



## The UK's Approach to Statelessness: Need for Fair and Timely Decisions

### Summary

This briefing considers the UK's approach to statelessness applications under Part 14 of the Immigration Rules and identifies some of the existing shortcomings in the UK's approach to statelessness. We make three main recommendations regarding: 1) quality of decisions; 2) delays in decision making; and 3) the need for legal aid.

### Introduction

The fundamental right to nationality is enshrined in Article 15 of the [1948 Universal Declaration of Human Rights](#) and is recognised in international human rights law (for example, the [Convention on the Rights of the Child](#), the [International Covenant on Civil and Political Rights](#), and the [Convention on the Elimination of All Forms of Discrimination against Women](#)). As the United Nations Refugee Agency (UNHCR) observes in its [Handbook on Protection of Stateless Persons](#), lack of nationality often results in the denial of other key rights such as the rights to vote, work, and access education and healthcare.

A stateless person is someone 'who is not considered as a national by any State under the operation of its law' according to the [1954 Convention relating to the Status of Stateless Persons](#). This Convention and the [1961 Convention on the Reduction of Statelessness](#) require States to safeguard certain rights and benefits and take measures to reduce instances of statelessness.

The 2011 report [Mapping Statelessness in the United Kingdom](#) by Asylum Aid and UNHCR discusses the causes of statelessness and highlights the harsh realities for stateless persons living in the UK. Most stateless people without legal status cannot leave the UK because no country will accept them, but without status and without permission to work, they are vulnerable to destitution, homelessness, depression, and exploitation. Their circumstance

may cause them to be separated from their families, and sometimes they are detained for years.<sup>1</sup>

Some stateless persons are rightly recognised as refugees<sup>2</sup> or obtain some other immigration status in the UK; however, until 2013, stateless persons had no option to remain lawfully in the UK based specifically on their statelessness. In April 2013, following advocacy by Asylum Aid and other organisations, the Government introduced a procedure through which eligible people can be granted leave to remain in the UK because of their statelessness, under [Part 14 of the Immigration Rules](#), on which the Government elaborates in its related [policy instruction](#).<sup>3</sup> This was a very welcome and significant step towards improving the situation of stateless persons in the UK, and it has led to some stateless persons being granted leave to remain.

## Recommendations

Although we acknowledge the Government's progress on statelessness, we are concerned that the UK's approach to statelessness applications under the Immigration Rules does not fully comply with international human rights law and that the Government does not treat statelessness as a protection issue. This briefing identifies some of the existing shortcomings in the UK's approach to statelessness and offers three main recommendations:

1. The Home Office should ensure that decisions on statelessness applications are fair.
2. The Home Office should usually decide statelessness applications within 6 months.
3. The Ministry of Justice should bring statelessness applications within scope for legal aid.

### **1. The Home Office should ensure that decisions on statelessness applications are fair.**

Thus far, there is an incredibly low rate of success on statelessness applications under the UK's new procedure – as of April 2016, only 39 applications had been granted (approximately **5.2%** of the 754 decided applications).<sup>4</sup> Proving lack of nationality can be very difficult, and we are concerned that in some cases, the Home Office does not make sufficient efforts to assist applicants with obtaining evidence of their statelessness, as should be done in accordance with the Home Office's current [statelessness policy instruction](#).<sup>5</sup> We are also concerned that

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<sup>1</sup> See European Network on Statelessness. (forthcoming November 2016). *Protecting Stateless Persons from Arbitrary Detention in the United Kingdom*.

<sup>2</sup> Stateless persons should be recognized as refugees if they meet the criteria of the [1951 Convention relating to the Status of Refugees](#).

<sup>3</sup> The current policy instruction was published in February 2016; the previous [policy instruction](#) was published in 2013.

<sup>4</sup> Data cited herein was provided by the Home Office (Statelessness Review Unit, Complex Case Directorate) to Katia Bianchini (European Network on Statelessness consultant researcher) in an email dated 21 June 2016 during research for the forthcoming European Network on Statelessness report (see note 1).

<sup>5</sup> Section 4.2 states that where an applicant has sought to provide as much information as possible, Home Office caseworkers 'must assist the applicant by interviewing them, undertaking relevant research and, if necessary, making enquiries with the relevant authorities and organisations'. The UK should also consider adopting the best practice implemented in many countries which have statelessness determination procedures, ie, formally sharing with applicants the burden of proof to

some decisions are of very poor quality and do not correctly apply relevant law and policy.<sup>6</sup> This is likely due, at least in part, to inadequate legal knowledge of some Home Office staff, which indicates a need for further training. The quality of decisions is particularly worrisome because, contrary to guidance in UNHCR's Statelessness Handbook recommending a full, independent appeal mechanism, there is no free-standing right of appeal for statelessness applications in the UK – only the possibility of an internal administrative review (introduced in February 2016). Such a remedy is inadequate, as it may simply perpetuate the Home Office's initial errors. Other potential remedies, such as judicial review, are limited in nature and will likely not be available in some cases.<sup>7</sup>

To ensure that decisions on statelessness applications are fair, it is essential that:

- Home Office caseworkers adequately assist applicants in obtaining evidence of statelessness.
- Home Office decisions are made in accordance with applicable law, including the 1954 Convention, the Immigration Rules, and the Home Office's own statelessness policy instruction.
- The Home Office ensures that its caseworkers have adequate legal training and sufficient support and time to keep updated on relevant law and policy.
- There is a full and independent right of appeal so that errors in initial decisions are more likely to be corrected.

Additionally, in order to demonstrate its commitment to quality decision-making, the Home Office should commission an independent audit of statelessness decisions and publish the results. This could be done, for example, through [UNHCR's Quality Integration Project](#), which has undertaken similar work previously. The Home Office should also, to comply with the principle of transparency, publish comprehensive, disaggregated statistics relating to statelessness applications and the detention of stateless persons.

## **2. The Home Office should usually decide statelessness applications within 6 months.**

Only 754 (47.4%) of the 1,592 applications made since April 2013 had been decided by the end of March 2016, and there are delays of three years in reaching decisions in some cases. The Home Office aims to decide most *asylum* applications within 6 months, and UNHCR guidance is that decisions on statelessness should usually be made within 6 months, with a possible extension of a further 6 months in exceptional cases. The Home Office urgently needs

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demonstrate lack of nationality. See European Network on Statelessness. (2013). [Statelessness Determination and the Protection Status of Stateless Persons](#), Section V.I.

<sup>6</sup> Some examples of poor decision making include: 1) failing to consider findings favourable to the applicant made by an Asylum Support judge; 2) granting Discretionary Leave instead of leave as a stateless person and asserting that applicant was 'admissible' to the UK and therefore not eligible for leave as a stateless person; 3) refusal without interview in 2013 (not permitted under 2013 policy); 4) agreeing to investigate with applicant's national authorities (required under 2016 policy) but doing very minimal investigation and refusing the application; and 5) refusal on basis that applicant had a 'claim' to Libyan nationality (under Immigration Rules, nationality must be assessed as at the time of the decision, rather than with respect to future possibilities). [Sameda v Secretary of State for the Home Department \(statelessness; Pham \[2015\] UKSC 19 applied\)](#) [2015] UKUT 658 (21 October 2015).

<sup>7</sup> To date, there are only two judicial review decisions arising pursuant to Part 14 of the Immigration Rules: *Sameda* (see previous footnote); and [JM v Secretary of State for the Home Department \(Statelessness: Part 14 of HC 395\)](#) [2015] UKUT 00676 (22 September 2015). Additional judicial review proceedings are pending.

to employ a sufficient number of properly trained staff to address the backlog which it has permitted to develop, and then continue assessing applications in a timely manner. If, in exceptional cases, it is not possible to meet the expectation to reach a decision within 6 months, the Home Office should inform applicants of the reason for the delay and provide a realistic estimate of when, within a further 6 months, they will reach a decision. Making decisions in a timely manner is particularly important because some stateless applicants are not able to access adequate support and live in very difficult circumstances.

### **3. The Ministry of Justice should bring statelessness applications within scope for legal aid.**

Statelessness applications are usually complex, both factually and legally, and require specialist legal advice and representation. UNHCR's Statelessness Handbook recommends that free legal assistance is available for stateless applicants who cannot afford to pay for it.<sup>8</sup> At present, however, legal aid is not available for applications to remain in the UK as a stateless person (including at the internal administrative review stage), unless exceptional case funding is granted.<sup>9</sup> Bringing statelessness applications within scope for legal aid, in line with asylum and other protection claims, would also assist the Home Office in making fair decisions, as applications made with appropriate legal advice are more likely to be better prepared and supported by adequate evidence. Exceptional case funding is not an adequate alternative, because legal advisors must undertake a significant amount of work to apply for it, for which they receive only limited remuneration if successful, and many legal advisors cannot take the risk of doing work which may not be funded. We are concerned that the absence of legal aid exacerbates the inherent difficulties of proving lack of nationality and makes the process of seeking to remain in the UK based on statelessness unfair. We note that Schedule 1 of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) has been amended to allow legal aid for victims of slavery, servitude, or forced or compulsory labour (Section 32A). We urge the Lord Chancellor to amend Schedule 1 to include assistance with applications under Part 14 of the Immigration Rules.

## **Conclusion**

The UK voluntarily agreed to comply with international standards on the treatment of stateless persons, and it was right to do so. It is in the interests of society as a whole to guarantee fairness, efficiency, and protection of fundamental rights, for stateless persons and all others who make their homes in the UK. This is so in terms of justice and in terms of common sense – making stateless persons wait for years without being allowed to work or during which they are detained whilst the Home Office makes futile efforts to remove them is detrimental to stateless persons and wastes resources.

Whilst we applaud the introduction of a procedure allowing stateless persons to be granted leave to remain in the UK, the Government must ensure that this procedure operates fairly and efficiently. This briefing offers realistic suggestions on how to improve the process. To ensure that decisions are fair, the Home Office must improve the quality of decision-making, and there should be a right of appeal so that errors are more likely to be remedied. To avoid

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<sup>8</sup> Paras 71, 76.

<sup>9</sup> Asylum Aid and Liverpool Law Clinic currently have special funding (not through legal aid) to assist stateless persons with applications to remain in the UK. We are aware of one case in which exceptional case funding has been granted.

causing stateless persons unnecessary hardships and enable them to more quickly integrate, the Home Office should address the existing backlog and decide most applications within 6 months. Finally, the Ministry of Justice should ensure that stateless people can access appropriate legal advice by bringing statelessness applications within the scope of legal aid.

## Notes

***For background, see also:***

Asylum Aid. (2013). [Asylum Aid Briefing Note on the Introduction of UK Stateless Determination Procedure Effective from 6 April 2013.](#)

Asylum Aid and UNHCR. (2011). [Mapping Statelessness in the United Kingdom.](#)

***For future reference, see also the following resources to which Asylum Aid has contributed:***

Migrants Resource Centre, University of Liverpool Law Clinic, European Network on Statelessness, and Institute on Statelessness and Inclusion. (September 2016). *Joint Submission to the Human Rights Council at the 27th Session of the Universal Periodic Review, United Kingdom* (link coming soon).

Liverpool Law Clinic and Immigration Law Practitioners' Association (forthcoming, November 2016). *Statelessness and Applications for Leave to Remain: A Best Practice Guide.*

European Network on Statelessness. (forthcoming, November 2016). *Protecting Stateless Persons from Arbitrary Detention in the United Kingdom.*

## Contact Information

This briefing was written by Cynthia Orchard, Legal Policy Officer.

For further information on the issues covered by this document, please contact:

Email: [cynthia.orchard@asylumaid.org.uk](mailto:cynthia.orchard@asylumaid.org.uk)

Tel: 0207 354 9631 x 236

### About Asylum Aid

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad. We provide free legal advice and representation to the most vulnerable and excluded asylum seekers and stateless persons, and lobby and campaign for an asylum system based on inviolable human rights principles. The Women's Project at Asylum Aid strives to obtain protection, respect and security for women seeking asylum in the UK by providing specialist advice and research and campaigning on the rights of women seeking asylum.

Further information is available from our website: [www.asylumaid.org.uk](http://www.asylumaid.org.uk)