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The Rt Hon Amber Rudd
Secretary of State for the Home Department
Home Office
2 Marsham Street
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8 January 2018

Sent by e-mail: privateoffice.external@homeoffice.gsi.gov.uk

Dear Home Secretary,

Re: Declarations of incompatibility relating to section 41A (registration: requirement of good character), British Nationality Act 1981

Please would you confirm what steps have been taken to lay before Parliament a draft remedial order, under the powers provided by section 10 and Schedule 2 to the Human Rights Act 1998, to resolve the declarations of incompatibility made by the Supreme Court on 19 October 2016 in *R (Johnson) v Secretary of State for the Home Department* [2016] UKSC 56 and the High Court on 4 July 2017 in *R (Bangs) v Secretary of State for the Home Department* (CO/1793/2017). When will a draft remedial order be so laid? (The respective declarations are appended to this letter.)

Each of these declarations relates to section 41A of the British Nationality Act 1981, albeit the relevant discrimination contrary to Article 14 of the European Convention on Human Rights arose in distinct ways.

Mr Johnson would have been a British citizen by birth but for the previous failure of British nationality law to recognise, for the purpose of acquisition of citizenship, the father where he was not married to the mother. (In the particular circumstances of Mr Johnson, he would have been British by descent.) Mr Bangs would have been a British citizen by birth but for the

previous exclusion under British nationality law of mothers for the purpose of acquisition of citizenship by descent.

The British nationality law (and policy) has been variously amended over the years in an attempt to correct these historical injustices by making provision for those so denied British citizenship at birth to be able to register as British. However, section 41A of the 1981 Act, inserted by the Borders, Citizenship and Immigration Act 2009, continues the injustices for those denied citizenship at birth but deemed not to be of good character. Hence, Mr Johnson and Mr Bangs would be prevented from registering as British.

As you are aware, the circumstances of Mr Johnson and Mr Bangs are not unique. The human rights incompatibility declared in their cases also applies to others, including two people presently instructing the Project for the Registration of Children as British Citizens (PRCBC). We are aware of many other people similarly affected. One of those presently instructing us was the subject of judicial review proceedings at the time of the declaration in Mr Bangs' case. Prior to the making of that declaration (made by the High Court with your consent), your leading counsel had been in discussion with our counsel for the purpose of settling those proceedings by way of a court order including a similar declaration by consent of the parties.

In the matter we were (and are still) dealing with (CO/4418/2014), our respective counsel had drafted an agreed statement of reasons for the purpose of inviting the court to make the order. In that statement, it was made clear that the need for the order was to empower you to exercise your powers to lay before parliament a draft remedial order. On your behalf, it was explained this was necessary because you did not foresee any imminent prospect of the introduction of a bill into parliament to amend section 41A, particularly in view of the government's heavy legislative agenda necessitated by the decision to withdraw from the European Union.

Ultimately, you did not pursue a consent order in our client's case because you consented to the order in Bangs, by which the High Court declared section 41A as it applies in our client's case to be incompatible.

Six months have now passed since the making of the declaration in Mr Bangs' case, and fourteen months have passed since that in Mr Johnson's case. Like Mr Bangs and Mr Johnson, those we represent continue to be denied the British citizenship that should have been theirs by birth and subsequently should have become available to them by registration many years ago. The necessary corrective step, as you have acknowledged, lies with you by initiating the remedial order process.

To our knowledge, litigation has been necessitated in cases other than those of Mr Johnson and Mr Bangs. Two of our clients have been compelled to engage in expensive and protracted litigation to secure their release from detention and prevent their removal from the UK. We have given the High Court reference number relating to one above. The other reference number is CO/386/2016.

Regrettably, while the declared incompatibility remains outstanding, it is likely that others have or will need to litigate with consequent cost to the public purse.

Our two clients remain without their British citizenship, more than one year after submitting to you their request to be registered by entitlement under section 4C and section 4G of the British Nationality Act 1981 respectively. Their lives remain in limbo. They are unable to travel outside the UK. They cannot vote. One of them must continue to apply for extensions of his leave to remain – applications for which you charge a fee. They must retain legal representation – for

which there is no legal aid. One of them continues to suffer from mental health difficulties, which are exacerbated by this limbo. These are some of the difficulties faced by our two clients and by other young people of whom we are aware.

Please would you confirm both that you will lay a draft remedial order before Parliament and how soon you will be doing so.

Yours sincerely

Solange Valdez-Symonds

Director and Solicitor PRCBC

cc: Joint Committee on Human Rights
Equality and Human Rights Commission
Law Society Immigration Committee
Immigration Law Practitioners' Association