



# UNHCR submission to the *Post-Implementation Review Evidence Gathering Exercise of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*

## Introduction

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1. UNHCR, the UN Refugee Agency, welcomes the opportunity to submit evidence to the *Post-Implementation Review Evidence Gathering Exercise of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO Act).
2. UNHCR is dedicated to saving the lives of, protecting the rights of and building a better future for refugees, internally displaced persons, refugee returnees and stateless people. We work to ensure that everybody has the right to seek asylum and find safe refuge, having fled violence, persecution, war or disaster at home. UNHCR has been entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to refugee problems.<sup>1</sup> Additionally, UNHCR has been formally mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people.<sup>2</sup>
3. This submission examines two areas within UNHCR's mandate where it is considered that there is a specific and urgent lack of legal aid in the UK. The first is in relation to applications for refugee family reunion under Part 11 of the Immigration Rules and the second, concerns applications to the statelessness determination procedure (SDP) under Part 14 of the Immigration Rules. While the latter came into effect after the enactment of the LASPO Act, and thus is strictly beyond the purview of this review, UNHCR considers the absence of legal aid in relation to applications under Part 14 to be particularly problematic and urges re-consideration of the existing statutory scheme.

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<sup>1</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

<sup>2</sup> General Assembly Resolution 3274 (1974), General Assembly Resolution 50/152 (1996).

## Family reunification – global context

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4. International human rights law recognises the family as the fundamental group unit of society entitled to protection by society and the State.<sup>3</sup> Following separation caused by forced displacement, such as from persecution and war, family reunification is often the only way to ensure respect for a refugee's right to family unity. Separation of family members can have devastating consequences on people's well-being and their ability to rebuild their lives. Family reunification is a fundamental aspect of bringing normality back to the lives of persons who have fled persecution or serious harm and have lost family during forced displacement and flight.
5. We are currently facing record levels of forced displacement: more than 68 million people around the world have been forced from their homes. However, journeys to reach safety and loved ones in other countries are increasingly dangerous.<sup>4</sup> Family reunification is a way for separated families to be reunited without the need for them to undertake dangerous journeys, potentially in the hands of people traffickers or smugglers.
6. While the 1951 Refugee Convention does not address family reunification and family unity specifically, the Final Act of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends that States "*take the necessary measures for the protection of the refugee's family, especially with a view to (...) [E]nsuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.*"<sup>5</sup>
7. Furthermore, UNHCR's Executive Committee (ExCom), of which the UK is an active member, has adopted a series of conclusions that reiterate the fundamental importance of family unity and reunification and call for facilitated entry on the basis of liberal criteria for family members of persons recognised as being in need of international protection.<sup>6</sup> In addition, UNHCR has emphasised that family reunification is an important element for the integration of beneficiaries of international protection in their host societies. ExCom Conclusion No. 104, in

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<sup>3</sup> See, UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 16(3): [www.unhcr.org/refworld/docid/3ae6b3712c.html](http://www.unhcr.org/refworld/docid/3ae6b3712c.html); and UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 23(1): [www.unhcr.org/refworld/docid/3ae6b3aa0.html](http://www.unhcr.org/refworld/docid/3ae6b3aa0.html).

<sup>4</sup> For example, despite the lower numbers crossing the sea from Libya, a higher proportion of refugees and migrants are dying at sea with one death for every 18 persons who arrived in Europe via the Central Mediterranean route between January and July this year compared to one death for every 42 in the same period in 2017. UNHCR, September 2018, *Desperate Journeys; Refugees and migrants arriving in Europe and at Europe's borders*, <http://www.unhcr.org/desperatejourneys/>.

<sup>5</sup> United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act and Convention Relating to the Status of Refugees, July 1951: [www.refworld.org/docid/40a8a7394.htm](http://www.refworld.org/docid/40a8a7394.htm).

<sup>6</sup> See in particular, ExCom Conclusions on Family Reunion, No. 9 (XXVIII), 1997 and No. 24 (XXXII), 1981; ExCom Conclusion on Refugee Children and Adolescents, No. 84 (XLVIII), 1997; and ExCom Conclusion on the Protection of the Refugee's Family, No. 88 (L), 1999. All ExCom Conclusions are compiled by UNHCR under, Thematic Compilation of Executive Committee Conclusions, June 2011, Sixth edition: [www.unhcr.org/refworld/docid/4e8006a62.html](http://www.unhcr.org/refworld/docid/4e8006a62.html).

particular, notes the potential role of family members in promoting the smoother and more rapid integration of refugee families given that they can reinforce the social support system of refugees.<sup>7</sup>

8. In this regard, family separation can affect refugees' ability to engage in many aspects of the integration process, from education and employment, to putting down roots, while it also impacts negatively on their physical and emotional health. Indeed, in most cases, family reunification is the first priority for refugees upon receiving status.<sup>8</sup>
9. In light of the ongoing historically high levels of global forced displacement, UNHCR continues to advocate for enhanced family reunification. In the New York Declaration on Refugees and Migrants, UN Member States, including the UK, agreed to consider the expansion of existing humanitarian admission programmes, including flexible arrangements to assist family reunification.<sup>9</sup> The final draft of the Global Compact on Refugees reflects this commitment. It highlights the need to ensure that complementary pathways to protection are made available on a more systematic, organised, sustainable basis and specifically calls on states to *“facilitate effective procedures and clear referral mechanisms for family reunification.”*<sup>10</sup>

## **Refugee family reunification in the UK post-LASPO**

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10. The passage of the LASPO Act in 2012 resulted in the exclusion of refugees and individuals granted humanitarian protection in the UK, from accessing legal aid in relation to applications for family reunion, except in exceptional circumstances.<sup>11</sup> As a result, individuals seeking to reunite with close family members are now required to make such applications without legal assistance or with recourse to private solicitors and are unable to access financial support for translations, DNA tests or interpreters that are regularly required when substantiating an application.

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<sup>7</sup> UNHCR, ExCom Conclusion No. 104 on Local Integration, 7 October 2005: [www.unhcr.org/4357a91b2.html](http://www.unhcr.org/4357a91b2.html).

<sup>8</sup> On the relationship between family unit and successful social and economic integration see: UNHCR, *A New Beginning: Refugee Integration in Europe*, September 2013: <http://www.refworld.org/docid/522980604.html>; Oxfam, *Safe but not settled: the impact of family separation on refugees in the UK*, January 2018: <https://policy-practice.oxfam.org.uk/publications/safe-but-not-settled-the-impact-of-family-separation-on-refugees-in-the-uk-620409>.

<sup>9</sup> UN General Assembly, *New York Declaration for Refugees and Migrants: resolution adopted by the General Assembly*, 3 October 2016, A/RES/71/1, Annex 1: <http://www.refworld.org/docid/57ceb74a4.html>.

<sup>10</sup> UN High Commissioner for Refugees, *The global compact on refugees*, 2 August 2018: <http://www.unhcr.org/uk/events/conferences/5b3295167/official-version-final-draft-global-compact-refugees.html>.

<sup>11</sup> UK: Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), 1 May 2012: [http://www.refworld.org/cases\\_UKHCL\\_58a6f6be94.html](http://www.refworld.org/cases_UKHCL_58a6f6be94.html).

## Challenges in preparing family reunification applications

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11. The justification for excluding refugees and individuals granted humanitarian protection from legal aid, except in exceptional circumstances, centered on the assumption that family reunion is a “generally straightforward” immigration matter, such that family members ought be able to make applications in their own right, without legal assistance.<sup>12</sup> That assumption has not been borne out. The reforms which brought LASPO into effect did not properly consider the special challenges refugees face when preparing and making family reunification applications. These challenges arise throughout the application process - in understanding the Immigration Rules and related guidance, when compiling documentation, and in preparing and submitting an application.
  
12. For example, the denial of legal aid can present a serious obstacle to the effective presentation of family reunification applications and is especially problematic if the sponsor’s command of the language is limited.<sup>13</sup> Applications for family reunion often involve complex issues of fact and law, crossing not only geographical hurdles but also cultural contexts.<sup>14</sup> UNHCR’s own research with refugees in the UK, for example, reveals that differences in the expression and practice of marriage across cultures and countries can make it more difficult for applicants to prove their relationships.<sup>15</sup> The British Red Cross has highlighted that in the UK, legal advisors are essential in identifying suitable evidence and producing client and witness statements that contextualise applications. Legal advisers are also able to identify factual discrepancies, which may undermine an individual’s credibility unless directly addressed and identify discretionary applications which, while falling outside the Immigration Rules on family reunion, nonetheless may present compelling cases for reunion.<sup>16</sup>

## Cost to refugee families

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13. Refugee families already face significant expenses in their attempts to reunite with costs arising from: certifying and translating documents; undergoing DNA tests; travelling to an embassy or consulate; and, eventually, travelling to the UK. Private legal fees to pursue family reunion for many will be prohibitively

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<sup>12</sup> Hansard HC Deb. 29 June 2011, vol 530, col 984: [http:// www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110629/debtext/110629-0002.htm](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110629/debtext/110629-0002.htm).

<sup>13</sup> UN High Commissioner for Refugees (UNHCR), *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition: <http://www.refworld.org/docid/5a902a9b4.html>, p 144.

<sup>14</sup> *A journey towards safety*, p 25.

<sup>15</sup> *A journey towards safety*, p 25-26.

<sup>16</sup> *Not So Straightforward*, on ‘Documentation Gathering’: pp 35-49; on ‘Submission’: pp 53-58.

On the complexity of discretionary applications: Nicholson notes that amendments to Home Office guidance require caseworkers to consider exceptional circumstances or compelling factors outside the Immigration Rules, necessitating applicants to set out their circumstances and show that a failure to consider factors outside the rules would amount to a breach of Article 8 ECHR: *The "Essential Right"*, p 116 fn [487]; See also UK Home Office, *Family Reunion: for refugees and those with humanitarian protection*, v. 2.0, July 2016: <http://www.refworld.org/docid/58b014c94.html>, p 19.

expensive.<sup>17</sup> Since the passage of LASPO Act, studies have found refugees in the UK taking out high-risk loans or compromising on basic necessities so as to save money to hire a solicitor.<sup>18</sup> UNHCR's own research with refugees in the UK indicates that in the absence of available legal aid, the cost of legal representation is a barrier to submitting applications for family reunion, limiting applications either to those who can afford legal representation or who have knowledge of the relevant legal procedures and the language skills needed to complete them.<sup>19</sup>

## Exceptional case funding

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14. Exceptional Case Funding (ECF) was created under LASPO Act in order to create a financial backstop for cases which fall outside of legal aid scope. Indeed, the Ministry of Justice (MoJ) expected between 5000-7000 applications for exceptional funding to be made per year.<sup>20</sup> However, in 2017 there were only 2400 applications made.<sup>21</sup> Furthermore, when applications are made a large proportion are rejected; between January to March 2018, of 746 ECF applications, only 390 (59%) were granted. This raises questions regarding the extent to which ECF is serving as a safeguard to provide legal aid where a failure to do so would breach rights under international law, including in the family reunification context.

15. While the application process has been simplified,<sup>22</sup> UNHCR is concerned that individuals who may be eligible for ECF continue to be deterred from or unable to access it.<sup>23</sup> The Public Law Project (PLP) reports that the ECF application process is complex, and there is little information or assistance available to support applications. As a result it is difficult for individuals to complete applications for ECF without legal assistance.<sup>24</sup> Further, the UK Law Society and PLP report that legal advisers are reluctant to make ECF applications which can be time consuming to complete and which often require preparation of detailed

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<sup>17</sup> *The "Essential Right"*, p 132.

<sup>18</sup> *Not So Straightforward*, p 64.

<sup>19</sup> *A journey towards safety*, p 25.

<sup>20</sup> National Audit Office, *Implementing reforms to civil legal aid*, HC 784, Session 2014-15, November 2014.

<sup>21</sup> Legal Aid Statistics quarterly, England and Wales, January to March 2018, published 28 June 2018.

<sup>22</sup> Revised ECF Guidance was published on 9 June 2015. Among other changes the threshold for granting ECF was amended from asking whether withholding legal aid would make "the assertion of the claim practically impossible" to asking "whether the withholding of legal aid would mean that the applicant is unable to present his case effectively and without obvious unfairness": Lord Chancellor's Exceptional Funding Guidance (Non-Inquests):

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/477317/legal-aid-chancellor-non-inquests.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477317/legal-aid-chancellor-non-inquests.pdf).

<sup>23</sup> The Law Society, *LASPO four years on: a Law Society review*, June 2017, <http://www.lawsociety.org.uk/news/documents/laspo-4-years-on-review/>, p 22.

<sup>24</sup> Public Law Project (Katy Watts), *PLP Research Briefing Paper: Exceptional Case Funding*, May 2018:

<https://publiclawproject.org.uk/wp-content/uploads/2018/05/Exceptional-Case-Funding-Briefing.pdf>, p 4; see also *LASPO four years on: a Law Society review*, p 22.

evidence, particularly as they will not be reimbursed for time spent on unsuccessful applications.<sup>25</sup>

## **Families Together Campaign**

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16. UNHCR is a member of the [Families Together coalition](#)<sup>26</sup> that brings together more than twenty civil society organisations including Amnesty International, the British Red Cross, the Refugee Council and Oxfam. The coalition is calling for the restrictive rules around refugee family reunion to be eased by expanding the definition of family and giving refugee children the right to reunite with their parents. In recognition of the key role legal aid plays, the coalition is also calling for the reintroduction of legal aid so that refugees who have lost everything have the support they need to afford and navigate the complicated process of being reunited with their families.
17. The campaign has garnered support from the general public and from politicians across the political spectrum. Momentum behind the campaign continues to grow and is an issue that the coalition and our supporters will continue to champion.

## **Family reunification for stateless persons**

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18. The family reunion provisions for individuals recognised as stateless persons in the UK reflect similar provisions as those for recognised refugees.<sup>27</sup> It has only been possible, however, to apply for recognition of stateless status and a grant of leave to remain since 2013 – i.e. post LASPO Act – and family reunion applications for those recognised as stateless under Part 14 of the Immigration Rules have never been eligible for legal aid outside ECF. Given that stateless persons and their families will often face similar challenges to making family reunification applications as those set out for refugees above, UNHCR would support the introduction of legal aid for applications by the family members of individuals recognised as stateless in the UK.

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<sup>25</sup> LASPO four years on: a Law Society review, p 22; PLP Research Briefing Paper: Exceptional Case Funding, p 1.

<sup>26</sup> <http://www.unhcr.org/uk/sign-the-families-together-petition.html>.

<sup>27</sup> UK Immigration Rules Part 14: stateless persons, § 410-413 <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>.

## UNHCR recommends that

The services listed under Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 be amended to include assistance for beneficiaries of international protection seeking family reunion under Part 11 of the Immigration Rules. Qualified and well-regulated legal advisors are best placed to deal with the significant complexities that may be experienced throughout the UK family reunion process and to ensure reunification mechanisms are swift and efficient in order to bring families together as early as possible.

## Applications for recognition as a stateless person – the global context

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19. Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) defines a stateless person as “*a person who is not considered as a national by any State under the operation of its law.*” UNHCR estimates that at least 10 million people around the world live without any nationality. UNHCR considers that “*Stateless people are amongst the most vulnerable in the world*” because they do not have access to the basic rights associated with citizenship of a nation state.<sup>28</sup>
20. The object and purpose of the 1954 Convention is “*to assure stateless persons the widest possible exercise of [their] fundamental rights and freedoms*” (Preamble). It addresses the special vulnerability of stateless persons by granting them a core set of civil, economic, social and cultural rights.<sup>29</sup>
21. The UK ratified the 1954 Convention in 1959 but it did not establish a formal mechanism for recognising and providing protection to stateless people for many years. In 2011, UNHCR and Asylum Aid undertook a mapping study to investigate statelessness in the UK.<sup>30</sup> As a result of this research, the UK government introduced an SDP by way of Part 14 of the Immigration Rules,<sup>31</sup> which came into force on 6 April 2013, enabling stateless persons to apply for recognition of their status and a grant of leave to remain. A grant of leave to remain confers some of the protections stateless persons are entitled to under the 1954 Convention (e.g. the right to work and access public funds) and provides a pathway to naturalisation. The Home Office issued an instruction on applications for leave to remain as a stateless person to accompany the new

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<sup>28</sup> Foreword to UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

<sup>29</sup> Many provisions were taken literally from the Refugee Convention, reflecting the Conventions' shared drafting history. However, where a stateless person is also a refugee, the wider provisions of the Refugee Convention apply.

<sup>30</sup> UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in The United Kingdom*, 22 November 2011: <http://www.refworld.org/docid/4ecb6a192.html>.

<sup>31</sup> UK Immigration Rules Part 14: stateless persons <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>.

Immigration Rules. This instruction was amended and a second version was published in February 2016<sup>32</sup> (2016 Home Office Policy Instruction).

22. In 2014 UNHCR published the Handbook on Protection of Stateless Persons (UNHCR Handbook).<sup>33</sup> This Handbook is intended to guide government officials, judges and practitioners, as well as UNHCR staff and others involved in addressing statelessness. It provides a valuable resource for both statelessness determination and the development and implementation of law and policies. The UNHCR Handbook is cited in the 2016 Home Office Policy Instruction. The UNHCR Handbook underlines the importance of providing legal aid to support statelessness applications (see below).

### **Legal aid for applications for leave as a stateless person: exceptional case funding and judicial review**

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23. Stateless leave granted for a successful statelessness application in the UK provides a form of international protection, and is more than an immigration status. Stateless persons are generally denied enjoyment of a range of human rights and prevented from fully participating in society. As indicated in the preamble and in the Travaux Préparatoires of the 1954 Convention, the object and purpose of this Convention is to ensure that stateless persons enjoy the widest possible exercise of their human rights. The stateless determination procedure provides a mechanism to *protect* those human rights.

24. There are serious consequences to incorrectly rejecting an application for stateless leave. The heightened risk of stateless persons to human rights violations has been identified in a number of mapping studies. UNHCR's UK study revealed that unrecognised stateless and 'unreturnable' persons "*face the risk of a number of human rights challenges that are directly linked to their lack of immigration status. These range from destitution and street homelessness to immigration detention*".<sup>34</sup> The Home Office's own guidance also recognises that "[p]ossession of nationality is considered essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights" and that stateless people "*are potentially vulnerable to serious discrimination*" including the denial of the right to own land, vote, obtain identity documents, access to education, health services or employment.<sup>35</sup> Furthermore, there are inherent

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<sup>32</sup> Home Office, Asylum Policy Instruction, *Statelessness and applications for leave to remain*, 18 February 2016: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/501509/Statelessness\\_AI\\_v2.0\\_EXT\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0_EXT_.pdf) (2016 Home Office Policy Instruction)

<sup>33</sup> UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014: <http://www.refworld.org/docid/53b676aa4.html>.

<sup>34</sup> UNHCR, *Mapping Statelessness in the United Kingdom*, 22 November 2011, p 148 §6.

<sup>35</sup> 2016 Home Office Policy Instruction, Section 1.2.

difficulties in proving statelessness because it requires an individual to prove a negative, namely that they are not a national of any State. UNHCR, therefore, considers that access to legal counsel is a procedural guarantee and that where free legal assistance is available, it is to be offered to applicants without financial means.<sup>36</sup>

25. Despite the acute protection needs of stateless persons, unlike in an asylum claim, legal aid is not generally available for advising, representing or assisting someone who wishes to make an application for leave to remain as a stateless person, or to ask for an administrative review of a refusal. In the UK, solicitors are required as a matter of professional obligation<sup>37</sup> to discuss and advise on the availability of public funding for any application or appeal. One option is the legally aided ECF procedure which is potentially applicable. At present, UNHCR anecdotally understands that very few solicitors are prepared to apply to the Legal Aid Authority for exceptional case funding for stateless leave applications unless there are clear reasons for doing so, because the preparation work needed by a solicitor for an application is not chargeable. UNHCR made a Freedom of Information request to the MoJ for this information, but was informed that the request would exceed the cost limit set out in the Freedom of Information Act.<sup>38</sup> It is, therefore, unknown to UNHCR how many individuals have applied through this route, or the success rate.

26. Legal aid may be available to investigate or to bring an application for judicial review of a decision to refuse an application for stateless leave, providing the merits and means tests for legal aid are met. However, judicial review is not generally concerned with the facts of a case and whether the decision was correct but addresses whether the correct procedures have been followed. It is also an expensive and lengthy option for both parties where representation is payable at higher rates than in asylum or human rights appeals.

### **Challenges in evidence gathering for stateless leave applications**

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27. The Home Office has set the standard of proof in statelessness cases higher than in asylum, requiring that the applicant must establish that he or she is not considered a national of any State to the standard of the balance of probabilities (that is, more likely than not).<sup>39</sup> Furthermore, the 2016 Home Office Policy Instruction states that “*the burden of proof rests with the applicant*”<sup>40</sup> and Paragraph 403(d) of the Rules also requires applicants to “*obtain and submit all*

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<sup>36</sup> *Handbook on Protection of Stateless Persons*, Paragraph 71.

<sup>37</sup> Solicitors Regulation Authority Code of Conduct 2011: <https://www.sra.org.uk/solicitors/handbook/code/content.page>.

<sup>38</sup> Response received by UNHCR from Ministry of Justice on 19 July 2018.

<sup>39</sup> 2016 Home Office Policy Instruction, Section 4.2.

<sup>40</sup> *Ibid.*

*reasonably available evidence*” to enable the Secretary of State to determine whether they are stateless. In UNHCR’s experience, applicants can, however, sometimes find it difficult to substantiate their claim with much, if any, documentary evidence about their lack of nationality. The UNHCR Handbook therefore advises that the burden of proof should be in principle shared, in that both the applicant and the examiner must cooperate to obtain evidence and to establish the facts.<sup>41</sup> Further, UNHCR advises that requiring a high standard of proof of statelessness would undermine the object and purpose of the 1954 Convention. UNHCR therefore advises States to adopt the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a “reasonable degree” that an individual is not considered as a national by any State under the operation of its law.<sup>42</sup>

28. In particular, information provided by foreign authorities is sometimes of central importance to SDPs.<sup>43</sup> Enquiries with foreign authorities are important because the subjective position of the other State is “*critical*” in determining whether an individual is its national.<sup>44</sup> Furthermore, the UNHCR Handbook highlights<sup>45</sup> that in order to establish whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/appeal decisions that may have had an impact on the individual’s status. This is a mixed question of fact and law. This is also reflected in the 2016 Home Office Policy Instruction.<sup>46</sup> The lack of legal aid may mean that applicants are not aware of the steps required to demonstrate that they are stateless, or, even where they are aware, they may not have the financial means to visit consulates or embassies which can provide this information and which are predominantly London-based.
29. When individuals need support in providing evidence to help satisfy the burden of proof required of them, a legal representative will sometimes send caseworkers to gather evidence from embassies with their client. This can help produce the expert witness statements that provide legally valid evidence to support stateless applications. Refugee Action’s Embassy Project ran from December 2015 to March 2017 and provided expert casework to help destitute people to gather the evidence from embassies to support statelessness or disputed nationality fresh claims. This project funding has ended and now there is currently no organisation in London or the UK which offers this service.

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<sup>41</sup> *Handbook on Protection of Stateless Persons*, Paragraph 89.

<sup>42</sup> *Handbook on Protection of Stateless Persons*, Paragraph 91.

<sup>43</sup> *Handbook on Protection of Stateless Persons*, Paragraph 96.

<sup>44</sup> *Handbook on Protection of Stateless Persons*, Paragraph 99.

<sup>45</sup> *Handbook on Protection of Stateless Persons*, Paragraph 23.

<sup>46</sup> 2016 Home Office Policy Instruction, Section 4.6.1.

Stateless persons, without legal support, are often left alone to fully satisfy the burden of proof being asked of them, which as outlined above is to a higher standard than is required in asylum claims.

## Efficiency and financial implications

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30. UNHCR considers that giving legal aid to applicants for stateless leave could help make the SDP more efficient. The Home Office has repeatedly claimed to UNHCR that the SDP receives a number of unfounded applications.<sup>47</sup> UNHCR is of the view that legal aid could help ensure fewer unfounded applications for stateless leave because the individual could be directed to the correct procedure by a solicitor and their expectations better managed. Legal aid could also assist in reducing the number of applications made without appropriate supporting evidence, resulting in less need for follow up by the Home Office and/or Administrative Review.

31. Furthermore, the financial cost of introducing legal aid for these applications would, in UNHCR's view be relatively small. The aforementioned 2011 mapping study investigated the extent of statelessness in the UK.<sup>48</sup> The data at the time of the study concluded there would be a relatively small number of stateless persons in the UK in need of a procedure to determine their status.<sup>49</sup> The Home Office does not regularly publish data on the SDP, but it does share some limited data with UNHCR. Data provided to UNHCR by the Home Office showed there were 969 applications to the SDP in 2017. This is far lower than the number of asylum applications received in the same period. Since the SDP was introduced in 2013 until the end of 2017 there have been 98 grants of stateless leave.

### **UNHCR recommends that:**

The services listed under Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 be amended to include assistance with applications under Part 14 of the Immigration Rules. Legal aid is a necessary part of an efficient procedure for determining statelessness and helps to ensure that the UK's legal obligations under the 1954 Convention and international human rights law are met.

**UNHCR**  
**28 September 2018**

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<sup>47</sup> This was the reason given by the Home Office for ending the process of mandatory interviewing in the 2016 Home Office Policy Instruction. It was reiterated in an email from the Head of the Status Review Unit at the Home Office to UNHCR on 26 July 2018.

<sup>48</sup> *Mapping Statelessness in The United Kingdom*,

<sup>49</sup> *Mapping Statelessness in The United Kingdom*, Chapter 3 (Estimating the population of Stateless and Unreturnable People in the UK).