

Asylum Policy/Status Review Unit

Product Name: UNHCR Audit (Statelessness)			
No.	Recommendation	Team responding	Home Office Response
1.	Decision-makers should more readily assist the applicant making enquiries with relevant national authorities and organisations. Decision-makers should receive updated guidance and training to encourage better understanding of when and how to assist the applicant with these enquiries.	Status Review Unit (SRU)	Accept Where necessary, Statelessness Determination Team caseworkers will liaise with other authorities and organisations in order to verify claims. Caseworkers have received full training on how to assess evidence and what resources are available to them to obtain country of origin information. The onus remains, however, with the applicant to meet the burden of proof.
2.	Home Office could consider introducing a question requesting consent from the applicant for the Home Office to make 'relevant enquiries' to national authorities in the declaration section of the online stateless leave application form. This should include an option for the applicant to explain why they do not wish to give consent, should that be the case.	Asylum Policy (AP)	Accept We will seek to add a question into the online application form to reduce delays caused by caseworkers having to write out to applicants to separately request permission to make enquiries with national authorities. This question will allow the opportunity for the applicant to explain why they do not consent.
3.	A checklist to supplement the policy, should be developed to assist decision-makers and applicants in understanding what is required to determine if 'all reasonably available evidence' has been provided or not.	AP	Accept in part A definitive checklist is not appropriate as 'reasonably available evidence' differs in every case due to the varying circumstances of each applicant, but we will provide more guidance on what we deem to be 'all reasonably available evidence' in our next guidance update.
4.	In light of the inherent difficulties some stateless applicants face when attempting to satisfy the burden of proof by obtaining	AP	Reject The burden of proof rests with the applicant, who is expected to cooperate with the decision maker to provide sufficient

	information from State authorities, the Home Office should consider supporting them in approaching and gathering evidence from embassies, as previously provided through Refugee Action's Embassy Project. This support could be provided for by the funding of an independent organisation.		evidence to demonstrate that they are stateless and that there is no country to which they can be removed for purposes of permanent residence. As explained in response to the fifth recommendation below, where the applicant has co-operated and provided evidence, but not to a sufficient level, then the decision-maker, will, where necessary, make enquiries directly with the relevant authorities and organisations. As a result, the funding of an independent organisation to provide additional support is not required.
5.	UNHCR advises States to recognise that the burden of proof should be shared, in that both the applicant and examiner must cooperate to obtain evidence and to establish the facts in every case (UNHCR Handbook paragraphs 89, 90).	AP	Reject The burden of proof is on the applicant to provide evidence of statelessness. There is already a high degree of co-operation, for example where the applicant has provided evidence, but this could be complemented by additional actions of the SSHD, then the Home Office will look to assist the applicant in obtaining further relevant and required evidence. In the circumstances where the decision maker believes that the applicant has sought to co-operate and provide the relevant evidence, but has been unable to do so to the sufficient level, then the decision maker must assist the applicant by interviewing them to elicit further evidence, undertaking relevant research or, if necessary, make enquiries directly with the relevant authorities and organisations.
6.	The same standard of proof should be applied to the determination of statelessness as is applied in the determination of refugee status. It should be required to establish "to a reasonable degree", that an individual is not considered as a national by any State under the operation of its law (UNHCR Handbook Paragraph 91).	AP	Reject The standard of proof that applies in considering stateless leave applications is that of a balance of probabilities, as confirmed by the Court of Appeal in AS (Guinea) v SSHD [2018] EWCA Civ 2234 . The standard of proof is different than in the determination of refugee status since the factual issues to be decided justify a higher standard of proof than the reasonable likelihood required to establish a well-founded fear of persecution in asylum claims, where the issue may be the threat to life, liberty and person.
7.	Decision-makers should receive refresher training on standards and guidance for preparing and undertaking stateless interviews	SRU	Accept: Completed. In March 2020, caseworkers on the Statelessness Determination Team received full refresher training on

	in a manner which assists the applicant to present their claim and be forthcoming with information necessary to take an informed decision.		preparing for and conducting interviews in order to assist applicants in presenting their claim.
8.	Responses received from national authorities following re-documentation interviews organised by the Home Office which are usually undertaken when the applicant was previously in detention, must be thoroughly and clearly recorded, not just in written form, but also on CID.	Returns Logistics	Accept: Completed. Interviews by foreign government authorities to establish or confirm identity/nationality, including those individuals who are detained, are recorded on the new Home Office database. All appropriate details are recorded such as date and location, and, where provided, the outcome of the interview. Such information is made clearly available for Home Office staff to make informed decisions based on nationality and statelessness.
9.	Decision-makers should ensure they have undertaken a review of the full Home Office paper file for each stateless leave applicant, including from further submissions to gather all necessary information including to ascertain if any removal action (such as applications for ETDs and interviews with national authorities) has previously been undertaken and to consider this in their decision.	SRU	Reject Where necessary to establish the full facts of the case, Statelessness Determination Team decision makers are able to access Home Office paper files held in relation to the applicant and will review and consider these when appropriate. In some cases, all relevant information is already available electronically and a review of paper files is unnecessary.
10.	Relevant Home Office Country of Origin information reports should include a section on nationality and citizenship so that decision-makers in the stateless team have information on the updated country situation to draw on in order to make accurate decisions. UNHCR would recommend the Home Office prioritise countries where individuals with the most applications for stateless leave originate.	Country Policy Information Team (CPIT)	Accept in part The Country Policy Information Team does not produce comprehensive country reports anymore, but reference to nationality and citizenship will be included in Background Notes, where relevant, in the future. Priority will be given to the countries where statelessness is more likely to be an issue.
11.	In the absence of country of origin information, decision-makers should more readily undertake requests for information on specific countries contexts via the Country Policy and Information Team (CPIT), as they are directed	SRU	Accept: Completed. Statelessness Determination Team caseworkers follow HO policy by making full use of the CPIT where it is necessary to obtain more information or assess how that the state in question is likely to apply their nationality law in practice.

	to do in the Home Office policy. This approach could also be used to ascertain information on determining how a State is likely to apply their nationality law to an individual applicant in practice.		
12.	The Independent Advisory Group on Country Information (IAGCI) should commission an evaluation of UK Home Office Country Information Products on 'nationality and citizenship' to assess the content and quality of country information and guidance notes produced by the Home Office and relied upon by decision makers. This will give a better picture of where the gaps lie.	CPIT	No response The IAGCI are an independent body and therefore, it is not for the Home Office to decide upon the workstreams which they review.
13.	Decision-makers should be trained, as stipulated by Home Office policy, to identify and consider all the available evidence, including both oral and written, in their determination of a material fact and how to attach appropriate weight to each piece of available evidence.	SRU	Accept: Completed. All caseworkers are fully trained in assessing evidence and are required to consider all available evidence and attach appropriate weight to such evidence. Quality assurance checks are undertaken to ensure that all evidence is correctly considered.
14.	Home Office Policy should clarify how a lack of response from a State should be treated, especially in the absence of other evidence. UNHCR suggests a period of time be specified as to how long a decision-maker should wait before making a decision on a case. This should be 6 months or up to 12 months in exceptional circumstances.	AP	Accept in part More guidance will be provided on how to treat a lack of a response from a state as part of our next guidance update, but a definitive time-limit will not be provided, given that there are differing circumstances across with the authorities of different countries.
15.	Decision-makers should be trained on how to assign weight to a lack of response from a request for information from a national authority when the approach is initiated by either the Home Office or an applicant themselves.	SRU	Accept in part: Completed. All caseworkers are fully trained in assessing evidence and all cases are considered on their individual circumstances. However, a lack of response to a request for information from a national authority could be for a number of reasons, and caseworkers will also exercise judgment on the weight to attach to this based on the individual circumstances and

			merits of a case.
16.	The Home Office should develop a template which encompasses a more structured approach to credibility assessment in order to assist decision-makers in structuring their decision making.	AP	Accept in part We will consider this as part of our ongoing template development and would welcome your views on how this can be achieved. However, we are mindful of the need to maintain highly individualised assessments and need to balance this against a more prescriptive approach.
17.	The 2019 Home Office Policy should be amended to refer to UNHCR guidance on credibility in statelessness determination (Paragraphs 101 – 107) which should be utilised by decision-makers when credibility concerns arise in stateless leave applications.	AP	Accept in part We will provide more guidance on credibility in statelessness determinations as part of our update to guidance to accompany the simplified rules. At the point of update, we will consider the UNHCR guidance on this.
18.	Training should be provided to decision-makers in the stateless team about the types of credibility issues which may arise in statelessness cases and the relevant standards and guidance for assessing these.	SRU	Accept: Completed. The assessment of credibility issues forms part of the training for all caseworkers and is regularly reviewed within quality assurance processes to ensure that the relevant standards and guidance are being followed.
19.	The Quality Assessment Framework and marking standards for stateless leave applications should have a dedicated question to monitor the use of relevant credibility indicators in assessing stateless applications. Despite a suggestion from UNHCR during the development of this framework, this has yet to be added.	SRU	Reject Within the Quality Assurance Framework, consideration of credibility indicators is already covered within the overall assessment as to whether the claim has been appropriately assessed and decided. Assessment of credibility indicators is one of many aspects of a claim that will be considered by the caseworker. Where credibility is an issue, the quality assessment marking standards direct the Senior Caseworker to assess whether the decision maker invited the applicant to supply further evidence.
20.	Decision-makers should receive training about how to appropriately use information from previous asylum claims and/or additional immigration history, so that this information is used to complement other available evidence and is consistently assessed.	SRU	Accept: Completed. This forms part of the training for all caseworkers and is regularly reviewed within quality assurance processes. Senior Caseworkers are asked to check whether the decision identifies issues that have been dealt with previously and (where appropriate) summarises previous findings, including those made by Immigration Judges, before drawing firm conclusions. The assurance framework also requires, where

			there has been a previous asylum or immigration application, that the Stateless leave decision address all new issues that have been raised. This includes addressing all documentary and oral evidence raised.
21.	<p>The Immigration Rules should be amended to reflect the UNHCR Handbook when considering the admissibility provision. They should read:</p> <p>“An applicant will be deemed admissible to their country of former habitual residence if he or she:</p> <p>is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality OR;</p> <p>enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible”</p>	AP	<p>Reject</p> <p>The Home Office’s interpretation of admissibility does not align with UNHCR’s view. Admissibility, for the purposes of an application for leave to remain as a stateless person, need not be a route with immediate permanent residence, but rather one which leads to permanent residence, in an acceptable time frame, with relative ease. More guidance will be provided on this at the point of the next guidance update.</p>
22.	The Home Office Policy on Statelessness and applications for leave to remain should, alongside this rule change, include a specific section to address admissibility in detail which sets out a position in line with the UNHCR Handbook.	AP	<p>Accept in part</p> <p>In the next update to the guidance, a standalone section will be included on admissibility, but this will not be in line with the UNHCR Handbook (see comment at point 21 above).</p>
23.	The admissibility ‘test’ requires a standalone question in the Home Office’s marking standards for the Quality Assurance Framework on stateless leave applications, in order to better monitor its application. Despite a suggestion from UNHCR during the development of this framework this has yet to be included.	SRU	<p>Reject</p> <p>The substantive point of this recommendation has already been implemented. Whilst there is not a standalone question in the Quality Assurance assessment criteria, the criteria already include assessment of whether the caseworker correctly concluded that the person was re-admissible to a country. This assessment is taken in conjunction with the assessment of statelessness and both factors are intrinsically</p>

			linked in the overall outcome for each application.
24.	A form of leave to remain should be provided in exceptional circumstances by the Home Office in cases where an individual has been found to be stateless for the purposes of Paragraph 401, but in which a decision on admissibility may be delayed due to investigation by both the applicant and/or the Home Office.	AP	Accept in part The Home Office's policy on Discretionary Leave is available for utilisation by decision makers in the Statelessness Determination team but will only be utilised in the most exceptional circumstances as set out in the DL policy, where a decision is not envisaged to be possible for the foreseeable future.
25.	The Home Office Policy on General Grounds should be amended to state that human rights must be considered when the Secretary of State refuses an applicant on general grounds. The Home Office should provide a form of leave to remain in these cases where it is considered that a refusal could lead to a potential breach of the applicant's human rights.	Criminality Policy	Accept in part As stated in the statelessness leave guidance, an applicant who meets the requirements in paragraph 403, but falls for refusal on general grounds, may fall for a grant of leave outside the Immigration Rules. Where an applicant is refused on general grounds, but also doesn't meet the requirements in paragraph 403, consideration is then given as to whether the person can be removed or if they have a claim to remain in the UK on human rights grounds – in the meantime, should an applicant wish to have their Article 8 rights, or eligibility for any other immigration route, considered then they should make the appropriate application. As a result, we do not feel that the GGFR guidance requires amending on this point.
26.	The Home Office should identify and reconsider those cases where an error has been made historically with regards to the requirement to determine whether an applicant meets the definition of a stateless person under Paragraph 401 in cases where general grounds apply. This includes the five cases outlined in this section.	SRU/AP	Reject The decision to refuse Stateless Leave in these cases remains correct. Additionally, every case where the Stateless Leave application is refused, the individual has the opportunity to request a review of the decision through the Administrative Review process. It is not possible to identify these cases without a manual check of every Stateless Leave decision; however, reconsideration will be considered on a case by case basis where requested. An individual is also able to make a new Stateless Leave application free of charge.
27.	The Home Office Policy should be amended to clearly stipulate that an interview is mandatory in all cases or, at the very least, in all cases in	AP	Reject In order to make a decision on applications for leave to remain as a stateless person, interviews are not always

	which a decision-maker is inclined to refuse an application for stateless leave.		required- both for positive or negative decisions. Where further evidence or clarification is required from an applicant, the caseworker will invite them to interview, or alternatively, write to them. Introducing mandatory interviews would further delay decision-making, which is unnecessary, given that well-informed decisions can be made without them in most cases.
28.	An interview should not be offered at the applicant's own expense but travel should be paid for by the Home Office to ensure there is no practical barrier for applicant's access to attending an interview.	AP	Reject The Home Office takes a consistent approach to travel expenses in that they are only offered for protection routes. That means that individuals' travel to Home Office offices is not funded if they are applying to stay in the UK on non-protection routes, such as statelessness.
29.	Alongside the introduction of mandatory interviewing, the Home Office could consider the development of a process for accelerated case management within the Statelessness Determination Procedure. This would mean an interview may not be necessary in both manifestly unfounded and manifestly well-founded applications.	AP	Accept in part We are considering the recommendation of an accelerated case management procedure with SRU. However, as above, this would not be in partnership with mandatory interviews.
30.	The Home Office should adequately staff the SDP to ensure that in the majority of cases decisions are made within 6 months and up to 12 months in exceptional circumstances. This timescale should be detailed in the Home Office policy.	SRU	Reject Cases are considered in date order where possible. Due to the particularly complex nature of Statelessness claims, it is not possible to attach exact deadlines to completing cases. On occasion, including in cases where enquiries are being made to national authorities, an application will take more than 12 months to resolve.
31.	An effective triage system should be introduced to ensure that cases are dealt with appropriately and according to their urgency and complexity.	SRU	Accept: Completed. All cases are triaged coming in to the team and vulnerable applicants are prioritised where possible.
32.	Applicants in the SDP awaiting a decision on their claim should be eligible for support under Section 95 of the Immigration Act 1999 to ensure their basic needs are met and to prevent destitution.	AP	Reject Section 95 support is only available if the person has an outstanding asylum claim or appeal against the rejection of such a claim – or, at the time their asylum claim or appeal was finally rejected, the person had children in their

			<p>household.</p> <p>Support is available under section 4 of the 1999 Act to failed asylum seekers who face a legal or practical obstacle that prevents their departure from the UK and in some circumstances that could include those who claim they are unable to leave because they are stateless and not admissible to any other country, provided they are taking all reasonable steps to place themselves in a position to leave the UK and to facilitate their departure.</p>
33.	<p>Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 should be amended to include assistance with applications under Part 14 of the Immigration Rules. Legal aid is a necessary part of an efficient procedure for determining statelessness and helps to ensure that the UK's legal obligations under the 1954 Convention and international human rights law are met.</p>	<p>Ministry of Justice (MoJ)</p>	<p>Reject</p> <p>Legal aid funding for applications made under Part 14 of the Immigration Rules may be available via the Exceptional Case Funding scheme. ECF is provided where the legal services are out of scope of the legal aid scheme (as defined by LASPO 2012) but where failure to provide legal aid would breach or risk breaching the individual's rights under ECHR or EU enforceable rights. Where an application for ECF is successful, legal representatives can also instruct interpreters or translation services and claim the fees for this back as disbursements, as per the relevant contractual limits. The MoJ and the Legal Aid Agency are working with legal practitioners to consider how to simplify the ECF process and to improve the timeliness of decisions to ensure that people can access funding when they need it.</p> <p>There are no plans to expand the scope of LASPO to include applications made under Part 14 of the Immigration Rules. However, as of October 2019, immigration and asylum advice to separated migrant children, including on statelessness, is now within the scope of the legal aid scheme.</p>
34.	<p>UK civil society should continue to develop and facilitate training for legal representatives on statelessness and its treatment in UK law and policy. This will help ensure that stateless persons on the UK territory are identified, that</p>	<p>MoJ</p>	<p>No response</p> <p>The legal services sector is independent of government, and different types of lawyers are regulated by legal regulators. It is a matter for the regulators to determine the training requirements for lawyers. Solicitors and barristers must act in</p>

	<p>their applications for stateless leave are of a suitable quality and that their representatives have met their duty to their client.</p>		<p>their clients' best interests at all times, as well as honouring their responsibilities as officers of the court, and any breaches of regulatory conduct can be investigated by their regulators. In addition, the Office of the Immigration Services Commissioner (OISC) regulates immigration advisers, ensuring they are fit and competent and act in the best interest of their clients.</p> <p>Further, any practitioner who holds an immigration and asylum legal aid contract must also be accredited under the Law Society's Immigration and Asylum Accreditation scheme, which seeks to ensure a high standard and competency of practitioners advising on immigration and asylum law.</p>
35.	<p>Applicants to the statelessness procedure should have an effective right to appeal against a negative first instance decision. The appeal procedure should rest with an independent body.</p>	<p>Appeals Policy</p>	<p>Reject The immigration appeals system was reformed by the Immigration Act 2014. Rights of appeal are now limited to decisions affecting a person's fundamental rights or where they have preserved rights as an EEA citizen (or their family member).</p> <p>Where a stateless person claims they are at risk of persecution or that removing them would be a breach of their human rights and we refuse that claim they will have a right of appeal.</p> <p>A stateless person who does not claim they are at risk of persecution, or that removal would breach their human rights, who is refused permission to stay in the UK can apply for an administrative review of the decision to refuse their stateless application. The administrative review is carried out by an independent team within the Home Office, which is separate to the initial decision-making team.</p> <p>If the administrative review finds that the original decision was correct, then it is open to the person to seek a judicial review of the decision.</p>

36.	In the interim, the current AR policy and training material should be amended to make it clear that wider casework errors are to be identified and assessed through a full review, and that AR should not only focus on those case working errors highlighted by the applicant in the AR application.	Appeals Policy	Accept in part As part of the wider Home Office project on simplification of the Immigration Rules we are currently reviewing the policy and rules for administrative review. We will include consideration of this issue. This piece of work is ongoing, and our aim is for consolidated and simplified Rules to be in force by April 2021.
37.	The Home Office should amend the “Adult at Risk in immigration detention” policy to expressly identify an individual’s risk of statelessness as a factor that will weigh against detention on the basis that it is likely to indicate that there are no reasonable prospects of removal.	Returns, Enforcement and Detention Policy (REDP)	Reject It is not necessary to make a specific reference to statelessness in the AAR policy. An individual’s statelessness will be taken into account when an assessment is made of their removability, and that assessment will, in turn, be taken into account when consideration is given to the appropriateness of a vulnerable individual’s detention under the AAR.
38.	The detention review form used to review cases in detention, should be amended to detail indicators of statelessness so as this information is available for the Home Office when considering whether to maintain detention.	Detained Casework Oversight and Improvement Team (DCOIT)	Accept in part The Detention Case and Progression Review form is currently being updated and proposals for the new form include a section to record if a person who is detained claims to be stateless.
39.	The Home Office should improve its training in respect of statelessness to ensure that officials and case progression panel members are able to identify indicators of statelessness, the appropriateness of immigration detention in these cases and the approach that should be taken to removal.	DCOIT	Accept In response to Shaw’s second review a consolidated training package has been produced for those involved in detained casework. The package includes vulnerability, public protection and statelessness.
40.	Information should be provided to all detained persons to ensure that they are aware of the statelessness determination procedure and have access to the procedure at any time.	REDP	Accept in part It is not necessary to inform all individuals who are detained about the statelessness determination procedure (for example, those who are willing to return, or have no concerns with returning to their country of origin), as this would not be appropriate to their circumstances.

			<p>However, individuals in immigration removal centres have regulated access to the internet and will be able to access the information on Gov.UK and the statelessness leave guidance.</p> <p>Detention Engagement Teams will also signpost individuals to the publicly accessible information available (such as that noted above), during their induction or other engagement, where it appears from the individual's circumstances, that it would be useful to do so.</p>
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