



Home Office

# Establishing Identity for International Protection: Challenges and Practices

## National contribution from the United Kingdom

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Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled European Migration Network (EMN) Focused Study. The contributing EMN National Contact Points have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN National Contact Point's Member State.



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# Executive Summary

The establishment of identity is of key importance to the process of international protection. Due to the nature in which applicants may leave the country of origin, many are lacking a verifiable form of identification. This can provide the opportunity for some applicants to fabricate biographies in the hope of increasing the chances of their application succeeding. Without knowing the identity of an applicant it can be very difficult for the UK Border Agency to determine the credibility of their application, and also whether responsibility for their protection lies with the UK. The UK strives to improve identification processes so genuine applicants can be welcomed.

A number of methods, supported by UK laws, can be used to help determine identity. Firstly, document verification can be used to determine whether any documentation provided can reliably confirm identity. Where documentation provides insufficient evidence, the UK has put emphasis on the use of biometric data.

New applicants' fingerprints are taken and compared against European Dactyloscopy (EURODAC- The European Union automated fingerprint identification system for identifying asylum seekers and irregular border-crossers), international databases and previous visa applications. This can establish an applicant's previous whereabouts (and thus whether their protection may be the responsibility of another Member State under the Dublin Regulation) and gives the possibility of finding a match to previously used travel documents, allowing for confirmation of identity. Facial images can also be used to support fingerprints of poor quality. Other methods, such as language analysis and age assessment, are used in establishing identity characteristics on a case by case basis and the results are referred to as a factor when making decisions on the application.

It is, however, important to note that there is no established standard of identity. Although identity characteristics such as nationality can be proved, which may help to determine the credibility of an application, getting a complete and conclusive picture of identity is more difficult. The co-operation of the applicant and the credibility of their claim when interviewed will also be important factors when coming to a decision on the application, and will be weighted differently on a case by case basis, alongside any evidence obtained.

More difficult is the issue of identity in the returns process, should the application be unsuccessful. Whereas some countries of origin will accept proof of nationality as a basis for return others will require definitive confirmation of identity. This can result in delays and complications in re-documentation (the issuing of new travel documents for return), ultimately reducing the number of applicants who can be returned.

Returns are facilitated when there are agreements between the UK and the country of origin, and thus further emphasis could be placed upon development of co-operation. Additionally, an international benchmark of sufficient evidence for determining identity could be established, enabling countries to follow a standard assessment of applicants, rather than having to approach the matter on a case by case basis according to country of origin.

# Section 1: National framework

## 1.1 The challenges and scope of the issue

**Is the issue of establishing identity in the absence of credible documentation considered an issue within the framework of the procedure for:**

- a) international protection; and**
- b) the forced return of a rejected applicant to their (presumed) country of origin?**

Establishing an individual's identity is a major issue in processing applications for international protection. The protection applicant is not required to provide identity documentation in order for their application to be considered valid, because there may be legitimate reasons why they have no such documentation, for example, having fled persecution in a hurry. This, however, provides the opportunity for the illegitimate applicant to conceal their true identity, provide misinformation or conflicting biographies. An applicant may do this to conceal past history that may otherwise count against them, or to frustrate the UK's ability to return them to the country of origin if the application is unsuccessful.

Establishing identity is crucial for the credibility and outcome of an application, as it can determine whether the applicant is of the nationality claimed. Additionally, it allows determination of which Member State is responsible for considering the asylum claim (under the Dublin Regulation, where a person has previously made an asylum application in another Member State they may be transferred to that State). Improving identification processes is important to ensure genuine applicants for asylum are welcome to the UK.

In terms of returning those whose applications have not been accepted, states will seek to confirm that the person is one of their nationals, and the majority need proof of identity in order to do this. Thus the applicant who chooses to withhold or has lost their identity documentation prevents removal from proceeding until identity can be proved through other methods and a new travel document obtained.

Documentation along with biometrics are the twin mainstays of the UK's identity management processes. The UK routinely captures and searches the fingerprints of applicants for international protection, as well as for a range of other transactions. Fingerprints can be matched against those taken when applicants applied for a biometric visa, giving details of the travel document used to apply for the visa and providing evidence of identity. This can be used in considering their application for protection and, if unsuccessful, the returns process. This is very much in the interests of the legitimate applicant (who may have arrived without any documentation or other way of demonstrating their bona fides) and in the interests of the UK. Fingerprints are run against the EURODAC database and a positive match is usually sufficient to confirm if the person has been in, and thus is the responsibility of, another Member State.

However, some applicants choose to damage their fingerprints in an attempt to hide their identity and not be identified as having been in another Member State. In these cases, detention is used to minimise the likelihood of repeat damage and is maintained until a readable set of fingerprints can be obtained. In 2011, 35 per cent of cases dealt with in this way resulted in a positive match

on EURODAC and were thus the responsibility of another Member State. Other methods to determine identity, such as language analysis and DNA analysis, can be used and are detailed in the second section of the report.

**Please also indicate which of the following factors listed below contribute to the issues.**

- **The volume of cases where no credible documentation is available to substantiate an applicant's identity is considered to be large and/or growing.** Some applicants arrive with no valid documentation, giving rise to cases where there is no credible documentation to substantiate identity. UK Border Agency does not collect statistics on this problem.
- **The measures used to establish an applicant's identity in the absence of credible documentation are resource-intensive.** The resources involved in determining identity where there is a lack of credible documentation varies depending on the method used. For example, simple fingerprint matching does not use many resources. However, many methods are more resource-intensive. In 2011, for example, in the instance of damaged fingerprint cases, the mean length of detention required before readable prints could be obtained was 20 days.
- **The measures used to establish identity are not always successful.** In some cases this is true. If no credible documentation is provided by or found for the applicant, and no biometric match confirms the identity, decision making is likely to rely heavily on the credibility of the applicant as assessed at interview (although further methods used on a case by case basis, such as language analysis and age assessment, may help to confirm nationality and age respectively).
- **Decision making on applications for international protection is difficult due to the fact that measures used to establish identity are not always successful.** As above. However, if there is a high level of co-operation from the applicant in the decision-making process, this will also make a decision easier.
- **A significant proportion of rejected applicants for international protection cannot be returned to their country of origin due to the fact that measures used to establish identity are not always successful.** For the returns process, the acceptance of the country of origin is critical. Different countries of origin have different criteria as to the types of evidence of nationality and identity they will accept as a basis for return. Confirmation of nationality should be sufficient to oblige the relevant country to accept their citizen's return. However, in reality, re-documentation processes operated by many countries make it very difficult to return applicants whose concrete identity remains unknown. The UK is constantly striving to improve performance in this area through the use of biometrics, which can, for example, link people to visa applications made, thus confirming identity and enabling the country of origin to re-document the person swiftly. The level of co-operation of applicants in the re-documentation process also influences the proportion that the UK can successfully return.
- **List the countries of (claimed) origin for which establishing identity is particularly difficult, (i) when considering asylum applications; (ii) for implementing return.** Such lists are transient as they change as the situation in countries of origin change.

## 1.2 Statistics on the scale of the issue

Please provide, to the extent possible, the following statistics (with their source) along with, if necessary, an explanatory note to interpret them if, for example, the statistics provided are partial, had to be estimated (for example, on the basis of available statistics that differ from those below, or of first-hand research) or if they reflect any particular trends (a change in policy, improved methods of establishing identity, a change in the country of origin of applicants or of rejected applicants).

	2007	2008	2009	2010	2011	Additional information (for example, source, caveats, reasons for trends, top five nationalities, with numbers for total applicants - see also table below)
Total number of applicants for international protection	23,431	25,932	24,487	17,916	19,865	Source: Home Office, Immigration Statistics April – June 2012.  There are differences between definitions of the asylum figures in Immigration Statistics and those provided to Eurostat. Immigration Statistics figures on fresh applications include those who have made a fresh claim in the same reference month, while figures provided to Eurostat exclude these applicants.
Number of applicants for whom identity was not documented at the time of application	Data not readily available					
Number of applicants for whom identity was wholly or partially established during the asylum process, thereby allowing the relevant authorities to reach a decision on the application	Data not readily available					
Total number of positive decisions	5,743	5,893	6,742	5,195	5,649	Source: Home Office Immigration Statistics April – June 2012. There are differences between definitions of the asylum figures in Immigration Statistics and those provided to Eurostat (see above).
Total number of positive decisions for applicants whose identity was not documented at the time of application	Data not readily available					

Total number of positive decisions for applicants whose identity was considered sufficiently established by the decision making authorities	5,743	5,893	6,742	5,195	5,649	Source: Home Office Immigration Statistics April – June 2012. There are differences between definitions of the asylum figures in Immigration Statistics and those provided to Eurostat (see above). These figures are equivalent to the number of positive decisions as asylum would only be granted where identity was established, which could be via a combination of appropriate documentation, interviews, fingerprint or language analysis.
Total number of negative decisions	16,032	13,505	17,545	15,066	11,731	Source: Home Office Immigration Statistics April – June 2012. There are differences between definitions of the asylum figures in Immigration Statistics and those provided to Eurostat (see above).
Total number of negative decisions for applicants whose identity was not documented at the time of application	Data not readily available					
Total number of negative decisions for applicants whose identity was not considered to be sufficiently established by the decision-making authorities						
Total number of (forced) <sup>1</sup> returns undertaken of all rejected applicants	8,047	7,169	6,432	6,174	5,774	Source: Home Office Immigration Statistics April – June 2012. Figures relate to number of enforced removals <sup>2</sup> in asylum cases. From the available data it is not possible to say what stage in the asylum process the nationals of any country have reached at the time of removal, including whether their claim has failed at that point and they are failed asylum seekers. This is because those departing voluntarily can do so at any stage without notifying the UK Border Agency. For this reason these figures only apply to asylum cases removed.
Number of (forced) <sup>3</sup> returns of rejected applicants whose identity had to be established at the time of return	Data not readily available					

1 While the scope of this focused study (with respect to returns) includes only the forced return of rejected applicants, it is acknowledged that distinguishing between forced and voluntary returns in official statistics may not be possible. Where possible, do make this distinction.

2 Enforced removals occur when a person has breached UK immigration laws and has no valid leave to remain within the UK. The UK Border Agency enforces their departure to ensure that they leave the UK.

3 Idem.

Number of (forced)<sup>4</sup> returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin

Data not readily available

## 1.3 Relevant EU and national legislation

### **Is the process used to determine identity within the procedure for international protection laid down in legislation?**

**If Yes, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the procedure for international protection.**

There is no overall set process of identity determination for protection applicants laid down in UK legislation. However, a number of acts surround the procedure.

- Immigration Act 1971: Persons are liable to be detained if their identity or basis of claim has not satisfactorily been established.
- Asylum and Immigration Act 1993: Established legal powers to fingerprint asylum seekers.
- Immigration and Asylum Act 1999: If an asylum seeker refuses to comply and is consequently arrested, their fingerprints may be obtained by use of reasonable force.
- Nationality, Immigration and Asylum Act 2002: Authorized the Secretary of State to register an applicant's 'external physical characteristics' for application to enter or remain in the UK.
- Asylum and Immigration (Treatment of Claimants etc.) Act 2004: Makes it a criminal offence for a person to not possess without reasonable excuse a valid document showing their identity/nationality when first interviewed by an immigration officer after arriving in the UK. Under Section 35 people are obliged to give the authorities information, documents, and their fingerprints, be photographed and complete the necessary forms to facilitate their removal.
- UK Borders Act 2007: Introduced compulsory biometric residence permits for non-EU immigrants.

The UK Border Agency's decisions are also subject to challenge and scrutiny through the courts, thereby providing judicial oversight and assurance of the way that identity checks are implemented and the weight that should be placed on the results.

### **Is the process to be used to determine identity within the procedure for the forced return of rejected applicants laid down in legislation?**

The UK Border Agency, under UK legislation, is responsible for the implementation of the UK's immigration controls. These include removing those who have no legal basis to remain in the UK. The UK courts can rule on the validity/legality of processes used by UK Border Agency to determine identity. The acceptability of identity data for return will in any event depend on the requirements of the authorities of the country to which the applicant's return is sought, thus rendering the prospect of national legislation difficult, if not nugatory.

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<sup>4</sup> Idem.

## 1.4 The institutional framework at national level

### **Which national authorities have the operational responsibility for establishing the identity of applicants for international protection, including those who have to be forcibly returned to their (presumed) country of origin?**

The Home Office is the lead government department in developing immigration and asylum policy and has overarching operational responsibility for processing applicants for international protection and for returning unsuccessful applicants.

The UK Border Agency and Border Force are between them responsible for protecting the UK border by maintaining controls at the port of entry, securing compliance within the conditions imposed on individuals and removing those who have no legal basis to remain in the UK. There are links with the Foreign and Commonwealth Office (FCO) Migration Directorate, which assists in meeting targets in the areas of documentation and returns. FCO and the Department for International Development (DFID) are also involved to the extent that they may facilitate applications that they have identified as requiring protection by the UK.

### **Does the UK have a central competence centre for issues related to the determination of identity and/or verification of documents?<sup>5</sup>**

Within the UK Border Agency, the Identity and Data Integrity Directorate (including the Identity Services Unit and the Immigration Fingerprint Bureau) is the centre of expertise for all matters relating to biometrics, and leads on identity management strategy and policy. The Immigration Fingerprint Bureau is the centre of forensic expertise.

The National Document Fraud Unit (NDFU) is the centre of expertise for all identity document related matters, including verification of documents. NDFU is the focal point for information on forged and counterfeit passports, ID cards, visas and residence permits. Caseworkers receive training from NDFU in the detection of forged identity documents, and may refer to NDFU for advice and/or further examination.

The Country Returns Operations and Strategy Unit (CROS) is the centre of expertise on the return of rejected applicants, including on the documentation requirements of different countries of origin.

#### **If Yes**

- Has the centre developed its own database/reference base for:
  - genuine documents? No;
  - false documents? All false documents referred to the NDFU are kept on record.
- Does it use the database iFADO (iPRADO)<sup>6</sup> for checking false ID documents? The UK does not use this database. However, it does upload information onto it for other states to use.
- Does it have a forensic document unit? Yes
- Does it use the EDISON<sup>7</sup> system? No.
- Does its tasks involve:
  - Advisory services? Yes.
  - Development of methods? Yes.
  - Training of frontline officers? Yes.
  - Support with difficult cases? Yes.

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5 This may be a separate body (as in Norway) or a unit within a relevant authority.

6 PRADO Public register of authentic identity and travel documents online.

7 EDISON Travel Documents System.

**Are the officials responsible for determining the identity of applicants for international protection authorised to access EU databases holding identity information about third country nationals (for example, EURODAC, SIS II, and VIS)?**

UK Border Agency officials are able to access EURODAC but are precluded from checking applicants against the SIS II and VIS databases due to the UK's position in relation to Schengen. Neither are officials in Schengen states routinely able to check these cases against equivalent UK data. If there is no fingerprint match on the EURODAC database, but there is other evidence to suggest that the applicant has been in another Member State then an article 21 request can be made, requiring the Member State to check against their domestic records. If the UK gets a request, the case information database is checked.

# Section 2: Methods for establishing identity

## 2.1 Definition and documents required for establishing identity

**What definition (if any) of identity is used with regard to (a) applicants for international protection and (b) for the return process.**

The minimum dataset that is routinely used is full name, date of birth, gender, nationality, and if available, travel document number and country of issue. However, the UK does not consider there to be a 'standard' dataset that could meaningfully be defined as constituting 'an identity' as some people are unable to provide details that others regard as standard. For example, some people do not know their date of birth. Biographic matching processes can use a wide range of attributes to identify records that relate to the same person.

**What types of documents and other information do authorities in the UK accept as (contributing to) establishing the identity for applicants of international protection? Also indicate the major issues faced concerning determining the veracity (or genuineness) of documents.**

The start of the process of applying for protection includes a 'screening' event. This is undertaken either at the port of arrival or centrally in the Asylum Screening Unit in Croydon. Applicants are expected to produce their passport or anything else available to establish their identity, nationality and means of entry to the UK. The Government retains these documents whilst assessing the application.

Identity can be confirmed by a travel document that contains a photo matching the applicant's appearance and passes the forgery check, or a fingerprint match to a previous encounter when the applicant produced a travel document established to be genuine in that identity. In such circumstances, if the applicant is unsuccessful the information usually provides a basis on which to return them to their country of origin.

However, there still remains the possibility that the document is genuine but has been obtained fraudulently. This is particularly the case where the issuing procedures in the country of origin are lax. For example, the UK has experienced particular issues with protection applicants claiming to be Zimbabwean, who have travelled to the UK on genuine South African documents, but which the South African authorities determine have been obtained fraudulently.

Applicants may produce a range of other documents, such as birth certificates, which may not rightfully belong to the applicant, or be genuine. All documents provided are taken into consideration alongside other available information, none of which may establish identity conclusively.

Some of the major issues in determining authenticity of documents include:

- lack of genuine comparison material;
- poor quality of original documents, such as a lack of verifiable security features;
- many different formats for the same document, such as birth certificates; and
- inability to carry out checks with issuing authorities.

## **What types of documents are accepted by national authorities in the countries of origin if those applicants for international protection have to be returned?**

Whilst it is very difficult to return to some countries unless a valid travel document is held, other countries will issue an emergency travel document (ETD) for a person's return on the basis of expired documents.

Typically, the UK Border Agency will conduct an ETD interview with the applicant, taking down answers to a range of questions on identity and related details. It will supply those details to the authorities of the relevant country with whatever documentary evidence is available.

Different countries have different approaches to the nature and standard of checks that they undertake before issuing an ETD, and therefore the speed and reliability with which ETDs may be obtained also varies greatly for different countries. The process is quicker, easier and more effective when countries of origin agree that the UK can use EU Standard Format Letters (EULs) for return.

## **2.2 Methods used in the absence of documentary evidence of identity**

In the absence of documentary evidence, which methods are used by the competent authorities in the UK to check the credibility of the applicant's statements? For each method listed, please indicate:

- (a) whether it is used within the framework of the procedure for international protection and/or the procedure to forcibly return rejected applicants
- (b) whether the method is enshrined in law, part of standard practice or optional.

If possible, outline briefly the rationale behind the method(s) used in the UK, for example, why some method(s) have been used in preference to others, if there is a hierarchy or order of methods followed, and any research conducted providing evidence of the method's reliability.

Table to show methods used in determining identity

Method	Brief	Used in IP?	Used in forcible returns?	Enshrined in law?	Rationale
Language analysis	Carried out by company SPRAKAB	Yes	Yes	No. Used in some cases only. Except where targeted testing is permitted, only to be used if strongly suspected that applicant is providing false documentation.	<p>Language analysis provides additional evidence when assessing the origins of an individual, but cannot on its own provide conclusive evidence.</p> <p>The weight to be given to the language analysis report in terms of evidence of nationality will depend on the findings of the report. Overall conclusions must take into account all of the evidence available.</p> <p>The Asylum Screening Unit can use language analysis on undocumented cases where the applicant speaks the correct language but there are still doubts over nationality. The most obvious cases that fit this scenario at present are Arabic speakers claiming to be Kuwaiti Bidoons.</p> <p>It is relatively easy to use and results are obtained within a short timescale.</p> <p>Language analysis results are more readily accepted by the asylum and immigration tribunal (AIT) than countries of origin, so it is a better method for protection cases than for return.</p>

Age assessment	Local authorities/ UK Border Agency conduct an assessment of age if in doubt.	Yes	Yes	No. However there is established case law on what constitutes good practice in age assessment by local authorities.	<p>Age assessment is unable to provide conclusive evidence, particularly for borderline cases, but can be used as a supporting factor in a decision.</p> <p>Where an unaccompanied applicant for international protection claims to be under 18, this is a matter both for the UK Border Agency in determining the claim for protection and for the relevant local authority's Social Services Department, which would be responsible for providing any support needed under the Children's Act 1989.</p> <p>If an applicants' appearance strongly suggests they are significantly under 18 they are assessed by a Chief Immigration Officer (CIO), or if the age is disputed but they do not meet the appearance threshold, then they are assessed by a local authority social worker using a full age assessment compliant with Merton case law.<sup>8</sup> In most cases that authority's decision will be decisive. However, all sources of information are considered in the overall decision.</p> <p>Age assessment is also to ensure that the child is supported appropriately. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary and the Director of Border Revenue to have regard to the need to safeguard and promote the welfare of children.</p>
Fingerprints (EURODAC)	Fingerprints of all new applicants and dependants aged 14+ are searched on EURODAC.	Yes	Yes – but only for transfer to the Member State responsible for applicant.	Yes – EU regulations and UK law.	<p>In compliance with the EURODAC regulation, all applicants for international protection aged 14+ have their fingerprints checked against and stored on EURODAC. Where this reveals a match it may provide a basis for transferring the claim to the Member State responsible under the Dublin Regulation. Fingerprint matches are conclusive, hence this provides a firm basis for transferring the claim within Europe.</p> <p>However, it should be noted that this does not routinely establish identity, as the Member State holding the record against which it has matched is also likely not to hold credible identity documentation for the person. Thus whilst EURODAC apportions responsibility for the case, the Member State that takes responsibility will still have the issue of determining identity.</p>

<sup>8</sup> B v London Borough of Merton (High Court, UK 2003)

Fingerprints (other)	Fingerprints enrolled for all new applicants and dependants aged 5+	Yes	Yes	Powers to fingerprint enshrined in UK law.	<p>Fingerprints are compared against the Immigration and Asylum Biometric System (IABS) and the UK police fingerprint database (IDENT1) to establish if the applicant is known to the UK.</p> <p>If a person has made a previous asylum claim, then the information that the person gave to the UK Border Agency will/should be available and can be used as a check against the content of any fresh claim. It can also be used to check if the person was removed (or made a voluntary departure), which will show the destination country.</p> <p>Where a fingerprint match occurs against a visa, biometric residence permit, or other transaction where the passport was used, it will help to confirm identity for both the protection and returns processes, by linking the person to the identity and travel document used, and information on where, when and why the person was fingerprinted.</p> <p>The UK Border Agency operates many data sharing arrangements with other countries, which are useful in identifying applicants for international protection, for the purposes of deciding their applications, and to assist return of rejected applicants. In particular, fingerprints may be checked against the fingerprint systems of Australia, Canada, New Zealand and the USA under the Five Country Conference High Value Data Sharing Protocol. According to the Biometric Case Matching Team Tracking Log, 7 per cent of cases checked are found to match against one of more of these systems. In 41 to 45 per cent of matching cases the match reveals travel document details known to the other country, thereby establishing identity that can be used in re-documentation of rejected applicants.</p>
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Photograph	Photographs taken as part of a standard biometric check when the application is made. Facial images as well as fingerprints are routinely enrolled in the UK Border Agency's biometric database (IABS).	Yes	Yes	No	IABS uses facial images as a secondary biometric, in support of fingerprints. In the event that a fingerprint quality is below a certain confidence threshold, a facial search will also be triggered automatically against the facial images in the system. Records where facial images are identified by the system as potential matches are then presented to a forensic expert in the Immigration Fingerprint Bureau for comparison. The forensic expert will view both the fingerprints and facial images within the relevant records to confirm or reject the match. Facial images may be compared manually against those held in other national systems when relevant.
Iris scans	The UK does not operate any iris recognition systems for international protection or returns processes.	N/A	N/A	N/A	N/A
DNA analysis	DNA testing may be used to establish parentage or familial links where disputed or unclear.	Yes	No	No – used in some cases only.	Used only in family reunification applications to determine the relationship of the applicant to the UK sponsor is 'as claimed' and only in those cases where there is insufficient documentary evidence. Does not determine the identity of either the sponsor or applicant merely the degree of relationship between the two.
Interviews	(a) Asylum screening interview.	Yes	Yes	Screening and substantive interviews are carried out within the standard policy and process for protection applicants.	Asylum screening interviews gather information about nationality and identity at the start of the process. The substantive interview is used to gather information about the substance of the claim, which will include testing identity and nationality claims if these are in doubt. Although primarily related to the protection claim, the information gathered in screening and substantive interviews is also used in the returns process. Although undertaken for returns purposes, the UK endeavours to carry out ETD interviews whilst the person is still within the protection application process, as there is contact and they are more likely to be compliant.
	(b) Substantive asylum interview.	Yes	Yes		
	(c) ETD interview.	No	Where an ETD will be required for return.		

	(d) Interview by home country officials.	No	Where country of origin needs to interview.	No – this is country of origin requirement.	Some countries require an interview with their own officials as part of the returns process. In theory they should be well placed to identify their own nationals, who may also be more likely to co-operate with officials from their country of origin rather than UK. In practice, however, it can create extra complexity and further reliance on the person's co-operation. Interviews by officials from or at a diplomatic mission normally take place after the protection claim has been finally disposed of. This would also apply to re-documentation operations that involve bringing expert officials from the country of origin to the UK to carry out interviews in reporting and removal centres.
	e) UK Border Agency expert re-documentation interview.	No	Where in-depth expert interview is needed.	No – used on uncooperative cases and where nationality is in doubt.	Expert interviewing teams have built up expertise in particular countries. All are able to carry out in-depth, assertive interviews, to cross check personal information an applicant may be using other than in their dealings with the UK Border Agency, and to challenge the person on discrepancies. This approach was developed for criminal cases and is now being taken up for other types of case, but is limited by the number of officials trained to carry it out.

# Section 3: Decision-making process

## 3.1 Status and weight of different methods to determine identity

On the basis of the information gathered by the methods outlined, how is a decision on identification made? Are some methods given more weight on their reliability than others? Briefly outline how the results from the different methods will be weighted, and whether this is laid down in legislation, policy or practice guidelines.<sup>9</sup>

The UK has a three-tiered procedure of dealing with foreign nationals who do not have any credible documentation with them. For example, applicants are interviewed once and asked about their name, date of birth and other biographic details. Two opportunities are available for the subject to correct and confirm the information (name, date of birth, etc.) recorded by the caseworker. If the information, including any documents, provided at the screening interview appear to be genuine, and this is confirmed at the more in-depth asylum interview and/or by the results of the fingerprint checks, then there may be no need for further investigation. If, however, information supplied during these interviews raises doubts then, depending upon the nature of the doubts, further investigation may be in order. New information can be factored into the protection consideration at any time.

The onus on the UK Border Agency in relation to an application for international protection is to make a decision that is fair, rational and reasonable in the light of all relevant information. Therefore all relevant information must be considered appropriately, including the applicant's own account, other information they have produced, and other information that the UK Border Agency has ascertained. Fair processing requires that where the UK Border Agency has information that appears to contradict the applicant's account, this will normally be put to the applicant and their response considered.

When considering what weight it would be appropriate to attach to documents submitted in support of the claim, decision makers must bear in mind the case of *Tanveer Ahmed*<sup>10</sup>. The Tribunal ruled that the burden of proof is upon the applicant to show that documentary evidence submitted can be relied on. However, it is for the decision maker to consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. In practice, this means that documentation submitted as evidence should not be considered in isolation from other pieces of evidence and other elements of the credibility assessment.

It is a matter of case by case judgement of what characteristics are in doubt to decide which methods are used. For returns, it is also dependent on the evidential requirements of the country of origin and on country-specific arrangements that are available, for example, whether the UK has a fingerprint matching or data sharing agreement with the country of origin, or whether the country of origin has agreed for its officials to carry out interviews in person (at its diplomatic

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<sup>9</sup> Member States may differ significantly in how they deal with applicants for international protection whose statements regarding their identity are not supported by valid documentary evidence, not only in the methods they can or should use, but also in the weight they give to the outcomes of some methods. The aim, therefore, is to highlight these differences, should they exist.

<sup>10</sup> [2002] UKIAT 000439.

mission or by officials coming to the UK for a re-documentation operation). More than one method may be used where the necessary information is not obtained from the first method used. Fingerprint match evidence is the strongest the UK may have, and is acceptable to the courts at any level. Other methods do not generally provide definitive proof so may be accepted to a greater or lesser degree by the courts and by the country of origin, and need to be weighed against other factors on a case by case basis. For example, if language analysis shows a high degree of confidence that a person, whose account lacks credibility and is internally inconsistent, is of a different nationality than claimed, it is likely that the conclusion from the language analysis will prevail. In relation to returns, the key factor is what the authorities of the country in question will accept as sufficient evidence to take the person back, and this varies widely between different countries.

It should be noted that the expectations of the UK judiciary and the country of origin of rejected applicants in relation to identity assurance often do not align. For example, if a conclusion as to nationality that relies on language analysis is accepted by an Immigration Judge, this does not mean that the relevant country of origin will accept the person back. Equally, an Immigration Judge may reject a finding even where the UK is confident that the authorities in the country of origin are satisfied that the person is one of their nationals and would accept them back. This considerably complicates the processes.

**Is a ‘grading’ structure or spectrum used to denote the degree of identity determination? If Yes, outline what this is.**

No, the UK Border Agency does not presently (at 2012) have any formal ‘grading’ structure for identity assurance. In practical terms, different levels or types of identity assurance are required in different circumstances. For protection, there is no set threshold as decisions will rest heavily on the applicant’s credibility. For returns, it will differ according to nationality as the criteria for return are subject to the agreement of the relevant country of origin’s authorities.

**Are any future measures considered with regard to setting up or further elaborating a ‘grading’ structure? If Yes, outline what these are.**

The UK Border Agency is developing an integrated casework system (ICW) including functionality for identity resolution through which all future cases will pass as an early part of the process. Identity resolution will reconcile the outcomes of biometric and biographic matching against different systems, to provide the caseworker with a single, consolidated view of what is known about the applicant.

### **3.2 Decisions taken by competent authorities on the basis of outcomes of identity establishment**

**What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken on the application?**

There is no category of decision other than grant or refuse. However, caseworkers may decide applicants are able to stay in the UK for reasons of humanitarian protection, in which case they may be given permission to stay temporarily. If a caseworker decides there are no reasons for stay, the applicant and their dependants will be expected to leave. The caseworker will tell the applicant the options they have under the Voluntary Assisted Return and Reintegration Programme. If the applicant does not leave the country, they can be removed. The UK Border Agency may detain the applicant until they are removed.

Facts that are credible but lack any external evidence to confirm them are deemed to be ‘unsubstantiated’, ‘uncertain’, or ‘doubtful’. However, a decision must be made whether to give the applicant the benefit of the doubt on each unsubstantiated fact – this means that the decision maker must come to a clear finding as to whether the fact can be accepted or rejected. It is not acceptable to come to a final conclusion that a claimed fact (about which the decision maker is uncertain) ‘may have happened’. The benefit of the doubt needs to be considered and applied appropriately to these uncertain facts when considering all the evidence in the round at the end of the credibility assessment. This means that the benefit of the doubt can only be considered after a finding on the material facts that are to be accepted or rejected has been made.

**How important is establishing identity relative to other factors used in making an overall decision? For example, if identity cannot be established, does this de facto lead to a rejected decision? Are other factors (for example, gender and suspected country of origin), given more weighting than identity determination in some cases?**

A key element of the decision-making process is to “assess the validity of any evidence and the credibility of the applicant’s statements” (UNHCR Handbook, paragraph 195). In determining if an applicant is in need of protection, decision makers are required to consider which aspects of the account they accept and which they reject. By doing this, decision makers are assessing the credibility of an applicant’s claim about past and present events. It should be a neutral assessment of the material facts that go to the core of the claim in which subjectivity should be kept to a minimum.

Decision makers must consider the credibility of a claim in light of all available evidence relating to the claim. Credibility assessments should address internal credibility (applicant’s own evidence) and external credibility (the consistency of material facts with the objective evidence).

Internal credibility requires assessing whether the applicant’s claim is coherent and consistent with:

- (a) past written and verbal statements;
- (b) claims made by witnesses; and
- (c) any documentary evidence submitted.

External credibility requires:

- (a) assessing whether the material facts are consistent with generally known facts; and
- (b) country of origin information.

Some factors can be material to the claim. Examples include an applicant’s nationality, membership of a political party, religion or a particular social group, incidences of arrests and periods of detention, locations or episodes of violence at the hands of non-state agents. It is for the decision maker first to identify all the claimed facts and to distinguish which facts are material to the claim and which are not. It is important to note that nationality is always a material fact.

Applicants do not have to convince the decision maker that they are telling the truth. It is possible to establish a credible claim even where the applicant is unable to provide any independent, corroborative evidence to support claims about past and present events and experiences as long as the account is coherent, consistent and plausible when considered in light of the applicant’s profile and any mitigating circumstances. Thus a negative outcome in terms of identity doesn’t necessarily mean a negative outcome for the claim.

**What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken on return? For example, does the outcome of identity establishment influence a recommendation to ‘defer return’?**

Rejected applicants for international protection can only be returned to their country of origin if the UK Government has the required information, documents and a process for doing so, in accordance with international law and/or as agreed with the relevant country’s authorities. There are several different processes, and the nature and level of evidence of identity will affect the process that is applied. Ideally, where a valid passport is held for the person there is no need for further documentation for return. Where there is no passport and an Emergency Travel Document (ETD) is needed, the evidence of identity is important for the country of origin to issue the ETD. For many nationalities UK Border Agency is able to return on an EU Standard Format Letter (EUL) instead of applying for an ETD, and the nature of identity evidence available may determine whether return can be affected on an EUL or whether an ETD is needed.

**Are the results of the methods used to establish identity during the international protection process available for the process of forced return?**

**What supplementary steps may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return?**

Results will be made available where they relate to nationality and identity. Most claims for international protection are based upon a person’s inability/unwillingness to return to their country of origin for reasons of persecution or breach of their Human Rights. Therefore to consider such an application, the UK would have to be satisfied as to the veracity of their claim, including nationality and identity. The latter can be used in the re-documentation process leading to return.

