Immigration Statistics - July to September 2014. Detention. Table dt_11_q: People in detention by sex and length of detention' (27 November 2014), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/377178/detention-q3-2014-tabs.ods [accessed 28 June 2016];

- see also All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 21
- ²³⁷ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 21
- ²³⁸ HC Deb, 1 December 2014, cW, in All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 21
- ²³⁹ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 25
- ²⁴⁰ Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 70
- ²⁴¹ All Party Parliamentary Group, *Inquiry into the Use of Immigration Detention* at 25
- ²⁴² Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 104
- ²⁴³ A Klein, and L Williams, 'Immigration Detention in the Community: Research on the Experiences of Migrants Released from Detention Centres in the UK' (2012) 18(6) *Population, Space and Place* 741
- ²⁴⁴ International Detention Coalition, *There are alternatives. A handbook for preventing unnecessary immigration detention (revised edition)* (September 2015) at 8, 73. Moreover, the OHCHR concluded that "[i]n designing alternatives to detention, States should observe the principle of minimum intervention and should pay attention to the specific situation of particular vulnerable groups such as children, pregnant women, the elderly, or persons with disabilities. While electronic tagging (such as ankle or wrist bracelets) was criticised as being particularly harsh, phone reporting and the use of other modern technologies were seen as good practice, especially for individuals with mobility difficulties." UNHCR and OHCHR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons* (11-12 May 2011) para 21; see also the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules). UNGA, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)' (14 December 1990) 68th Plenary Meeting (1991) UN Doc A/RES/45/110, para 2.6
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- ²⁴⁶ *Ibid*
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- ²⁴⁸ Bloomfield, 'Alternatives to Detention at a Crossroads' (2016) at 46
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- ²⁵⁰ Immigration, Refugee and Citizenship Canada, *ENF 20. Detention* (2015) at s 5.8, 5.11, in International Detention Coalition, *There are alternatives (revised edition)* at 37
- ²⁵¹ A Edwards, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* (Legal and Protection Policy Research Series, Division of International Protection, PPLA/2011/01.Rev.1, UNHCR, April 2011) at 56-58
- ²⁵² *Ibid*
- ²⁵³ *Ibid* at 60
- ²⁵⁴ *Ibid* at 65, 66, 82. Cooperation rates above 94% were achieved in 10 of 13 alternatives to detention projects in different countries. *Ibid* at 82-83
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- ²⁵⁶ IARS, *Detention Action Alternative to Detention Community Support Project April 2014 - June 2017. IARS' Evaluation of the Detention Action Community Support Project (covering June 2014 - May 2015)* (2015) at 4
- ²⁵⁷ *Ibid* at 3, 8
- ²⁵⁸ *Ibid* at 8
- ²⁵⁹ *Ibid* at 4
- ²⁶⁰ *R (on the application of S) v Secretary of State for the Home Department* [2007] EWHC 1654 (Admin), [2007] All ER (D) 290. See also the Shaw Review, which specifically investigated the welfare of vulnerable people in detention and made a number of important recommendations. With regard to children, it found that their number in immigration detention is small. S Shaw, *Review into the Welfare in Detention of Vulnerable Persons* (cm 9186, January 2016), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf [accessed 29 August 2016] at 66- 67, 96-97
- ²⁶¹ MacDonald and Toal, *Immigration Law and Practice* at 1648-1649
- ²⁶² Detention Centre Rules 2001, SI 2001/238, r 11
- ²⁶³ UK Visas and Immigration and Immigration Enforcement, 'Enforcement instructions and guidance. Chapters 46 to 62: detention and removals. Chapter 55: detention and temporary release' ch 55.9.4. Until July 2016, the pre-departure accommodation centre was Cedars House. MacDonald and Toal, *Immigration Law and Practice* at 1648, 1849 fn 7. However, Cedars has been closed and families with children will now be detained at Tinsley House. The Government considered this 'the most cost-effective way of providing the necessary component of pre-departure accommodation for the family returns process, while ensuring that safeguarding and promoting the welfare of the children involved remain a key priority.' Parliament, 'Cedars pre-departure accommodation: Written statement - HCWS114' (21 July 2016)
- ²⁶⁴ Immigration Act 2014 (as amended), s 6; UK Visas and Immigration and Immigration Enforcement, 'Enforcement instructions and guidance. Chapters 46 to 62: detention and removals. Chapter 55: detention and temporary release' para 55.9.4
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- ²⁶⁸ HM Chief Inspector of Prisons, *Report on an unannounced inspection of Campsfield House Immigration Removal Centre 11-21 August 2014* at 14, 23; HM Chief Inspector of Prisons, *Report on an unannounced inspection of Harmondsworth 5-16 August 2013* (Her Majesty's Inspectorate of Prisons 2014) at 27-28; HM Chief Inspector of Prisons, *Report on an unannounced inspection of Heathrow Immigration Removal Centre. Harmondsworth site. 7-18 September 2015* (Her Majesty's Inspectorate of Prisons 2016) at 13, 25, 26
- ²⁶⁹ Interview with C della Croce, lecturer (4 April 2016, Oxford, UK)
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- ²⁷² Interview, C della Croce
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- ²⁷⁴ *R (on the application of K) v Secretary of State for the Home Department* [2007] EWHC 980 (Admin), 150 Sol Jo LB 743; *EO (Turkey) v Secretary of State for the Home Department* [2013] EWHC 1236 (Admin); *R (on the application of Kambadzi) v Secretary of State for the Home Department* [2011] EWHC 1236 (Admin); MacDonald and Toal, *Immigration Law and Practice* at 1671
- ²⁷⁵ Detention Centre Rules, SI 2001/238, r 35
- ²⁷⁶ HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, *The Effectiveness and Impact of Immigration Detention Casework. A Joint Thematic Review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration* (December 2012). In its report in 2015, the HM Inspectorate of Prisons emphasized its regular criticism on Rule 35 reports and Home Office responses and stated that reports often fail to offer meaningful commentary and replies are dismissive.
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- ²⁷⁸ Interview with C della Croce
- ²⁷⁹ Home Office, *Detention Centre Rule 35 Audit* (February 2011). See also Bruycker, Bloomfield, Tsourdi and Pétin, *Alternatives to Immigration and Asylum Detention in the EU* at 79
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- ²⁸¹ MacDonald and Toal, *Immigration Law and Practice* at 1671
- ²⁸² G Triggs, ‘Mental Health and Immigration Detention’ (2013) 199(11) *The Medical Journal of Australia* at 721
- ²⁸³ Gatwick Detainee Welfare Group, *A Prison in the Mind* at 5
- ²⁸⁴ J Cohen, ‘Safe in Our Hands: A Study of Suicide and Self-harm in Asylum Seekers in the UK’ (2008) 15(4) *Journal of Forensic and Legal Medicine* at 235-244
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- ²⁸⁸ *Ibid* at 3
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- ³⁰⁴ Shaw, *Review* at 147-148
- ³⁰⁵ Excessive handcuffing was reported also by the HM Chief Inspector of Prisons. HM Chief Inspector of Prisons, *Report on a full announced inspection of Brook House Immigration Removal Centre 15-19 March 2010* at 9-10, 18; HM Chief Inspector of Prisons, *Report on an unannounced inspection of Harmondsworth 5-16 August 2013* at 13, 21
- ³⁰⁶ MacDonald and Toal, *Immigration Law and Practice* at 1651
- ³⁰⁷ Ousman was particularly vocal on this; the poor quality of the meals also emerges in Shaw as a problem, *Review* at 254
- ³⁰⁸ The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005
- ³⁰⁹ *R (Limbuella) v Secretary of State for the Home Department: R (Tesema) v Secretary of State for the Home Department* [2005] UKHL 66
- ³¹⁰ Home Office, ‘Reforming Support for Migrants without Immigration Status. The new system contained in Schedules 8 and 9 to the Immigration Bill’ (January 2016) para 5
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- ³¹⁵ Asylum Aid and UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in the United Kingdom*
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- ³¹⁹ Home Office, National Statistics, ‘Immigration Statistics. Detention Tables – dt_01 to pr_01.Table dt_06_q: People leaving detention by reason, sex and length of detention’ (25 February 2016)
- ³²⁰ Home Office, National Statistics, ‘Immigration Statistics. Removals and voluntary departures tables - rv_05 to rv_08.q. Table rv_06: Removals and voluntary departures by country of destination and type’ (25 February 2016)
- ³²¹ *Ibid*

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Our Network has developed rapidly since we launched in 2012, attracting over 100 members in 39 European countries (see shaded area of map). Our London-based Secretariat coordinates ENS's law & policy, awareness-raising and capacity-building activities. For information about Network activities or membership enquiries contact ENS Director Chris Nash (chris.nash@statelessness.eu).



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