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Liverpool Law Clinic

STATELESSNESS IN PRACTICE: IMPLEMENTATION OF THE UK STATELESSNESS APPLICATION PROCEDURE

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Any remaining errors are the authors' own.

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1 Background and objectives of the research

In 2013 the Liverpool Law Clinic began its work on assisting people who are stateless and at risk of statelessness. There were several reasons for doing so.

Firstly, the Home Office introduced a procedure in April 2013 for people to request leave to remain in the UK on the basis that they are stateless[1] and not admissible to any other country.[2] It was clear that there was a gap in provision of legal advice and assistance to people in this area. Advice and representation on statelessness was outside scope of legal aid and in the first few years after the enactment of the Legal Aid Sentencing and Punishment of Offenders Act 2012[3] it was almost impossible to get discretionary legal aid by way of a grant of exceptional case funding.

Secondly, the Law Clinic is part of the University of Liverpool School of Law and Social Justice. We teach law students though 'enquiry-based learning'.[4] Students work on real cases under the supervision of one of the Clinic lawyers. Four of the Clinic lawyers are immigration and asylum lawyers and the Clinic has a speciality in this area which is consistent with the social justice ethos of the Department. There is a synergy between our expertise, an identified need, and the opportunity to provide an interesting and informative clinical educational experience for our students.

Thirdly, the statelessness team at the Home Office is based in Liverpool and in this means that the Law Clinic is well placed to assist people at statelessness interviews. We have also been able to develop a constructive policy dialogue with the statelessness operations and policy teams and have met with them on a regular basis to discuss issues arising from the procedure.

The Law Clinic has continued its work on statelessness cases since the inception of the procedure. With others (Asylum Aid/Migrants Resource Centre,[5] the Immigration Law Practitioners Association[6] and the European Network on Statelessness[7]) we are involved with policy work on statelessness. This has included regular meetings with Home Office officials to discuss the implementation of the procedure. We have found these useful and constructive and look forward to this dialogue continuing. We made a joint submission to the United Nations Universal Periodic Review of states' human rights records in May 2017. The recommendations we set out addressed lack of legal aid, lack of an appeal right, which resulted in three statelessness-related recommendations being made to the UK government.[8]

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[1] Convention Relating to the Status of Stateless Persons 1954 http://www.unhcr.org/uk/un-conventions-on-statelessness.html. With reference to the definition in the 1954 Convention on the Status of Stateless Persons, adopted in the UK Immigration Rules, Part 14.

[2] Immigration Rules, Part 14

[3] Legal Aid, Sentencing and Punishment of Offenders Act 2012, Paras 22-32, Part 1, Sch. 1 http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted

[4] Peter Kahn, Karen O'Rourke, 'Guide to Curriculum Design: Enquiry-Based Learning' (2018) Research Gate https://www.researchgate.net/publication/242281830_Guide_to_Curriculum_Design_Enquiry-Based_Learning accessed 14.6.2018

[5] See https://www.migrantsresourcecentre.org.uk/

[6] See http://www.ilpa.org.uk/

[7] See https://www.statelessness.eu/

[8] 'Getting Statelessness on the Agenda at the Universal Periodic Review' (*Asylum Aid*, 2017) See https://www.asylumaid.org.uk/wp-content/uploads/2017/05/UPR-Summary-Getting-Statelessness-on-the-Agenda.pdf (accessed 14.6.2018); and the UPR submission itself: https://www.upr-

In 2016 the Law Clinic obtained funding from the Strategic Legal Fund[9] to undertake dedicated casework research. We have also been supported by another anonymous donor to enable the casework project to continue for two and a half years. This support has meant that we have broadened our casework considerably and developed a better understanding of trends and developments in statelessness cases. We have been able to bring together our policy and casework and we hope to continue to do this in the future.

With the help of grant funding, we have made or assisted with 33 statelessness applications over the past two years. We have received eight grants and two refusals. 23 applications remain outstanding. The specific examples in this report draw on the decisions made by the Home Office in the cases taken on over the course of the project. We also have some examples of refusals that clients had already received from the Home Office when they approached the Law Clinic. In one of these cases an existing refusal was challenged with a Pre Action Protocol letter and statelessness leave subsequently granted. In another, we made a new application and the Home Office granted statelessness leave. General examples draw on the Law Clinic's experience of Home Office decision making since 2013. We believe that we have the largest caseload relating to statelessness leave applications.

This report details some of our findings on how the procedure is working, including systemic problems and our recommendations as to how they might be resolved. We hope that it will be useful to policy makers, legal practitioners and people affected by statelessness. We hope that it will encourage more people to make statelessness leave applications where appropriate to do so and to stimulate further change.

A child's eye view of statelessness leave

I waited and waited but suddenly someone came and gave us a special post. It was the Iqama [Arabic word for ID card]….. I was over the moon. I felt a free bird and so happy.

I can still go to school and draw more pictures.

I can go swimming and go round the world.

I can visit my nanny and grandpa and cousins.

I dream to see them one day and you too.

Thank you for helping my family. You're so kind and lovely. I want to be a teacher and help cute children.

Extract from a letter from the 7 year old daughter of one of our clients.

info.org/sites/default/files/document/united_kingdom/session_27_-_may_2017/js8_upr27_gbr_e_main.pdf (accessed 27 June 2018)

[9] See http://www.strategiclegalfund.org.uk/

2 Introduction and key challenges

The UK adopted the United Nations Convention relating to the Status of Stateless Persons in April 1959 ('the Convention').[10] The Convention provides protection by way of specified rights to persons who are 'not considered as a national by any State under the operation of its law'.[11]

The introductory note to the Convention, by UNHCR, uses the language of protection. "*It establishes a framework for the international protection of stateless persons and is the most comprehensive codification of the rights of stateless persons yet attempted at the international level.*" The Convention points to the "*profound vulnerability that affects people who are stateless.*"

In November 2011 Asylum Aid and UNHCR published their report "Mapping Statelessness in the United Kingdom."[12] It called on the UK government to implement an accessible procedure to identify stateless persons and to grant them leave to remain in appropriate circumstances. In 2013 the UK introduced a statelessness application procedure which is at Part 14 of the Immigration Rules ('the Rules').[13] Those Rules make provision for the Home Office to recognise individuals as stateless. They also provide for a grant of leave to remain to stateless persons. Dependants may apply for leave to enter and to remain with the stateless person.

Data on statelessness is currently not included in the Home Office quarterly Immigration statistics.[14] The problem of unreliable data on stateless persons was identified in the 'Mapping Statelessness' report in 2011.[15] The only published data is in UNHCR statistics.[16] These show that there have been 85 grants of leave since the procedure was introduced in April 2013. In the first two years of operation only 40 grants of leave to remain were made, with a 95% refusal rate.[17] We understand that there were additional grants during the years 2015-17. We have tried to get more up-to-date figures and a breakdown of numbers of applications and grants on a yearly basis through a Freedom of Information Request.[18] The Home Office refused the request on the basis that they intend to publish the data in the future.

The procedure was warmly welcomed when it was introduced, but Asylum Aid, UNHCR and others raised concerns at the outset about some elements such as the lack of access to good legal

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[10] Convention on the Status of Stateless Persons 1954 http://www.unhcr.org/un-conventions-on-statelessness.html

[11] Article 1(1) of the Convention. The definition is considered to be customary law – see UNHCR, 'Handbook on Protection of Stateless Persons' (2014) http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf

[12] Asylum Aid, *Mapping Statelessness in the UK* (Research Paper, 24 December 2011) https://www.asylumaid.org.uk/mapping-statelessness-in-the-uk/

[13] Immigration Rules, Part 14: Stateless Persons https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons

[14] Home Office, 'Immigration Statistics, Year Ending March 2018' (2018) https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2018

[15] Asylum Aid, *Mapping Statelessness in the UK* (Research Paper, 24 December 2011) <https://www.asylumaid.org.uk/mapping-statelessness-in-the-uk/>

[16] UNHCR, 'Mid-Year Trends' (June 2017) http://www.unhcr.org/uk/statistics/unhcrstats/5aaa4fd27/mid-year-trends-june-2017.html

[17] Numbers provided to the Law Clinic through UNHCR in June 2016

[18] See https://www.whatdotheyknow.com/request/the_statelessness_determination?nocache=incoming-1158537#incoming-1158537

representation through legal aid and the absence of a statutory appeal right. We have found through our casework that these concerns were justified. The result is that decision-making is of variable quality.

The UK is ahead of many other countries in having a statelessness application procedure, but it does not treat statelessness as a protection status equivalent to refugee status or humanitarian protection. In practice, this means that there are deficiencies in the process and in the rights associated with the grant of leave.

If the Home Office decided to treat statelessness as a protection status or equivalent, alongside refugee status and humanitarian protection, a person in the stateless application procedure would have similar entitlements to an asylum applicant. These include a right of appeal and legal aid. A person with statelessness leave would have the same rights and benefits as a refugee or person with leave to remain on humanitarian protection grounds. Notable examples of rights that those with statelessness leave do not have at present include access to home student fees and access to student finance in order to attend University, and entitlement to social housing and other benefits.

The description in the introductory note to the Convention of the '*profound vulnerability'* of many stateless people is correct. We have seen it in our casework and through it we have identified ways in which the procedure could be modified to reduce rather than reinforce this vulnerability.

The key challenges, examined in detail in this report, are:

a. Decision-making is inconsistent and at times poor. This is compounded by the lack of legal aid and the absence of a statutory appeal right. Particular problems have arisen with basic country information. It is unclear how the Home Office interprets "shared burden", in particular when it takes steps to investigate a person's statelessness through interviews or enquiries. Its guidance is reasonably clear but we do not always see this reflected in practice. There is a lack of Home Office guidance addressing related applications involving stateless persons. There are delays in processing claims – especially those of adults without dependent children. Cases can be outstanding for periods in excess of 20 months.

b. A lack of legal aid means many applicants do not have legal representation. This makes it difficult for people to make informed decisions about whether or not statelessness (or another) claim is most appropriate. It also means that applications are neither prepared nor evidenced as well as they could be leading to more refusals and repeat applications.

c. Lack of appeal right means that there is insufficient judicial scrutiny. Administrative review is not a sufficient remedy as it is limited in scope and conducted internally. Judicial Review does not commonly require the court to make factual findings, but the facts are often in dispute where there is a contested statelessness decision. It is also is expensive (for both sides), slow, sometimes opaque, and difficult to access.

d. We have found links between trafficking and statelessness cases. The statelessness applications process and the NRM processes do not always work well together for the benefit of stateless victims of trafficking.

e. There are deficiencies in the entitlements of individuals in the statelessness application procedure. It is not clear that they are entitled to Home Office accommodation and support,

they are not exempt from charging for secondary health services and there is no provision for permission to work.

f. There are deficiencies in the entitlements of individuals who have statelessness leave. The initial grant of leave is 30 months. They are not eligible for home student fees or student finance, which means university level study is inaccessible. They are not exempt from charging for secondary health services, they are not eligible for social housing and they are excluded from making claims for criminal injuries compensation.

3 The statelessness leave application procedure.

The relevant Immigration Rules are at Part 14.[19] The Home Office has produced guidance to the Rules,[20] which we understand will be reviewed in mid-2018. This guidance refers to, and in parts replicates, the UNHCR Handbook on Protection of Stateless Persons.[21]

Part 14 of the Immigration Rules, paragraphs 401- 405, sets out the requirements the applicant must meet to be granted leave to remain as a stateless person. Paragraph 401 replicates the definition found in the 1954 Convention.[22] Paragraph 402 sets out the criteria for excluding a person from recognition as a stateless person for the purposes of Part 14 of the Rules.[23] If the Secretary of State recognises that a person is stateless under paragraph 401 they must meet additional criteria in order to be granted leave to remain. The requirements for leave to remain are at paragraph 403. These include a requirement that the person is not 'admissible' to their country of former habitual residence or any country. The Home Office guidance explains admissibility as 'admissibility for the purposes of permanent residence'.[24]

There are refusal criteria in paragraph 404 and these import the general grounds for refusal set out in paragraph 322 of the Rules.

If successful a stateless person will be granted a period of leave of 30 months (paragraph 405). After a period of 5 years where the most recent grant of leave was under Part 14, and providing they continue to meet the requirements of paragraph 403, a person can apply for Indefinite Leave.

Liverpool Law Clinic and ILPA have published a detailed best practice guide on the procedure.[25] The electronic immigration network (EIN) has a resource page[26] which is kept up to date with case law.

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[19] Home Office, 'Immigration Rules Part 14: Stateless Persons' (2016) https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons

[20] Home Office, *Asylum Policy Instruction: Statelessness and Application for Leave to Remain* (Guidance Paper, 18 February 2016) https://www.gov.uk/government/publications/stateless-guidance

[21] UNHCR, 'Handbook on Protection of Stateless Persons' (2014) http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf

[22] Convention Relating to the Status of Stateless Persons 1954 http://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html

[23] These are very similar to those excluding refugees from the protection of the 1951 UN Convention on the Status of Refugees, Articles 1D to 1F. See UNHCR, 'Convention and Protocol Relating to the Status of Refugees' available: https://tinyurl.com/y7hn67g7

[24] Home Office, Asylum policy Instruction. Statelessness and Applications for Leave to Remain 18 February 2016. Para 1.4 https://www.gov.uk/government/publications/stateless-guidance

[25] Sarah Woodhouse, Judith Carter, ILPA , University of Liverpool Law Clinic, *Statelessness and applications for leave to remain: A best practice guide* (Guidance Paper, 3 November 2016) http://www.ilpa.org.uk/resource/32620/statelessness-and-applications-for-leave-to-remain-a-best-practice-guide-dr-sarah-woodhouse-and-judi

[26] Electronic Immigration Network, 'Statelessness' https://www.ein.org.uk/members/theme/2327

4 The initial application

The Rules require an applicant to make an application for leave as a stateless person on a FLR (S) form[27] (the initials refer to Further Leave to Remain (Stateless)). The form is relatively simple, especially when compared with other Home Office application forms. However, it is likely that many applicants will not have legal representation and the guidance attached to the form may be misleading in places, for example it only points applicants towards dealing with statelessness and not with admissibility.[28] The application is made by post to Liverpool and is free. The form includes a list of the kind of evidence the applicant needs to provide (letters from embassies, etc.).

4.1 Accessing the most appropriate procedure

There is a cost in both resources and time when a person goes through both the asylum and statelessness procedure unnecessarily.

Most statelessness leave applicants have been through the asylum procedure. However a significant number of the clients we have worked with have not claimed asylum or have abandoned their claim at an early stage. Some of these clients may have been able to make a claim that they are refugees under Article 1D of the 1951 Convention, which provides for automatic acquisition of refugee status where UNRWA protection has been lost.[29]

There are some cases where an application for statelessness leave is the more appropriate procedure, but there is a concern that some people are only making that application after their asylum claim fails. We have cases which have succeeded and were strong applications in the statelessness procedure, but which were never likely to succeed in the asylum procedure.

In the article 1D cases that we have dealt with there have factual, evidential, legal or other procedural reasons for not advising clients to claim asylum for that reason. We have referred out some clients to make such claims.

There are a number of reasons why people may go through the asylum process where the statelessness application process would be more appropriate:

- Where a person cannot return to their home country the assumption is likely to be that making a protection claim is appropriate (asylum or Article 3 ECHR). In many cases this is correct, but some legal advisers are not routinely considering statelessness as an option.
- In many cases a delay in claiming asylum would have negative consequences for a person's credibility should they later need to rely on an asylum claim - so the safest advice is to apply for asylum first.
- Advice, assistance and representation regarding Part 14 of the Rules is not in scope of legal aid. Exceptional Case Funding[30] (ECF) may be available in some cases but someone must

[27] Application for leave to remain as a stateless person and a Biometric Immigration Document Version 11/2016. https://www.gov.uk/government/publications/application-to-extend-stay-in-uk-as-stateless-person-form-flrs

[28] See section 9 FLR(S)

[29] Article 1D, UN Convention relating to the Status of Refugees, http://www.refworld.org/docid/3be01b964.html; B.6.b best practice guide

[30] Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 10. Also see http://www.publiclawproject.org.uk/exceptional-funding-project#howcanplphelp (accessed 25 June 2018)

apply for it, which is itself time consuming. Were legal aid made available for statelessness applications on the same basis as for protection claims it is more likely that lawyers would consider and advise on it as an alternative to an asylum claim.

- Where a person is destitute or homeless and urgently requires accommodation. Support used to be available under section 4(1) of the Immigration and Asylum Act 1999 but this was repealed in January 2018.[31] Whilst it is possible for the Home Office to provide support to statelessness applicants under paragraph 9, Part 1 of Schedule 10 to the Immigration Act 2016[32] it has not been made clear if or how this will be done. Support is available for an asylum seeker or failed asylum seeker under certain conditions.[33]
- There is a lack of awareness of the statelessness application procedure both within the Home Office and more generally. This means that people may not be directed to the procedure from the Asylum Screening Unit or other parts of the Home Office. Access to legal aid would make it more likely that potential applicants would get good legal advice at an early stage; and that fewer claimants would go through the asylum process.
- The asylum procedure has safeguards –crucially a right of appeal. Even if the appeal is unsuccessful findings of fact made in an asylum appeal may be useful to a person who subsequently makes a claim under Part 14.
- Refugee status and humanitarian protection leave provide a higher level of associated rights (e.g. student loans). This makes it a more attractive process for most applicants even if it is not the most appropriate.

If potential applicants were able to access the statelessness application procedure more easily, with fewer disadvantages as compared to asylum seekers, there would be no advantage in people taking a circuitous route via the asylum procedure.

As the statelessness application procedure becomes better known, we hope that this will be a diminishing problem. We are aware that the Home Office is amending the leaflet given to new asylum applicants to refer to the statelessness application procedure and this is welcome. Practitioners in England and Scotland have participated in training provided by ILPA,[34] the Law Clinic and Asylum Aid[35] on the statelessness determination procedure. However, potential applicants need good advice to make well-informed decisions about which process is right for them. Unless legal work regarding applications under Part 14 is brought within scope of legal aid this advice is unlikely to be widely available and statelessness applications will remain a marginal area for many legal practitioners.

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[31] Section 4(1) of the 1999 Act was repealed on the 15 January 2018 by the Immigration Act 2016. See Home Office, 'Support Provided Under section 4(1) of the Immigration and Asylum Act 1999: Handling Transitional Cases' (Guidance Paper, 16 February 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682498/section-4_1_-handling-transitional-cases-v1.0ext.pdf (accessed 25 June 2018

[32] http://www.legislation.gov.uk/ukpga/2016/19/schedule/10/enacted (accessed 25 June 2018)

[33] Immigration and Asylum Act 1999, s 4 https://www.legislation.gov.uk/ukpga/1999/33/section/4; Asylum Support Appeals Project, *Section 4 Support* (Factsheet, April 2016), available at <https://www.asaproject.org/uploads/Factsheet-2-section-4-support.pdf> (accessed 25 June 2018)

[34] See http://www.ilpa.org.uk/ (accessed 25 June 2018)

[35] See https://www.asylumaid.org.uk/ (accessed 25 June 2018)

Home Office fails to refer family to statelessness leave procedure

A stateless Palestinian man born and formerly resident in the UAE, with his family as dependants, applied for asylum in late 2015. He was unable to articulate a fear of persecution at the screening interview and the officer advised him that asylum was not the right claim so he withdrew it. He took further advice and decided that he had no option but to claim asylum as his particular circumstances meant that the family would not be permitted to enter the country they had left. He made further submissions and then decided to attempt voluntary return. When it transpired that voluntary return was impossible he made further submissions again. The case went in and out of further submissions for a period in excess of 12 months. A solicitor drafted very weak further submissions, which did not amount to an asylum claim and made no reference to statelessness.

The Home Office papers reveal that officials recognised throughout 2016 that issues of statelessness arose. Despite this and numerous contacts with the Home Office, officials did not refer the family to the statelessness determination procedure.

With the help of the Law Clinic, in December 2016 the client made a claim for leave to remain as a stateless person with his family as dependants. The claim was decided relatively quickly (within 7 months) and leave to remain under Part 14 was granted.

The client and his family received support for a period of 18 months from social services. This involved a move between two houses which caused disruption to the children's education. The welfare of all the family members was seriously affected.

Had the family made a statelessness application at an earlier stage it is likely that their case would have been resolved earlier. This would have resulted in an earlier grant of leave, lessened disruption to the children's education and minimised the resource implications for the Home Office and the local authority social services department.

Judge's findings in an asylum appeal

A Palestinian (born and formerly resident in a Gulf Country) man's asylum claim was refused. He appealed. The appeal was dismissed but the Immigration Judge, in dismissing it, made findings that he is stateless and unable to return to the country of his former habitual residence.

Although his appeal was dismissed, these findings are extremely valuable to the client. They should make determination of his application for leave to remain under Part 14 more straightforward. The appeal determination is a useful back up in making a claim within a procedure which does not itself have a right of appeal.

However, he has suffered considerable delay. He has been restricted to Home Office provided accommodation for over twelve months and has been unable to work for a lengthy period.

The P family are Palestinian and formerly resident in a Gulf country. They described a good life in that country and did not consider themselves victims of persecution. Their case was that they could not return to their home country as they no longer had a valid Iqama (residence document that depends on employer sponsorship). They felt uncomfortable making an asylum claim. They told their lawyer this but were advised to continue with asylum. They believed that this was their only option. The Home Office refused their asylum claim. They appealed the refusal but on the advice of the Judge, they withdraw their appeal.

The family then made an application for leave to remain as stateless persons. The Home Office refused it. Following a letter threatening legal action the Home Office agreed to reconsider and the family was granted leave to remain under Part 14.

The family lived in Home Office-provided accommodation during the period of their asylum claim and appeal, throughout the course of their statelessness application and until they were granted leave to remain. They received Legal Aid Agency funding for their asylum claim and aborted appeal.

Had legal aid funding been available for advice on statelessness and had they received such advice at the outset it is likely that the case would have been resolved with one claim rather than two. This would have given the family a quicker solution to their problem of statelessness. It would also have been a more effective use of Home Office resources and public funds.

4.1.1 Recommendations – the initial application

We recommend that:

- Legal aid is made available for advice and representation on statelessness applications on the same basis as for asylum and humanitarian claims so that it becomes a mainstream part of legal practice.
- Home Office accommodation and support is made available for statelessness applicants who are destitute irrespective of whether or not they have previously made an asylum claim.

5 Decision making

The quality of Home Office decision making is variable. This problem extends to other areas of Home Office[36] but in statelessness cases the lack of an appeal right against refusals means there is little judicial scrutiny. Many applicants do not get legal advice and are unrepresented because statelessness is out of scope of legal aid. This means that decision makers are not accountable and there is no emerging body of case law similar to country guidance. If legal aid were available it is likely that applications under Part 14 would be better prepared and decision makers pointed to relevant evidence with reference to the legal framework. It may also result in fewer innappropriate and repeat applications.

This section covers the problems arising from the lack of a systematic approach to decision-making; limited consideration of related matters such as deportation and family rights; poor application of the burden of proof; failure to interview the applicant or make enquiries of their state authorities; and delays at all stages.

We have attempted to understand the reasoning behind decisions by making subject access requests[37] following both grants and refusals of leave under Part 14 of the Rules. There are few notes relating to the decisions on the file and nothing which elaborates on the reasons given in the refusal letter. In some there is virtually nothing apart from a bullet point summary of the refusal letter.

Our observations on decision-making are on the basis of the case facts as we understand them, the reasoning that we see from the Home Office decision letter and the limited information on the Home Office file.

5.1 Lack of a systematic approach which reflects the structure of the Rules

There are two distinct elements in the Immigration Rules. These are: -

- Consideration of statelessness: should the person be recognised as stateless because they fall within the definition?
- Consideration of a grant of leave: should the person be granted leave to remain, do they meet the criteria and are there any reasons why leave should be refused?

The decision-maker can fail to assess the two elements separately and sequentially, sometimes entirely failing to determine statelessness. This is problematic as a person may be stateless (so should be recognised as such) but not eligible for a grant of leave to remain under Part 14 for some reason. This distinction may have a practical importance in another immigration application such as an application for revocation of a deportation order.

[36] Kate Lyons, Kirstie Brewer, 'A Lottery: Asylum System is Unjust, say Home Office Whistle-blowers' *The Guardian* (London, 11 February 2018) https://www.theguardian.com/uk-news/2018/feb/11/lottery-asylum-system-unjust-home-office-whistleblowers?CMP=share_btn_tw

[37] A procedure whereby a person could request a copy of their Home Office file under the Data Protection Act 1998; now access to data is governed by the Data Protection Act 2018 and the General Data Protection Regulation (EU) 26/679 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> (accessed 25 June 2018)

5.2 Where there is a deportation order or decision to deport

A person who is subject to a deportation order or a decision to make one cannot be granted leave as a stateless person (paragraph 404(c) and 322(1B) of the Rules).[38] That said, they may be a stateless person as defined in paragraph 401 of the Rules. It is likely that the issues of statelessness and admissibility will be central to consideration of any request for revocation of the deportation order,[39] whether or not such a request has been made alongside the Part 14 application. Many applicants without a legal representative will not appreciate that they should make a revocation application.

In December 2016 the Law Clinic submitted an application for revocation of a deportation order and also an application for leave to remain under Part 14. Within two months the Home Office refused the application for leave to remain as a stateless person on the basis of paragraph 404(c) and 322(1B) of the Rules.

The refusal states:

"In light of all the evidence above, substantive consideration has not been given to your claim that you are a stateless person or meet the requirements of paragraph 403 of the Immigration Rules. You do not qualify for leave to remain under paragraph 404 of the Immigration Rules as you are subject to a deportation order signed on [date]."

"*The application to revoke the deportation decision has been sent to criminal casework directorate.*"

The Home Office Status Review Team, which has been trained to assess statelessness, has not considered the application. A decision may be made by the Criminal Casework Directorate instead.

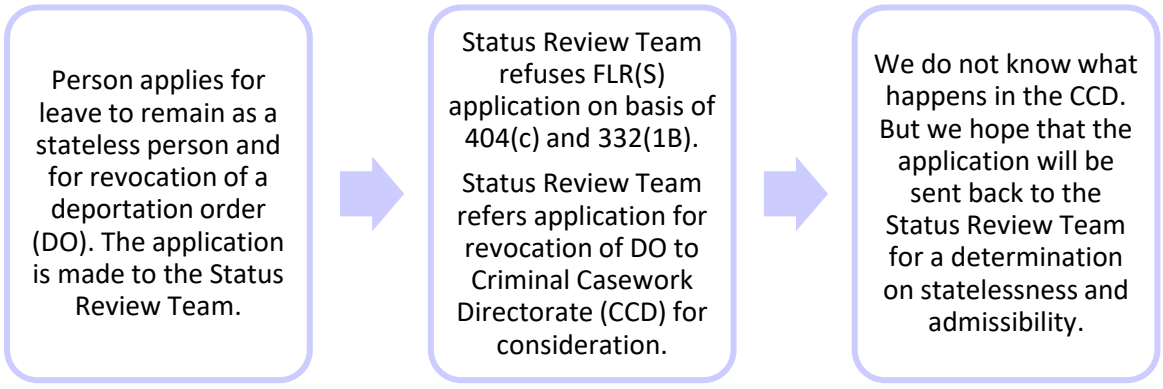
Where there is a decision to deport or a deportation order, a statelessness application should, ideally, be accompanied by a request to revoke the deportation order.[40]

We have seen decisions where the Home Office does not deal with the issue of statelessness at all on the basis that the person is subject to a deportation order or a decision to deport. The decision maker jumps immediately to a refusal of leave to remain on the basis of paragraph 404(c) of the rules (requirement to refuse while deportation proceedings are pending) without making a decision on recognition.

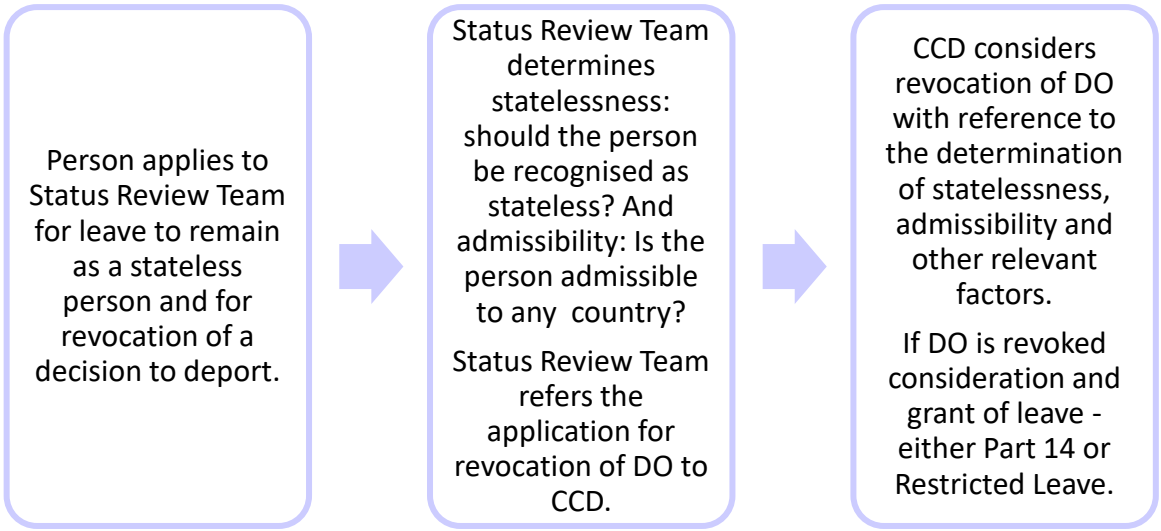
We set out the current process for the Home Office consideration of an application for statelessness leave where there are deportation proceedings, and a suggested alternative procedure, to illustrate

[38] Part 14, paragraph 404 of the Rules refers to the general grounds of refusal which are set out in paragraph 322 of the Rules. Sub-paragraph 322(1B) prevents any grant of leave to remain being made where the application is made while deportation proceedings are pending.
[39] An application for revocation of a deportation order is made under paragraph 390 of the Rules which lists the criteria for consideration of such an application.
[40] Sarah Woodhouse, Judith Carter, ILPA , University of Liverpool Law Clinic, *Statelessness and applications for leave to remain: A best practice guide* (Guidance Paper, 3 November 2016) 45 http://www.ilpa.org.uk/resource/32620/statelessness-and-applications-for-leave-to-remain-a-best-practice-guide-dr-sarah-woodhouse-and-judi (accessed 25 June 2018)

the recommendation we make. This is the current procedure:



We would suggest an alternative approach:



There are Immigration Rules (paragraphs 398 to 399), legislation (s117 Nationality Immigration and Asylum Act 2002) [41] and guidance (on criminality and Article 8 European Convention on Human Rights) [42] which guide the Home Office and the courts in interpreting the UK's human rights obligations in relation to people subject to deportation proceedings. None of these refer to statelessness.

Where a person is stateless and where they cannot be removed to another country because no country will document them, there will be no prospect of enforcing a deportation order, so it remains an impractical measure. Maintaining the deportation order and refusing to give the person permission to stay in the UK may breach Article 8 ECHR in these circumstances. It leaves the person

[41] S117 Nationality, Immigration and Asylum Act 2002 as amended by s19 Immigration Act 2014

[42] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594709/Article-8-criminality-cases-v6.0.pdf (accessed 25 June 2018) and https://www.gov.uk/government/publications/who-needs-an-entry-clearance-ecb04/ecb04-who-needs-an-entry-clearance#ecb432-how-can-a-deportation-order-be-revoked (accessed 2 July 2018)

in limbo without legal status, potentially for the rest of their lives, subject to the hostile or compliant environment.

We think Home Office caseworkers should be directed in the guidance (on criminality and Article 8 ECHR) to such considerations arising from statelessness (which includes 'admissibility' under Part 14 of the Rules) that are relevant to whether or not to make or maintain a deportation order.

5.3 Shared burden of proof

The Home Office has a 'shared burden' in assisting the applicant to evidence their claim in applications relating to statelessness status.[43] The shared burden reflects the particular challenge in statelessness cases where the applicant often has to prove a negative (that he or she is not a national of x country or cannot legally enter and live in y country). There is a clear reference to the role of the decision maker in assisting with this in the UNHCR handbook.[44] It is established in the UK through case law.[45] The Secretary of State accepts that s/he has a role to play. Home Office Guidance[46] says:

"*In all cases, the burden of proof rests with the applicant, who is expected to cooperate with the caseworker to provide information to demonstrate they are stateless and that there is no country to which they can be removed. Paragraph 403(d) of the Rules requires applicants to obtain and submit all reasonably available evidence to enable the Secretary of State to determine whether they are stateless and whether they qualify for stateless leave. It is not enough, for example, for the applicant to rely upon a simple and unsupported assertion of statelessness, or to provide no explanation or evidence in support of the application, particularly where this runs contrary to previously available information.*

However, caseworkers must make a distinction between applicants who show no interest in genuinely co-operating or providing supporting information and those who may be unable to submit much evidence or information because, for example, they do not have the resources or knowledge to obtain information about the laws of a given State. ***In such circumstances, where the available information is lacking or inconclusive, the caseworker must assist the applicant by interviewing them, undertaking relevant research and, if necessary, making enquiries with the relevant authorities and organisations.***" [authors' emphasis]

It is very unclear how the Home Office implements this Guidance in practice. The Home Office file notes have given us little insight. We have seen correspondence or communication with embassies and High Commissions in file notes. But we find that these (even if not concluded for a significant period or at all) are not mentioned in the reasons for refusal letter or the bullet point summary of this letter. We have managed to obtain from the Home Office copies of their records of contacts

[43] See the equivalent duty to cooperate in asylum cases: CJEU - C-277/11 M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General, paras 65 and 66, https://tinyurl.com/ydbnv4mb

[44] UNHCR, 'Handbook on Protection of Stateless Persons' (2014) Para 89

[45] This approach was endorsed in the cases of *R (on the application of Semeda) v Secretary of State for the Home Department* (statelessness; *Pham* [2015] UKSC 19 applied) IJR [2015] UKUT 658 (IAC).

[46] Home Office, *Asylum Policy Instruction: Statelessness and Application for Leave to Remain* (Guidance Paper, 18 February 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0__EXT_.pdf> (accessed 25 June 2018)

with embassies when we have been able to insist because the applicant knew it existed. We do not know if there is third party correspondence which is not included in the papers we receive through subject access requests.

The applicant is a stateless Palestinian who was born and lived all his life outside the Occupied Palestinian Territories, in an Arab country, before coming to UK. The Home Office has written to the Embassy of the country the client formerly lived in asking questions relating to admissibility of the applicant. As far as we can see (from the papers) the Home Office did not receive a response to this letter. If they did receive a response, it is not on the file. There are no notes of conclusions relating to the lack of a response on file. There is no reference made to it in a refusal letter.

5.4 Interviews and further enquires

The Home Office should not refuse a claim for want of information that they could gain through an interview or further enquiry. The Home Office Guidance[47] says:

"*An interview will normally be arranged to assist the applicant to fully set out their case for being considered stateless and to submit any other relevant evidence. In other instances, questions about evidence submitted as part of the application may be resolved through additional written communications. Where the applicant does not complete all relevant sections of the application form, caseworkers may request the missing information by writing to the applicant or their legal representative if they have one.*

A personal interview will not be required if there is already sufficient evidence of statelessness, it is clear that the individual is not admissible to another country, and is eligible for leave to remain on this basis.

An interview will not be arranged, and the application may be refused, where recent and reliable information including the applicant's previous evidence or findings of fact made by an immigration judge, have already established that the applicant is not stateless or is clearly admissible to another country for purposes of permanent residence and where no evidence to the contrary has been provided."

The Guidance is useful and appropriate, but the problem arises where caseworkers are reluctant to interview when they could resolve problems by doing so: where a refusal is contemplated it is more efficient to enquire before refusing. The resource implications of this can be considerable. A decision to refuse may lead to an Administrative Review, Judicial Review and/or a further statelessness application.

We have seen relatively few interviews over the period of the project.[48] This may be because the Home Office has sufficient information to make a decision. In some cases, this is correct. We are not

[47] Home Office, *Asylum Policy Instruction: Statelessness and Applications for Leave to Remain* (Guidance Paper, 18 February 2016) Section 4.2 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0__EXT_.pdf> (accessed 25 June 2018)

[48] Under the Home Office guidance in effect May 2013 to February 2016 it was obligatory for the Home Office to interview before refusing (section 2.2, https://tinyurl.com/yag5pxz9, archived, accessed 28 June 2018)

suggesting that the Home Office needs to interview or write out for further information in every case. Where the applicant is not represented it is more likely that the Home Office will need to make some form of further enquiry.

It has been rare for the Home Office to make requests to us for further information to help establish a claim in spite of the very clear suggestion in the Guidance to Home Office caseworkers to do this. Likewise, it is unusual for the Home Office to make enquiries of another body – for example an embassy. Where caseworkers do make enquiries those should be focussed on the facts of the case rather than relying on templates which don't address the relevant legal tests.[49]

[49] Eg. letter code ICD 1100 which asks 'What is UNRWA?' and 'What assistance does UNRWA provide?' sent to clients in 2014 and 2018.

6 Poor understanding of the objective evidence

This is one of the most serious problems with decision making in the statelessness application procedure. We have seen reasoning in decisions which shows a lack of understanding of the political situations in the countries from which stateless people originate. Our experience of this poor understanding has been particularly in relation to Palestinians. The Home Office Guidance says:

'*The great majority of Palestinians are stateless. Following the war in 1948, more than 750,000 Palestinians were displaced and took refuge in neighbouring Arab States and in the lands now occupied by Israel in 1967. Over the succeeding years, the number of Palestinians worldwide has grown to an estimated 8 – 9 ½ million people.* ***While the Palestinian population theoretically has had a state since the approval of UN General Assembly Resolution 1984 (1947), their claim to a right of return to their homes has been disputed by Israel. Apart from Jordan, neighbouring Arab countries have not granted citizenship to the Palestinian refugee population in their countries, leaving around 4 million individuals as de jure stateless persons.***'[50] *[authors' emphasis]*

Despite the Home Office Guidance giving this as a clear starting point we have seen decisions on Palestinian cases which do not reflect this understanding of the Palestinian situation and particularly that of Palestinians who have never been resident in the Occupied Palestinian Territories. If our caseload is representative, these make up a significant proportion of cases in the statelessness application procedure. Surprisingly, decision makers in the team do not seem to have access to adequate information on the issues faced by the people in the Palestinian diaspora. Quality control measures in the Home Office do not pick up the systemic problems decision makers have in understanding Palestinian claims.

Our Palestinian clients have lived with 'the right to return'[51] all their lives. This is a right or aspiration that has not been realised. The pain they feel is compounded by the Home Office suggestion that they can "return" if they want or that it is a minor matter.

The Palestinian right to return

The Palestinian right to return is the political position or principle that Palestinians have a right to return to the land and property they or their forebears left behind or were forced to leave in what is now Israel and the Palestinian territories as part of the 1948 Palestinian exodus - a result of the 1948 Palestine war - and due to the 1967 Six-Day War.

The right applies both to first generation Palestinian refugees and their descendants. The right to return is supported by the international community by UNGA resolution 194 (https://unispal.un.org/DPA/DPR/unispal.nsf/0/C758572B78D1CD0085256BCF0077E51A (accessed 25 June 2018). It remains an aspiration that has not become a reality. Around 5 million Palestinians worldwide cannot return although they claim that right.

"*I would love to be able to return to Palestine. It is my dream. I am not allowed in.*" (client)

[50] United Kingdom: Home Office, *Operational Guidance Note: The Occupied Palestinian Territories*, 19 March 2013, Occupied Palestinian Territories OGN v4, available at: <http://www.refworld.org/docid/5149944f2.html> (accessed 25 June 2018). There is more recent Guidance on the OPT but the OGN of 2013 deals particularly with the question of statelessness.

[51] See <http://www.badil.org/en/publication/survey-of-refugees.html>

Palestinian passports.

A Palestinian 'passport' may be held by a person who was not born in the Occupied Palestinian Territories, has never been to the OPT and who is not permitted to enter the Occupied Palestinian Territories. These passports are obtained in a variety of ways though local Palestinian Missions in conjunction with the Palestinian Authority in the West Bank. A Palestinian passport has a space for the individual's Palestinian ID number. For people who are on the population register and have had or have an ID card this begins with a 4, 7 or 8. Where this number begins with a 00 this means the person is not on the register, does not have an ID card and is not able to enter or live in the Occupied Palestinian Territories.

Palestinians from Gulf countries

Second generation stateless Palestinians who have never lived in (or been to) the OPT have few rights in the Gulf countries in which they were born. These Palestinians now have children and grandchildren - further generations of stateless people.

The large numbers of Palestinians in Gulf countries - UAE, Saudi Arabia, Kuwait - often have permission to reside based only on a work permit or *Iqama*. This means they and their dependants can only reside lawfully as long as they remain employed. If a Palestinian in this situation loses their job or if a contract is not renewed then that person no longer has the right to live lawfully in the respective country.

In Gulf countries, there is a drive towards getting more nationals, including women, into the workforce. This means that it is becoming less attractive for employers to continue to employ well-qualified migrants – especially in professional sectors. As these economies squeeze Palestinians out of work they also squeeze Palestinians out of the minimal rights they have as non-national residents. This means that Palestinians in Gulf countries are especially vulnerable to loss of status. Like all migrant workers they might lose their job and right to reside at any point. But unlike other migrant workers they have nowhere else they can go.

The examples in the boxes focus particularly on Palestinian cases as those are where we have found particular problems over the past two years. This is consistent with other findings that poor decision-making is a feature across the Home Office. The Law Society has commented on the numbers of immigration and asylum claims where decisions are overturned on appeal.[52] Nearly 50% of Home Office decisions are found to be wrong by an Immigration Judge. There is no right of appeal in a stateless case and so none of these are statelessness decisions but we have no reason to believe that decision making is any better in applications for statelessness leave than it is in other areas where there are appeal statistics.

[52] 'Serious Flaws in UK Immigration System, Law Society Warns' *BBC* (12 April 2018), <http://www.bbc.co.uk/news/uk-politics-43737542>; 'Failures in UK Immigration and Asylum Undermine the Rule of Law' (12 April 2018), <http://www.lawsociety.org.uk/news/press-releases/failures-in-uk-immigration-and-asylum-undermine-the-rule-of-law/> (accessed 20 June 2018)

The Home Affairs select committee report on the delivery of Brexit[53] comments on non-EU decision making;

"69. The evidence we have received in this inquiry has revealed a picture of Home Office teams struggling with a lack of resources, high turnover of staff and unrealistic workloads. ***A lack of experienced staff and pressure to meet targets has meant that mistakes are being made that have life-changing consequences. A lack of first-line supervision is leading to mistakes not being identified or rectified and effective feedback to improve learning from errors is absent.*** *Cases are being moved outside of service standards often with little or no justification, causing delay and frustration for the applicant and too frequently the first time a case receives adequate attention is when it goes to court. We note that the number of cases going to court has fallen but this is largely because access to justice has been restricted, not because initial decisions have improved. This is an unacceptable way to run an immigration system." [authors' emphasis]*

6.1 Where a person has an Article 8 ECHR (or other claim) as well as a statelessness claim.

A person may meet the requirements for a grant of statelessness leave under Part 14 but also have a claim for leave to remain under Appendix FM of the Rules (family and private life Rules) or Article 8 of the European Convention on Human Rights (right to family and private life, 'ECHR'). Paragraph 34BB of the Rules (introduced in January 2018), states that an applicant cannot have more than one application pending at any one time.

The position of the statelessness team has, in the past, been that they will only consider the statelessness leave application and that any other application should be made separately as a paid application on the correct form and to the relevant team. As it is no longer possible to do this concurrently we would suggest that representations and evidence on Appendix FM, Article 8 ECHR (or other) should be made with the statelessness application. The Home Office should be pressed to consider them.

Very importantly, following the case of *Ahsan v The Secretary of State for the Home Department [2017] EWCA Civ 2009*[54] an Article 8 claim made with or as part of a statelessness application should now give rise to a right of appeal on the human rights element where the application is refused. The appeal will be limited to the question of whether there would be a breach of Article 8 ECHR, but it is likely that there will be relevant factual findings on statelessness as part of the determination – see the next section.

[53] 'Home Office Delivery of Brexit: Immigration' (2018) available: <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/42104.htm#_idTextAnchor042> para 69 (accessed 20 June 2018)

[54] *Ahsan v Secretary of State for the Home Department* (Rev 1) [2017] EWCA Civ 2009 (05 December 2017), <http://www.bailii.org/ew/cases/EWCA/Civ/2017/2009.html>

6.2 Statelessness as an Article 8 ECHR right

It has been argued that a grant of leave to remain as a stateless person is an Article 8 ECHR right.[55] The authority for this comes from a series of cases before the European Court of Human Rights[56] which deal with the impact of statelessness, and related lack of documentation, on a person's social identity and every day functioning in society. If these arguments are clearly articulated in an application for statelessness leave it may then be possible to argue for an appeal right if the application is refused. Again, this appeal (and a subsequent grant of leave) will be confined to Article 8 ECHR issues. It may be that findings made by an Immigration Judge in this context can be used in a statelessness application. We have raised this in applications on which we have not yet received decisions.

6.3 Where a stateless person is entitled to Humanitarian Protection

Immigration lawyers will be familiar with the approach taken to stateless persons in the asylum process. Most practitioners have dealt with the claims of Kuwaiti Bidoons, Palestinians and others who may be recognised as stateless refugees in the UK. It is also possible (though perhaps less common) for a stateless person in the UK to be entitled to Humanitarian Protection. An example of this is a stateless Palestinian who was born and lived in Libya before coming to the UK. *A detailed explanation is in the text box below.* Following the case of *ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC)* [57] that person should be granted Humanitarian Protection in the UK.

There is a lack of clarity in the Home Office guidance on grants of Humanitarian Protection regarding the correct identification of the relevant country of return for a stateless person.

The wording of the Refugee Convention on the relevant country of return is clear:

"….. *or who,* ***not having a nationality and is outside of the country of his former habitual residence*** *is unable or, owing to such fear, unwilling to return to it.*"[58]

The provisions in the Immigration Rules on Humanitarian Protection[59] which are intended to reflect the provisions in subsidiary protection in Articles 15-19 of the Qualification Directive[60] do not deal with stateless persons explicitly. Paragraph 339c of the Immigration Rules says:

"…. *substantial grounds have been shown for believing that the person concerned, if* ***returned to the country of return****, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country;….* "

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[55] 'Strategic Litigation: An Obligation for Statelessness Determination Under the European Convention on Human Rights?' (2014) <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20Discussion%20Paper_September%202014.pdf>

[56] *Hoti v Croatia* (63311/14) [2018]; *Kim v Russia* (44260/13, 2014); *Genovese v. Malta* (53124/09, 2011); *Smirnova v. Russia* (46133/99; 48183/99, 2003)

[57] ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC) (28 June 2017) <http://www.bailii.org/uk/cases/UKUT/IAC/2017/263.html>

[58] Article 1 of the 1951 Convention on the Status of Refugees, as amended by the 1967 Protocol: <http://www.unhcr.org/uk/3b66c2aa10> (accessed 25 June 2018)

[59] Paragraph 339Ciii Immigration Rules

[60] Council Directive 2004/83/EC (2004) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

The Qualification Directive Article 2(e) clarifies the correct approach in determining a claim for subsidiary protection for a stateless person. This mirrors the Refugee Convention and reads:

"…. *if returned to his or her country of origin,* ***or in the case of a stateless person,*** *to his or her country of former habitual residence…..*")[61]

The Home Office Guidance on Humanitarian Protection states that:

"…. *the broad principles that apply to considering asylum claims may apply equally to considering whether or not a person qualifies for Humanitarian Protection (HP)* ."[62]

This is logical. If that were not the position, a stateless Palestinian whose country of former habitual residence was not the Occupied Palestinian Territories would be denied a grant of humanitarian protection in the UK. That cannot be the intention. It may help Home Office decision makers (and applicants) if the Guidance on Humanitarian Protection could specifically deal with the 'country of return' as it relates to a stateless person.

KM is a second generation Palestinian who had been born and lived all his life in Libya. The Home Office has previously accepted that he is a stateless Palestinian from Libya. He made a claim for Humanitarian Protection based on the country guidance case of ZMM Libya.

The Home Office refused his claim. The decision-maker's view was that ZMM did not apply as KM is a Palestinian national. They accepted as accurate evidence which shows KM is unable to enter the Occupied Palestinian Territories (OPT) because he does not have an ID card and will not be able to get one.

KM's claim was that this meant that as a matter of law and policy he was unable to enter the OPT *and that the relevant country of return for him was Libya.* He succeeded on appeal.

6.4 Time, delay and expedition

Our understanding from officials at the Home Office is that they aim to make a decision on a statelessness application within 12 months. The UNHCR Handbook points to the importance of states dealing with applications within a reasonable timescale. The Handbook suggest a period ranging from a few months where a claim is well evidenced and manifestly well founded[63] to six months in other cases and in exceptional cases 12 months.[64]

During 2017 the Home Office expedited some cases involving dependent young children. In a few cases the team made a decision in around 6 months. This is welcome, as is the fact that it is possible to communicate with the team about time scales.

[61] Ibid, Chapter 1, Article 2(e) <http://www.asylumlawdatabase.eu/en/content/en-qualification-directive-directive-200483ec-29-april-2004#Art%202%20QD>
[62] 'Humanitarian Protection' (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597377/Humanitarian-protection-v5_0.pdf>
[63] 'Handbook on Protection of Stateless Persons' (2014), para 74
[64] Ibid, para 75

We have other cases, including some involving children, which have been outstanding for a period in excess of twelve months: children are dependent on the main applicant as a family member but not in need of leave. The Home Office Statelessness Guidance[65] is that expedition in a child's best interests should be considered whether or not the child is a party to the application. "*The statutory duty to children includes the need to demonstrate that applications are dealt with in a timely and sensitive manner where children are involved. In accordance with the UN Convention on the Rights of the Child (UNCRC) and the Supreme Court judgment in ZH (Tanzania) (FC) (Appellant) v SSHD, the best interests of the child are a primary consideration, although not necessarily the only consideration, when making decisions affecting children. This applies whether the child is the direct subject of the application, or an adult applicant is the primary parent or guardian of a child in the UK, or has genuine and subsisting family life with a child in the UK.*"

Historically, our clients have waited over two years for a decision even in cases where there are no complicating factors.

Many applications are made by single adult men who cannot make any specific case for expedition. These are generally not dealt with within 12 months. Our current experience is of cases remaining outstanding after 18-20 months. Unlike in asylum and humanitarian protection claims there is no provision for a grant of permission to work at any time while the application is pending.

Some of these single male applicants have already been living in 'limbo' for years – attempting to return to their 'home' country and making multiple attempts to do so. Delays in decision-making means a prolonged period of uncertainty, contrary to the purpose of the procedure and the UNHCR Handbook.[66] For some people the conditions they experience whilst waiting for a decision in the UK replicate those in their country of origin. The European Court of Human Rights noted this is in *Hoti v Croatia*[67] suggesting that an application from a 'stateless migrant' is a distinct from other migrants because of the 'special features' arising from statelessness.[68]

The period of leave granted is 30 months, followed by a further period of 30 months. Removing one of these grants of leave, and giving a grant of leave of 5 years would free the team up from dealing with renewal applications.[69] Curtailment is still available to the Home Office, if needed, under paragraph 406 of the Immigration Rules.

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[65] Home Office, *Asylum Policy Instruction: Statelessness and Application for Leave to Remain* (Guidance Paper, 18 February 2016) Page 6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0__EXT_.pdf

[66] Ibid, para 75

[67] *Hoti v Croatia* (63311/14) [2018] <https://hudoc.echr.coe.int/eng#{"itemid":["001-182448"]} https://www.statelessness.eu/blog/hoti-v-croatia-landmark-decision-european-court-human-rights-residence-rights-stateless-person>

[68] Ibid, paras 131-141

[69] House of Commons, *Home Office Deliver of Brexit: Immigration* (Home Affairs Select Committee, 2018), para 77 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/42104.htm#_idTextAnchor042>

BBB is a stateless Palestinian from Gaza. He has no Palestinian passport or ID card and no means to acquire these. The Home Office is providing section 4 support on the basis that he is unable to return to Gaza for reasons beyond his control – namely the accepted lack of documentation.

He has been in this situation for 7 years. After being referred to the Law Clinic by a London based NGO he made an application for leave to remain in July 2017 and is awaiting the decision. These years in limbo have taken a toll on his mental health and he has been unproductive and unable to work over this period.

Effect of delay

BC made an application for leave to remain as a stateless person in September 2016. His claim has been outstanding for 20 months.

His partner, who has Refugee status, has given birth to two children in the time he has been waiting for a decision on his case. During this time BC's partner (who is breastfeeding) has been pressured by the benefits agency into paid work despite BC's willingness to work and support her.

BC wants to work and support the family. His inability to do this has been a strain on family relationships. With leave to remain, BC would be able to work and the family would be less likely to rely on benefits.

6.4.1 Recommendations – decision making

In order to improve the quality of decision making in statelessness cases, as well as overall efficiency, we recommend that: -

- There should be a statutory right of appeal[70] to the Tribunal in statelessness cases.
- Legal aid is made available for advice and representation on statelessness applications on the same basis as other 'protection' claims so that it becomes a mainstream part of legal practice.
- Decision makers use a template or framework which requires decision makers to approach and record decision making in a systematic way: -
    a. A determination of statelessness (paragraphs 401 and 402).
    b. A decision on leave (paragraph 403 - 405).
    c. A decision on revocation of deport and leave (paragraph 390).
- Effective quality assurance measures and regular training are put in place for Home Office decision makers, particularly on country information for key countries.
- The duration of statelessness leave is extended to 5 years consistent with the leave to remain granted to refugees and those with humanitarian protection.
- That Home Office guidance on Humanitarian Protection is amended to make it clear that, as for an asylum claim, where the claimant is stateless, the relevant country of return is the country where the person was formerly habitually resident.

[70] Nationality, Immigration and Asylum Act 1998, s 82
http://www.legislation.gov.uk/ukpga/2002/41/section/82

7 Legal advice: Role of the legal adviser and the case for legal aid.

Over recent years there have been a series of cuts to legal aid (rates of pay and scope)[71] and an ever more hostile immigration system. There are fewer providers of publically funded legal advice in immigration.[72] In some parts of the country (especially outside London) it is very difficult for people with complex immigration claims to access good legal advice. The impact of this on a particular group of people has been seen in what has been called the "Windrush scandal".[73] Our observation locally is that those providers who remain prioritise the cases of newly arrived asylum seekers over those of people who have been here for some time and might have more complex cases. Even some newly arrived asylum seekers with meritorious claims are unable to get representation because local providers have no capacity. This means that victims of trafficking and individuals who may have a fresh claim find it virtually impossible to get legal advice. Others with complex cases may be able to get exceptional case funding (ECF) but are then unable to find a solicitor or adviser to take on their case.

The statelessness application procedure was introduced after the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force.[74] This means that there was no consideration of statelessness and scope during the debate on the legal aid reforms. Advice and assistance for this area are not in scope of legal aid.

Exceptional Case funding (ECF)[75] is available but is subject to an application that is time consuming and not remunerated. Even where the Legal Aid Agency grants ECF, the rate paid is the immigration fixed fee [76] rather than the higher asylum fixed fee.[77] Statelessness cases, even with ECF funding, are likely to remain relatively uneconomic to already stretched legal aid practitioners.

Our experience is that statelessness applications are complex. Many raise historic credibility issues similar to those found in fresh asylum claims. Some require expert evidence. Nearly all require research on foreign laws including how countries implement these in practice. All the Law Clinic lawyers are experienced immigration and asylum practitioners; we have found statelessness cases amongst the most difficult we have dealt with.

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[71] The Bach Commission, *The Right to Justice* (Fabian Policy Report, 2017) https://fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB-2.pdf Amnesty International, *Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice* (Report, EUR 45/4936/2016, 2016) https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf. 'Thanks to the latest wave of sweeping budget cuts access to the law looks set to become an inaccessible luxury for many' (*Chambers Students*, November 2013) http://www.chambersstudent.co.uk/where-to-start/newsletter/legal-aid-cuts-and-reforms accessed 20 June 2018

[72] Siobhan Taylor-Ward, 'Who carries the cost? Three years after the LASPO legal aid cuts'(*The Justice Gap*, 27 April 2016) http://www.thejusticegap.com/2016/04/carries-cost-three-years-laspo-legal-aid-cuts/

[73] Fiona Bawdon, 'The Windrush scandal shows the urgent need for immigration legal aid' *The Guardian* (London, 25 April 2018) https://www.theguardian.com/commentisfree/2018/apr/25/windrush-scandal-immigration-legal-aid

[74] Legal Aid, Sentencing and Punishment of Offenders Act 2012 http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted

[75] Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 10. Also see http://www.publiclawproject.org.uk/exceptional-funding-project#howcanplphelp

[76] £234

[77] £413

In a typical case most, if not all, of the following steps will be required.[78]

1. Consideration of options (initial or fresh protection claim, statelessness claim, other human rights claim or no valid claim).
2. Detailed history. This includes analysis of and instructions on previous claims, why they have failed, and on issues of credibility.
3. Investigation of nationality and immigration law of one or more countries.
4. Application of nationality law of country of origin to client's case.
5. Approaches to Embassies or evidence of clients approaches to Embassies of relevant countries including to verify our understanding of the application of relevant foreign law to clients' cases.
6. Consideration of the situation of family members who may or may not also be stateless.
7. Where information isn't available from other sources, obtaining expert reports (country of origin, psychological etc.)
8. Preparation of claim including detailed representations.
9. Submitting application and pursuing it with the Home Office.
10. Dealing with the decision. Explaining status to client.
11. If refused, administrative review and or application for legal aid for Judicial Review in appropriate cases.

Obviously, some cases are more straightforward than others but on average we have spent more than 25 hours on each case. Whilst this may mean that a legal aid lawyer may be able to claim the 'escape fee',[79] the reality is that very few cases would get that far as they are so uneconomic for lawyers with competing priorities.

The time and resources required in an individual case may reduce as issues are clarified – for example if there were accurate and clear Home Office Country of Origin (COI) guidance on common country situations. Even with this, legal assistance will still be needed. In cases where the applicant already has leave (under Part 14 or other leave) the Home Office can refuse a renewal application with no right of appeal. Legal advice is essential in these cases to protect clients who stand to lose their right to work, rent, study and claim benefits because of a Home Office decision.

The UNHCR handbook on statelessness provides that applicants requesting a determination of their statelessness:

"*… are to have access to legal Counsel; where free legal assistance is available, it is to be offered to applicants without financial means*." [80]

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[78] The best practice guide on statelessness applications and leave to remain provides detailed advice on these steps; Sarah Woodhouse, Judith Carter, ILPA , University of Liverpool Law Clinic, *Statelessness and applications for leave to remain: A best practice guide* (Guidance Paper, 3 November 2016) Section C <http://www.ilpa.org.uk/resource/32620/statelessness-and-applications-for-leave-to-remain-a-best-practice-guide-dr-sarah-woodhouse-and-judi>

[79] Legal Aid Agency, 'Escape Cases Electronic Handbook: Controlled Work' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699975/escape-cases-electronic-handbook-v1.7.pdf

[80] UNHCR, *Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons* (2014) para 71 http://www.unhcr.org/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html

Until statelessness applications are included in scope of legal aid on the same basis as asylum, many legal practitioners will be unlikely to advise their clients about it. This means that clients are less likely to get adequate advice on their options and subsequently find it more difficult to make informed choices about whether a statelessness application is appropriate. They will also be less able to evidence and argue their claims. Crucially, they will be unable to challenge poor decision-making.

The government should recognise that people need access to high quality legal advice at an early stage in order to resolve their immigration problems. The LASPO review[81] is a chance to ensure that quality, access and sustainability in immigration services are improved so that people have access to the advice and assistance they need.

7.1.1 Recommendations - legal aid

We recommend that: -

- Legal aid is made available for advice and representation on statelessness applications on the same basis as for 'protection' claims so that it becomes a mainstream part of good quality legal practice.

[81] Ministry of Justice, *Post-implementation review of LASPO* (Review Paper, 8 March 2018) https://www.gov.uk/government/publications/post-implementation-review-of-laspo

8 Challenging decisions

Statelessness cases are factually and legally complex. Home Office decision making is too frequently flawed and the available remedies are not sufficient. The procedure cannot work properly without an appeal, which provides an independent and transparent remedy.

8.1 The need for an appeal right

There is no statutory right of appeal against a refusal of leave to remain as stateless. In their initial briefing in 2013, Asylum Aid pointed to the difficulty caused by lack of an appeal right.[82] This concern has proven to be very well founded. It is a serious lack, both for individuals and also for the development of the law in this area.

The essence of a stateless person's claim is that they have no nationality and no country where they can legally live on a permanent basis. UNHCR considers that these people are in need of international protection and so statelessness decisions should attract a right of appeal like other protection decisions.[83]

The lack of an appeal right also means there is no ongoing Tribunal scrutiny of decisions. We know that a large (50%) proportion of asylum, immigration and asylum support decisions are overturned by the Tribunal. There is no reason to suggest that the situation should be different with statelessness claims. A statutory right of appeal to the Tribunal would result in better scrutiny of decisions and guidance on particular situations from specialist judges. In particular, it would be likely to aid understanding of objective evidence with clear judicial statements informed by appellant's evidence.

The UNHCR handbook sets out the need for an adequate appeals mechanism:

"An effective right to appeal against a negative first instance decision is an essential safeguard in a statelessness determination procedure. The appeal procedure is to rest with an independent body. The applicant is to have access to legal counsel and, where free legal assistance is available, it is to be offered to applicants without financial means.

Appeals must be possible on both points of fact and law as the possibility exists that there may have been an incorrect assessment of the evidence at first instance level. Whether an appellate body can substitute its own judgment on eligibility under the 1954 Convention or whether it can merely quash the first instance decision and send the matter back for reconsideration by the determination authority is at the discretion of the State. The choice will tend to reflect the general approach to such matters in its legal/administrative system. In addition, States may permit a further judicial review,

[82] Asylum Aid, *Asylum Aid Briefing Note on the Introduction of a UK Stateless Determination Procedure effective from 6 April 2013* (Briefing Paper, April 2013) p2 https://www.asylumaid.org.uk/wp-content/uploads/2013/08/STATELESSNESS_BRIEF.pdf

[83] Paragraph 71 states that UNHCR considers an appeal a procedural guarantee; UNHCR, Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons (2014) para 71 http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html

which addresses questions of law only, and may be limited by the procedural rules of the judicial system concerned." [84]

The remedies available are Administrative Review and Judicial Review. These are inadequate. Their shortcomings are discussed below.

8.2 Administrative review

Administrative Review is an internal Home Office remedy available for certain decisions (including statelessness) where there is no right of appeal. Its parameters are set out in the Immigration Rules[85] and there is further detail in Guidance. [86]It allows the applicant to raise 'case working errors'. A person in the Home Office not connected with the original decision – in a separate team - conducts the review. Where the review is upheld the decision (in a statelessness case) is sent back to the statelessness team for a new decision. There is no prescribed timescale for a new decision.

It is possible for the refused applicant to submit further information when they request an administrative review, but the review of evidence is by its nature less wide ranging and rigorous than takes place in an appeal hearing. The process is not transparent and is not independent. The on-line form is difficult to find and use.

In asylum appeals there is a system for recording judicial findings through country guidance cases. Administrative Review does not contribute to a repository of publically available information in relation to statelessness cases.

8.3 Judicial review

Judicial Review (and onward appeal) is the only judicial remedy available in a statelessness case. It is a resource intensive remedy, usually lengthy and expensive for both parties. Legal aid is available (subject to means and merits) but through a more cumbersome process and payable at higher rates than that for representation in an asylum or human rights appeal (CLR). It looks at process and does not generally determine the questions of fact which are crucial to a statelessness decision. The result, at best, is a declaration of unlawfulness and a reference back to the Home Office for a new decision. The Judicial Review does not finally conclude the case.

There have been relatively few Judicial Reviews of statelessness decisions. We would suggest that this isn't a reflection of flawless decision making but of the fact that many people have made their application without legal advice and that Judicial Review is not in any case a suitable remedy. Poor decision making will inevitably go unchallenged and lead to repeat applications rather than the resolution of cases.

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[84] UNHCR, Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons (2014) paras 76, 77 http://www.unhcr.org/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html

[85] Para 34L-X of and Appendix AR to the Immigration Rules

[86] Home Office, *Administrative Review: Version 8.0* (Guidance Paper, 6 April 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/618626/admin_review_guidance_v8_0.pdf

An applicant is likely to be unable to work or rent a house while they are pursuing a Judicial Review – see the next section.

8.4 Applications made by people with extant leave – lack of protection for those without appeal rights

The absence of a statutory appeal right in statelessness cases presents a real problem for people seeking to switch into or extend their leave under the statelessness provisions.

It is possible for a person to apply to switch into statelessness leave. This may be from another form of limited leave or from discretionary leave granted in connection with, for example, a finding that the person is a victim of trafficking. Where a person has statelessness leave they can apply for that leave to be renewed for a second period of 30 months. Most people who are granted leave to remain under Part 14 will need to apply again towards the end of the initial 30 month period, and then apply for Indefinite Leave to remain.

Applications and claims – for example for refugee status - which do attract a right of appeal if refused, allow the applicant to enjoy a continuation of their existing immigration status while the case goes through the appeals system. This is known as 's3C leave', referring to the ongoing benefit to those appealing negative decisions of statutory leave to remain under s3C of the 1971 Immigration Act. [87] The applicant/appellant only loses their existing immigration status when the case is 'finally determined'.

By contrast, the person with extant leave who makes an application for leave or renewal of leave under Part 14 has less protection from loss of leave: the person will only have section s3C leave until the period for making an Administrative Review ends. If the Administrative Review is in favour of the applicant, they will retain their section s3C leave whilst the Home Office reconsiders the case. If an Administrative Review is refused s3C leave will end. This puts people who the Home Office has already recognised as stateless in an extremely precarious position. They are likely to lose their employment, businesses, income from benefits, home, bank account and driving licence.

Unless their application is resolved through a successful Administrative Review and further positive decision the person will lose their status whilst they pursue other remedies (most likely Judicial Review).

In a renewal application there will almost always be an Article 8 claim. This claim needs to be explicitly made in representations and clearly evidenced. The case of *Ahsan v The Secretary of State for the Home Department*[88]means that in these circumstances the person should get a right of

[87] Immigration Act 1971, *Part I, s 3C.* Home Office, *Leave extended by section 3C (and leave extended by section 3D in transitional cases)* (Guidance Paper, 6 March 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596771/3C-3D-Leave-v8_0.pdf. 's 3C leave' means that where a person applies for further leave to remain in the UK while they still have extant leave, s3C operates to continue that leave until the next application is finally determined.

[88] (Rev 1),[88] Court of Appeal - Civil Division, December 05, 2017, [2017] EWCA Civ 2009 paras 14 and 15

appeal.[89] The scope of the appeal will be limited to Article 8. The other, albeit inadequate, remedies should be pursued alongside this in relation to the statelessness decision.

If the Home Office (and Ministry of Justice) is concerned about vexatious appeals arising out of unmeritorious stateless applications then this can be dealt with by certification.[90]

All members of a stateless family have leave to remain under Part 14. They have set up a business, are renting a house, their children are at school and college. They have bank accounts and financial commitments.

They make an application for a second period of leave under Part 14. This is refused. The family members claim is that they are stateless and that there is no other country that they can go to. The Home Office accepted this in a previous application and as a result the family was granted leave to remain.

They have section 3C leave only during the period they have to lodge an Administrative Review or for the period that Review, if made, remains outstanding. If the Administrative Review is successful, they retain section 3C leave whilst a further decision is made. However, if the Administrative Review is refused they have no leave to remain.

Even issuing a Judicial Review will not restore section 3C leave. They will no longer be able to run their business and their income will cease. They are likely to lose their home. Their bank accounts might be frozen.

8.4.1 Recommendations – challenging decisions

We recommend that:-

- There should be a statutory right of appeal[91] to the Tribunal in statelessness cases.
- Legal aid is made available for representation for statelessness appeals applications on the same basis as for other protection claims.

[89] Nationality, Immigration and Asylum Act 2002 (as amended), s 82(1)(b) http://www.legislation.gov.uk/ukpga/2002/41/section/82
[90] Nationality, Immigration and Asylum Act 2002 (as amended), s 94 http://www.legislation.gov.uk/ukpga/2002/41/section/94
[91] Nationality, Immigration and Asylum Act 2002 (as amended), s 82 http://www.legislation.gov.uk/ukpga/2002/41/section/82

9 Trafficking and statelessness

People who are stateless are often marginalised. This makes some stateless people vulnerable, including to trafficking[92]. We have seen clear links between trafficking and statelessness in our caseload. A person who is abandoned or orphaned as a baby or in early childhood, whose birth is not registered and who grows up without family and social ties may (repeatedly) be a victim of trafficking. Likewise, a person who is born into a stateless population such as people of Nepalese descent in Bhutan may also become a victim of trafficking, as that person may not have good options available to resolve their situation.

The Home Office (Competent Authority) Trafficking Guidance is that a victim of trafficking should be granted the most advantageous form of leave that they qualify for.[93] This could be statelessness leave. Where this is the case it would be preferable for the Home Office to grant statelessness leave at an early stage rather than restricting consideration to discretionary leave on the basis of trafficking. This would prevent a vulnerable person from going through an additional lengthy legal process. There may be some practical implications for the Home Office processes in taking this approach but these are beyond the scope of this report.

The current Guidance to Home Office staff on Trafficking (The Front Line Guidance)[94] is addressed to asylum caseworkers who come across potential victims of trafficking. Both this and the Home Office Competent Authority Guidance refer to the cross over between human trafficking and asylum. The Guidance does not refer to statelessness. As with asylum, some statelessness applications might be granted independently of a decision on trafficking but others will be connected and relate to the same set of facts and circumstances. As with asylum, this is a decision which needs to be made on a case by case basis. However, where there are no references to statelessness in the Guidance it is less likely that caseworkers will be prompted to consider it. As the Home Office is reviewing the Guidance following the Court of Appeal decision in *the Queen on the application of PK (Ghana) and the SSHD*,[95] it would be opportune to consider introducing references to statelessness in the Guidance.

SB is from a well-recognised stateless community in South East Asia. SB's family arranged for her to travel to Europe. She arrived in the UK in 2007. Her asylum claim failed and her appeal was dismissed. SB was recognised conclusively as a victim of trafficking in 2016 and granted a period of 12 months discretionary leave. She was referred to LLC and made an application for leave to remain as a stateless person in April 2017. She is currently awaiting the outcome of this.

[92] Institute on Statelessness and Inclusion, *The World's Stateless: Children* (January 2017) http://www.institutesi.org/worldsstateless17.pdf

[93] Home Office, *Victims of modern slavery – Competent Authority guidance: Version 3.0* (Guidance Paper, 21 March 2016) 121 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf

[94] Home Office, Victims of modern slavery – Competent Authority guidance: Version 3.0 (Guidance Paper, 21 March 2016) 121 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf

[95] *PK(Ghana) v SSHD* [2018] EWCA Civ 98 http://www.bailii.org/ew/cases/EWCA/Civ/2018/98.html

There is limited legal aid available to advise victims of trafficking. Where a victim of trafficking puts forward an asylum (or other protection) claim the person will be entitled to legal aid for advice on that claim. Adequate legal aid provision is needed to enable victims of trafficking to get the most advantageous immigration status to which they are entitled. Both statelessness and trafficking are complex areas. Stateless victims of trafficking are often traumatised by their experiences, which means that advisers need time and resources to take proper instructions and advise them.

It has recently been confirmed that where a person has had a positive Reasonable Grounds[96] decision and has not had a negative Conclusive Grounds[97] decision legal aid is available to pursue the person's (non-asylum) immigration claim[98]. This can include a claim for leave to remain as a stateless person where appropriate. However, the general lack of availability of legal aid and a shortage of experienced practitioners means that a victim of trafficking who is also stateless may find it difficult to access appropriate advice in order to pursue their statelessness claim. Our experience in Liverpool is that, at times, it is impossible for a victim of trafficking to access legal advice about their immigration claims.

9.1 Recommendations – trafficking and statelessness

We recommend that:-

- Relevant Home Office guidance on trafficking (Competent Authority and Guidelines for frontline staff) should direct front line staff to the statelessness application process as well as asylum and discretionary leave.
- In reviewing the policy on discretionary leave for victims of trafficking in light of recent case law the Home Office should also address the links between statelessness and trafficking. [99] This should include setting out how referrals might be made to the statelessness determination procedure to enable a victim of trafficking to get the most advantageous leave to which they are entitled at the earliest opportunity.
- Where a person is identified as a victim of trafficking, consideration of a statelessness application should be expedited in order for the most generous grant of leave possible to be granted as soon as possible.
- Legal aid is made available for advice and representation on statelessness applications on the same basis as for other protection claims so that it becomes a mainstream part of legal practice.

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[96] Home Office, *Victims of modern slavery – Competent Authority guidance: Version 3.0* (Guidance Paper, 21 March 2016) 121 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf
See page 19 'Reasonable Grounds' is the first stage of decision making where a trafficking case has been referred to the National Referral Mechanism (NRM).

[97] ibid

[98] *Legal Aid and Immigration Advice for Victims of Modern Slavery* (*ATLEU*, 30 April 2018) http://atleu.org.uk/news/legalaidimmigrationadvice referring to Legal Aid, Sentencing and Punishment of Offenders Act 2012, Sch 1, para 32A (inserted by Modern Slavery Act 2015, s47(2))

[99] *PK (Ghana) v SSHD* [2018] EWCA Civ 98

10 Rights and entitlements

10.1 Rights and entitlements for people in the statelessness application procedure

The rights and entitlements of a person who has made an application for statelessness leave differ in important ways from a person who has made a protection claim. Individuals may qualify for certain benefits if they are, for example, recognised as a victim or trafficking or if they are in receipt of Home Office support under the Immigration and Asylum Act 1999 (known as asylum support).[100] A person who has never been through the asylum process, and so cannot be in receipt of asylum support, and who is not a victim of trafficking, is particularly disadvantaged in terms of rights and entitlements.

10.1.1 Accommodation and subsistence (section 4 support)

On 15th January 2018 section 4(1) support was abolished.[101] This had a particular impact on statelessness applicants who are not failed asylum seekers. It is not clear that there is any provision for accommodation and subsistence support available for these people during the period whilst they await the outcome of their application for leave to remain in the UK. Paragraph 9 of Schedule 10 to Immigration Act 2016[102] provides a power for the Secretary of State to provide "exceptional support". This "exceptional support" could be granted to a person in the statelessness application procedure. The current Guidance relating to people on Immigration Bail[103] is aimed at the situation of people being released from immigration detention and does not deal with the situation of statelessness applicants. There are other issues relating to Schedule 10 support that we hope will be resolved such as the process for applying and whether it will (as section 4(1) did in the past) act as a gateway to other benefits such as an exemption from health service charges. It would be useful if Home Office Guidance could be amended to give clarity on Schedule 10 support. The Asylum Support Appeals Project[104] will be publishing further information on this

[100] Immigration and Asylum Act 1999, s 4 https://www.legislation.gov.uk/ukpga/1999/33/section/4; Asylum Support Appeals Project, *Section 4 Support* (Factsheet, April 2016) http://www.asaproject.org/uploads/Factsheet-2-section-4-support.pdf

[101] Immigration Act 2016, sch.11 http://www.legislation.gov.uk/ukpga/2016/19/schedule/11/enacted Asylum Support Appeals Project, *Changes to asylum support brought in by the Immigration Act 2016* (Briefing Paper, March 2017) http://www.asaproject.org/uploads/Immigration_Act_-_Summary_of_changes.pdf

[102] Immigration Act 2016, Para 9 of Schedule 12 http://www.legislation.gov.uk/ukpga/2016/19/schedule/10/enacted>

[103] Home Office. Immigration Bail. Version 2.0 May 8th 2018. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705600/immigration-bail-v2.0ext.pdf

[104] http://www.asaproject.org/

10.1.2 Healthcare

The Department of Health Guidance in implementing the Overseas Visitor Charging Regulations (Dec 2017, 'the Regulations') sets out a charging regime for health care for migrants in the UK. [105]

Some people who are in the stateless application procedure and are refused asylum seekers receive asylum support. The Regulations list these people as being exempt from being charged for secondary healthcare services. Other groups such as recognised victims of trafficking are also listed as exempt.

A person who has made an application for statelessness leave who is not exempt from charging on any other basis is, according to the Regulations, chargeable for secondary healthcare services.

A is a stateless Palestinian. His case is in the statelessness application procedure. He formerly lived in a Gulf country but whilst on a visit to the UK to see his British parents his residence permit in that country was cancelled. This means he is unable to return to that country. He has a degenerative eye condition and needs medical attention to prevent his eyesight deteriorating to a stage where he is seriously disabled. His application has now been outstanding for over twelve months. During this period he is not, according to the Regulations, exempt from being charged for secondary health services.

10.1.3 Identity Card

Some people in the statelessness application procedure have an Asylum Registration Card (ARC).[106] This is a card issued by the Home Office documents recording personal data and which confirms that the person is known to the Home Office. A person who has been granted temporary admission is likely to have an IS 96 (pre January 2018) or BAIL 201 form (post January 2018).

However, a person who has not previously claimed asylum can be without any identity card or papers whilst they are in the statelessness application procedure. This causes difficulties in accessing health care and dealing with authorities.

The 1954 Convention places considerable importance on identity documents.

"Article 27

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document."[107]

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[105] Department of Health and Social Care, *Guidance on implementing the overseas visitor charging regulations* (Guidance Paper, May 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697626/guidance_on_implementing_the_overseas_visitor_charging_regulations_april_2018.pdf

[106] Immigration Act 1971, s 26A. Home Office, 'Application Registration Card: Version 4.0 (Guidance Paper, 13 April 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699750/application-registration-card-v4.0ext.pdf

[107] Convention Relating to the Status of Stateless Persons 1954 http://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html

It is possible for the definition of Asylum Registration Card to be extended, by secondary legislation, so that it can be issued to other claimants.[108]Under section 26A of the 1971 Act the definition of an ARC can be amended to include people other than asylum claimants.

10.1.4 Recommendations – entitlements for people in the statelessness application procedure

These recommendations are made in addition to those regarding the right of appeal and access to legal aid for those in the procedure.

We recommend that:-

- Home Office accommodation and support is made available for who have made a statelessness application and are destitute.
- That people in the statelessness application procedure have access to health services free of charge on the same basis as asylum seekers.
- An identity document similar to an Asylum Registration Card is issued to a person when they make a statelessness application.
- In any other area where there is variance between the rights and entitlements of people in the statelessness procedure and asylum seekers that these are brought into line.

10.2 Rights and entitlements of people with statelessness leave.

UNHCR's view is that statelessness is a protection status and equivalent to refugee or humanitarian protection. Despite this, there are some important areas where people in the UK with statelessness leave do not have the same rights and entitlements as refugees or those with subsidiary protection.

10.2.1 Duration of leave

If a person is successful and is granted statelessness leave the initial period of leave is 30 months. The person is required to make a further application to extend their leave before this period expires. After two periods of leave (5 years) the person is able to apply for indefinite leave. This is in contrast to leave to remain as a refugee or humanitarian protection where the grant is for an initial period of 5 years.

In relation to immigration applications, the Home Office Select Committee on Immigration after Brexit said:

"In requiring people to apply for repeated extensions before they can achieve settlement the Home Office has increased its own workload as well as added to the costs and complexity for the applicant.

[108] Immigration Act 1971, s 26A https://www.google.co.uk/search?q=Immigration+Act+1971%2C+s+26A&rlz=1C1GCEA_enGB760GB760&oq=Immigration+Act+1971%2C+s+26A&aqs=chrome..69i57.746j0j4&sourceid=chrome&ie=UTF-8

We recommend that the Government review and attempt to streamline the process for those who apply based on long residence and where it is recognised they should be able to remain in the UK". [109]

The same is true for statelessness applications.

The requirement to renew leave combined with limited access to legal aid and no right of appeal puts stateless people in a very vulnerable and insecure situation, as discussed in the section above, 'Challenging decisions'.

Were the duration of leave to be extended to 5 years, consistent with Refugee leave and Humanitarian Protection, this problem would be alleviated at least on the first renewal occasion. It would also reduce the workload of the statelessness team. Curtailment of the grant of leave under paragraph 414 of the Rules would still be available if in a particular case the Home Office were to take the view that the conditions required for leave to remain no longer exist.

10.2.2 Health care

The National Health (Charges to Overseas Visitors) Regulations 2015 were amended in 2017. The amendment came into force on 23rd October 2017.[110]

The Regulations (and amendment) make no provision in respect of people granted statelessness leave.

People with statelessness leave may qualify for free health care under another route (e.g. as a victim of domestic violence or trafficking) but they do not qualify in respect of their leave to remain as stateless.

There is provision for exemption from health service charges for all other comparable groups. Refugees, people with humanitarian protection, victims of domestic violence and human trafficking are all exempt from charging for health care. People who have paid the International Health surcharge or who have been granted an exemption from it are exempt from charges.

We have not heard of people with statelessness leave being refused health care or being asked to pay health service charges. We can only assume that the NHS is insufficiently familiar with the detail of immigration law to differentiate between Biometric Residence Permits. The Department of Health Guidance on charging[111] reinforces this practice: it suggests that there will be very few people with Biometric Residence Permits who have to pay for healthcare and people with statelessness leave are

[109] House of Commons, *Home Office Delivery of Brexit: Immigration* (Home Affairs Select Committee, 2018) para 73 https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/42104.htm#_idTextAnchor042

[110] The National Health Service (charges to overseas visitors) amendment regulations 2017, SI 756 of 2017 http://www.legislation.gov.uk/uksi/2017/756/contents/made

[111] Department of Health and Social Care, *Guidance on implementing the overseas visitor charging regulations* (Guidance Paper, May 2018) <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>

not listed. We think this is more likely to be an omission than a deliberate policy. However, as the NHS is required to enforce the Regulations increasingly strictly this omission needs to be corrected.

The Department of Health has recently done a consultation exercise on the impact of the charging Regulations on vulnerable groups and we have put our concerns to them.

10.2.3 Housing

People with statelessness leave are not eligible for social housing. Allocations policies for social housing vary between local authorities but Regulations[112] set out who is eligible to be on a housing waiting list or to be provided with housing assistance.[113] Refugees and people with humanitarian protection are included. The Regulations were amended in 2016 to include people who have leave to remain under Appendix FM as long as they have recourse to public funding. When the Regulations were amended in 2016 we asked for people with statelessness leave to be included in eligibility for social housing. They were not included which suggests that this is a policy decision rather than omission.

The UK is in breach of Article 21 of the Convention by the refusal to allow people with statelessness leave to access social housing. Their position is clearly less favourable that other 'aliens'.

"Article 21 housing As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances." [114]

This exclusion has a particular impact on the most vulnerable stateless individuals and families who may otherwise be eligible for social housing.

10.2.4 Access to higher education

Access to university is the issue which, in practice, we have seen to be the most pressing, particularly for young people with statelessness leave.

Prior to 2015 immigrants who wished to study needed to have refugee status or humanitarian protection, or have indefinite leave to remain, to be eligible for home student fees and student finance. This meant that many young people with other forms of leave to remain (mainly limited leave) were excluded from higher education or had to wait (sometimes ten years) until they qualified for indefinite leave. In 2016, as a result of *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills*[115] the Education (Student Fees, Awards and Support)

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[112] The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 http://www.housing-rights.info/docs/Allocation-of-Housing-and-Homelessness-Eligibility-English-Regulations.pdf

[113] Charted Institute of Housing, *The Law on Housing Eligibility* http://www.housing-rights.info/03_1_1_Housing_eligbility_law.php

[114] Convention Relating to the Status of Stateless Persons 1954 http://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html

[115] *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* [2015] 1 WLR 3820

Regulations 2011 were amended.[116] This amendment meant that some (but not all) young people previously excluded from eligibility for home student fees and student finance were now included.[117]

However, people, who have statelessness leave remain excluded. This particularly affects young people who may have been dependent on a parent's claim.

A person has statelessness leave because there is no country to which they can return and live as a permanent resident. That situation is unlikely to change. Stateless people are disadvantaged by the fact of their statelessness and it comes as an unwelcome surprise that on achieving leave to remain they (or their children) are unable to access higher education. A young person who is granted statelessness leave at the age of 18 will probably need to wait until he or she is at least 23 before being able to go to University. This puts the UK in breach of Article 22 of the Convention.

Article 22 public education

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.[118]

10.2.5 Criminal injuries compensation.

The Criminal Injuries Compensation Scheme[119] sets out eligibility for compensation for victims of some crimes. There is a residence requirement. The scheme specifically includes refugees and asylum seekers who are subsequently recognised as refugees. It also includes recognised victims of trafficking (paras12-16). People who are granted leave to remain under Part 14 of the Immigration Rules are not included. This may put the UK in breach of Article 23 of the 1954 Convention, subject to arguing that criminal injuries compensation is a 'public relief'.

"*Article 23 – Public relief*

[116] The Education (Student Support) Regulations 2011 http://www.legislation.gov.uk/uksi/2011/1986/contents/made (accessed 20 June 2018) were amended by the Education (Student Fees, Awards and Support)(Amendment) Regulations 2016 <http://www.legislation.gov.uk/uksi/2016/584/pdfs/uksi_20160584_en.pdf> (accessed 20 June 2018)

[117] See http://letuslearn.study/

[118] Convention Relating to the Status of Stateless Persons 1954 http://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html

[119] Ministry of Justice, *The Criminal Injuries Compensation Scheme* (Guidance Paper, 2012) paras 13, 15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243480/9780108512117.pdf>

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."[120]

10.2.6 Nationality - Excessively high fees and good character requirements

A person remains stateless (albeit sometimes with leave to remain) until they acquire a nationality. With the exception of the provisions which allow a stateless child who was born in the UK to register after 5 years[121] there are no special provisions in relation to registration or naturalisation of stateless persons in the UK. Registration and naturalisation applications are subject to the standard fees.[122] The Project for the Registration of Children as British Citizens[123] has done a great deal of research, casework and campaigning on the issue including in relation to stateless children. There is a precedent for a fee free registration application for a child born before July 1 2006 to a British father and non-British mother where the parents were not married.[124] Further precedents are being set in relation to the 'Windrush generation'[125].

It is clear that the fees are prohibitively high and we know that they include a significant amount over and above the actual cost to the Home Office in processing the application. The current fee for registering a child as British is £1012. The actual cost to the Home Office is £372[126].
The only complete solution to statelessness in the UK is acquisition of British citizenship with its associated right to bear a British passport. The high fees are a barrier to this for low-income stateless individuals and families and are contrary to the 1954 Convention.

Article 32 naturalization: The 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. [127]

The "good character requirement" may also prevent a stateless person from naturalising for a considerable period. The Home Office Guidance[128] on good character includes various immigration related infractions (illegal entry, assisting illegal immigration and evasion of immigration control) as indicators of bad character. This means that a person may be prevented from naturalising for a

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[120] Convention Relating to the Status of Stateless Persons 1954
[121] British Nationality Act 1981, Sch. 2 https://www.legislation.gov.uk/ukpga/1981/61/schedule/2
[122] Currently £1330 + £80 ceremony fee for naturalisation and £1012 for registration fees.
[123] PRBC <https://prcbc.wordpress.com/>
[124]Home Office, *Guide UKF: Registration as a British Citizen* (Guidance Paper, March 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/601496/Guide_UKF__-_March_2017.pdf
[125] Home Office, *Free Citizenship for the Windrush Generation* (23 April 2018) https://www.gov.uk/government/news/free-citizenship-for-the-windrush-generation
[126] HL Deb 12 June 2018, 791, 1655 https://hansard.parliament.uk/Lords/2018-06-12/debates/5DE6605F-5F9C-4D5E-909A-55CD245CC5F3/ImmigrationAndNationality(Fees)Regulations2018
[127] Immigration and Nationality (Fees) Regulations 2018 http://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html
[128] Home Office, *The Good Character Requirement* (Guidance Paper) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701902/annex-d-v4.0-ext.pdf

period of ten years after the commission of one of these offences. For a stateless person, who by definition does not have an alternative nationality, this is an especially harsh situation and may be a breach of Article 32 of the 1954 Convention.[129]

10.2.7 Recommendations – rights and entitlements for people with statelessness leave

We recommend that:-

- The duration of statelessness leave is extended to 5 years.
- People with statelessness leave have access to health services free of charge on the same basis as refugees and others with leave to remain in the UK.
- People with statelessness leave have access to higher education on the same basis as refugees, those with Humanitarian Protection, those with Indefinite leave to remain and others who qualify because of long residence.
- People with statelessness leave have access to social housing on the same basis as refugees, those with Humanitarian Protection and others with leave and recourse to public funds.
- People with statelessness leave have access to criminal injuries compensation on the same basis as refugees, those with humanitarian protection and indefinite leave to remain.
- People with statelessness leave have a realistic and affordable pathway to citizenship.
- In any other areas where people with statelessness leave do not have the same rights and entitlements as refugees and people with Humanitarian protection that these are brought into line.

[129] Convention Relating to the Status of Stateless Persons 1954 http://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html

11 Final conclusions and summarised recommendations

The UK is ahead of many countries in having a statelessness application procedure. We have seen the lives of stateless individuals and families in the UK dramatically improved through a grant of statelessness leave. The procedure is not working as well as it could and is failing some applicants. Decision-making is chronically slow and some decisions are flawed. Where decisions are flawed, the available procedures to challenge them are inadequate. Many statelessness applicants do not have access to any legal advice because of the limits on the provision of legal aid. A combination of these factors means that we see resources being wasted though cases being 'recycled' by repeated Home Office rejections rather than resolved.

The rights and entitlements of people in the statelessness application procedure and for people with statelessness leave are inconsistent with those of asylum applicants and refugees. It is not clear why this is the case nor whether it is intentional.

Stateless persons do not possess any nationality. However, they face significant hurdles in acquiring British citizenship. High fees and onerous character related requirements are barriers which mean that moving out of statelessness may not be a real possibility for some individuals and families.

These recommendations are in line with those put forward elsewhere. [130]

General recommendations in relation to statelessness leave application procedure

1. Legal aid is made available for advice and representation on statelessness applications on the same basis as for asylum and humanitarian claims so that it becomes a mainstream part of legal practice. This could be achieved through amendments to Schedule 1 of LASPO 2012.[131]

2. Home Office accommodation and support is made available for statelessness applicants who are destitute irrespective of whether or not they have previously made an asylum claim. This could be achieved through use of the discretion in Schedule 10 to Immigration Act 2016[132] but needs clear guidance and an applications process.

3. There should be a statutory right of appeal[133] to the Tribunal in statelessness cases. This could be achieved by amendment to section 82 (1) of the NIAA 2002[134].

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[130] For example, in the UN review of the UK's human rights record: 'Getting Statelessness on the Agenda at the Universal Periodic Review' (*Asylum Aid*, 2017) See https://www.asylumaid.org.uk/wp-content/uploads/2017/05/UPR-Summary-Getting-Statelessness-on-the-Agenda.pdf> accessed 14.6.2018; and the UPR submission itself: https://www.upr-info.org/sites/default/files/document/united_kingdom/session_27_-_may_2017/js8_upr27_gbr_e_main.pdf (accessed 27 June 2018)

[131] Legal Aid, Sentencing and Punishment of Offenders Act 2012, Sch.1, Part 1 http://www.legislation.gov.uk/ukpga/2012/10/schedule/1

[132] Immigration Act 2016, Para 9 of Schedule 12 http://www.legislation.gov.uk/ukpga/2016/19/schedule/10/enacted

[133] Nationality, Immigration and Asylum Act 1998, s 82 http://www.legislation.gov.uk/ukpga/2002/41/section/82

[134] Nationality, Immigration and Asylum Act 2002, s 82 http://www.legislation.gov.uk/ukpga/2002/41/section/82

4. Decision makers use a template or framework which requires decision makers to approach and record decision making in a systematic way: -
    d. A determination of statelessness (paragraphs 401 and 402).
    e. A decision on leave (paragraph 403 - 405).
    f. A decision on revocation of deport and leave (paragraph 390).

5. Effective quality assurance measures and regular training are put in place for Home Office decision makers, particularly on country information for key countries.

6. That Home Office guidance on Humanitarian Protection is amended to make it clear that, as for an asylum claim, where the claimant is stateless, the relevant country of return is the country where the person was formerly habitually resident.

7. Relevant Home Office guidance on trafficking (Competent Authority and Guidelines for frontline staff) should direct front line staff to the statelessness application process as well as asylum and discretionary leave.

8. In reviewing the policy on discretionary leave for victims of trafficking in light of recent case law[135] the Home Office should also address the links between statelessness and trafficking. This should include setting out how referrals might be made to the statelessness determination procedure to enable a victim of trafficking to get the most advantageous leave to which they are entitled at the earliest opportunity.

9. Where a person is identified as a victim of trafficking, consideration of a statelessness application should be expedited in order for the most generous grant of leave possible to be granted as soon as possible.

Rights and entitlements of people in the statelessness procedure

10. People in the statelessness application procedure have access to health services free of charge on the same basis as asylum seekers. This could be achieved through amendments to the National Health (Charges to Overseas Visitors) Regulations 2015 (amended in 2017) [136] and accompanying guidance.

11. An identity document similar to an Asylum Registration Card is issued to a person when they make a statelessness application. This could be achieved through an extension of the definition of 'registration card' in section 26A of the Immigration Act 1971[137] or perhaps without legislation.

12. In any other area where there is variance between the rights and entitlements of people in the statelessness procedure and asylum seekers that these are brought into line.

[135] *PK (Ghana), R (On the Application Of) v The Secretary of State for the Home Department* [2018] EWCA Civ 98
[136] SI 756 of 2017 http://www.legislation.gov.uk/uksi/2017/756/contents/made
[137] Immigration Act 1971, s 26A http://www.legislation.gov.uk/ukpga/1971/77/section/26A

Rights and entitlements for people with statelessness leave

13. The duration of statelessness leave is extended to 5 years. This could be achieved through an amendment to paragraph 405 of the Immigration Rules.

14. People with statelessness leave have access to health services free of charge on the same basis as refugees and others with leave to remain in the UK. This could be achieved though amendments to The National Health (Charges to Overseas Visitors) Regulations 2015 (amended in 2017).[138]

15. People with statelessness leave have access to higher education on the same basis as refugees, people with Humanitarian Protection, people with indefinite leave to remain and others who qualify because of long residence. This could be achieved through amendments to the Education (Student Fees, Awards and Support) Regulations 2011.[139]

16. People with statelessness leave have access to social housing on the same basis as refuges, people with Humanitarian Protection and others with leave and recourse to public finds. This could be achieved through amendments to the Allocation of Housing and Homelessness eligibility (England) Regulations 2006.[140]

17. People with statelessness leave have access to criminal injuries compensation on the same basis as refugees, people with humanitarian protection and people with indefinite leave to remain. This could be achieved through amendments to paragraphs 13 and 15 of the Criminal Injuries Compensation Scheme 2012.[141]

18. People with statelessness leave have a realistic pathway to citizenship. This could be achieved through revising fees[142] and good character requirements[143] for nationality applications (naturalisation and registration) to take into account the unique situation of stateless people and the UK's obligations under the Conventions.

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[138] SI 756 of 2017 http://www.legislation.gov.uk/uksi/2017/756/contents/made

[139] The Education (Student Support) Regulations 2011 http://www.legislation.gov.uk/uksi/2011/1986/contents/made (accessed 20 June 2018) were amended by the Education (Student Fees, Awards and Support)(Amendment) Regulations 2016 http://www.legislation.gov.uk/uksi/2016/584/pdfs/uksi_20160584_en.pdf (accessed 20 June 2018)

[140] The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 http://www.housing-rights.info/docs/Allocation-of-Housing-and-Homelessness-Eligibility-English-Regulations.pdf

[141] Ministry of Justice, *The Criminal Injuries Compensation Scheme* (Guidance Paper, 2012) paras 13, 15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243480/9780108512117.pdf

[142] Immigration and Nationality (Fees) Regulations 2018 http://www.legislation.gov.uk/uksi/2018/330/contents/made (Fees are specified through Regulations)

[143] Home Office, *Annex D to chapter 18: The good character requirement* (Guidance Paper) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701902/annex-d-v4.0-ext.pdf

19. That in any other areas where people with statelessness leave do not have the same rights and entitlements as refugees and people with Humanitarian protection that these are brought into line.