JUSTRIGHT SCOTLAND

JustRight Scotland
Written Evidence in Response to the UK Govt's
New Plan for Immigration Consultation

About JustRight Scotland

JustRight Scotland is a registered charity established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working towards a model of collaborative social justice. We work in partnership with non-lawyers and others towards the shared aims of increasing access to justice and reducing inequality in Scotland. We do this by providing direct legal advice to individuals and organisations, running outreach legal surgeries and helplines, delivering rights information, training and legal education, and contributing to research, policy and influencing work. We work across a number of policy areas including women's legal justice and gender-based violence, trafficking and exploitation, disability and trans justice, and migration and citizenship.

We also host JustCitizens, an advisory panel of people who have lived experience as migrants in Scotland. Our JustCitizens have separately submitted a response to this consultation and we refer to and adopt their response in its entirety here.

Our Response to the New Plan for Immigration

We refer to and adopt the opening paragraphs of our JustCitizens response which states:

> "The immigration system and the unlawful conduct by the Home Office continues to harm the lives of migrants and asylum seekers. From the high costs associated with visa applications and appeals, to the complex and changing landscape of immigration policy, the system remains hostile to migrants often forcing them into poverty and harm. The constant attacks and barriers put in place for safe and legal routes to the UK push migrants into the hands of traffickers and increase the chance of illegal or dangerous activity.

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> The interventions by the Home Office, in particular over the last five years, have been entirely counter-productive to the apparent intention of the new immigration plan which is "*to increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum.*""

Furthermore, as human rights lawyers, engaged in the day-to-day practice of providing legal advice and representation to people across Scotland to claim asylum, make family reunion applications, and seek protection from trafficking and domestic violence, we are concerned that many of the proposals are themselves unlawful. Specifically, we believe that various proposals breach the Refugee Convention 1951, the European Convention on Human Rights ("ECHR"), the Council of Europe Convention on Action Against Trafficking in Persons ("ECAT"), or the UN Convention on the Rights of the Child ("UNCRC").

Moreover, we believe that many of the proposals set out in the consultation – were they to be enacted without legislative consent motions – would be contrary to the devolution agreements in Scotland, Northern Ireland and Wales.

We believe these new proposals are harmful and unfair. Furthermore, they are not evidence-based, contradictory, unworkable and potentially unlawful.

The Consultation Process and the Value of Lived Experience

We also have significant concerns about the consultation process itself. Contrary to published guidance, the consultation is only open for six weeks, giving organisations and individuals limited time to respond. Many of the proposals in the New Plan for Immigration and the consultation itself are also confusing and lacking in detail.

We are further concerned that the timing of the consultation – during election period for local, regional and national elections in England, Wales and Scotland – means that key local and regional government agencies will not be able to contribute to the evidence.

Crucially, the design of the consultation creates barriers for many who may want to share their views. The documents are only available in English and Welsh and the consultation questions themselves are complex, and weighted towards answers which assume support for the New Plan and assume support of previous interventions. Many questions do not allow for answers which accurately express our strong disagreement with the proposals or provide space for a balanced response. We are concerned that responses will be limited, will be difficult to decipher and will not provide the clear evidence required for such a fundamental change in policy.

Our JustCitizens advisory group is made up of a diverse range of migrants which include asylum seekers and refugees. Our group includes individuals who have

experienced torture, abuse and have fled persecution. Many of our group members have experienced first hand the consequences of the UK's complex, unfair and hostile immigration system, which these proposals only further extend and embed. Their consultation response – which was produced with the support of JRS - reflects lived experience navigating the asylum and immigration system, and professional experience working within migrant communities in Scotland. It should be valued and captured in the form of this consultation.

Our JustCitizens have said:

> "The process is purposefully difficult to prevent engagement rather than being the transparent and inclusive participation method the UK Government and Home Office should be aspiring to….These proposals reflect a disdain for members of our group and asylum seekers across Scotland who have fled to the UK in the hope of finding safety, inclusion and respect.
>
> **We would strongly urge that the consultation process takes a different approach and reaches out specifically to third sector, human rights and advocacy groups who can provide input of lived experience expertise from those who have gone through or are going through the immigration system. This would enable a more competent and evidence-based immigration system to be created with human rights and equality at the centre."**

We are joint signatories of a letter from Scottish civil society groups to the Prime Minister, the Home Secretary and the Secretary for Scotland raising concerns these concerns about the consultation process and will continue to support our partners to respond to opportunities to contribute, throughout the legislative process.

Impact of the Proposals in Scotland

One of our key concerns is that whilst some of the proposals relate to issues that are reserved to the UK Parliament (for example, proposals around the legal standard for assessing asylum claims, or reforms to British nationality law), some of the proposals are not matters to be decided by the UK Home Office alone, becausethey are issues devolved to the competence of the Scottish Parliament and/or their impact will fall into areas of devolved competence, such as the identification, support and safeguarding of vulnerable groups.

We highlight below some key areas of our work to illustrate our concerns:

Supporting survivors of trafficking

In Scotland, this work is governed by the Human Trafficking and Exploitation (Scotland) Act 2015 ("the 2015 Act"). Changes to our legal framework for survivor support must be consistent with the principles and protections set out in the 2015 Act and our other commitments under international law, including the Council of Europe Convention on Action Against Trafficking in Human Beings and EHRC.

The identification and protection of victims of human trafficking in the UK is not an immigration process. Yet the decision by the Home Office to present these proposals as part of a New Plan – as well as the substance of some of the proposals – appear to conflate the two issues.

A National Referral Mechanism (NRM) for the identification of victims of trafficking is a co-operative, national framework through which governments fulfil their obligations to protect and promote the human rights of victims of trafficking, co-ordinating their efforts in a strategic partnership with civil society organisations and the private sector[1]. Early identification is fundamental to an NRM. We have legal obligations arising under our international commitments, including Article 4 ECHR, to take proactive measures to prevent trafficking and protect victims. Any proposals for reform must be in line with these international commitments and consistent with the principles of an NRM.

Furthermore, and with particular regard to Scotland, identification, protection and prevention are also questions that relate to the safeguarding of vulnerable people, child protection and other local authority safeguarding structures, criminal justice, specialist adult support as well as health and legal support for survivors. Every single one of these matters is a devolved issue.

The Human Trafficking and Exploitation (Scotland) Act 2015, and its Regulations, recognises these links and competencies by setting out the criminal offence of human trafficking as well as the presumption against prosecution of victims of human trafficking. It also establishes measures for the protection of adult and child victims; around guardianship, age assessment and a clear statutory obligation to provide support and assistance to adults with defined parameters around when this support will be provided and for how long. This devolved competence is demonstrated by Scotland having a minimum recovery and reflection period of 90 days as opposed to the 45 days in England and Wales.

[1] OSCE Permanent Council (2003), Decision No. 557 on OSCE Action Plan to Combat Trafficking in Human Beings, 24 July 2003.

We note that the key proposals on trafficking set out in the New Plan (training, parameters of support, health, child protection, criminal justice) largely relate to matters firmly within the devolved competence of the Scottish Parliament.

Increasing enforcement powers and severity of offences linked to entering the UK illegally

The New Plan also sets out proposals that directly impact survivors of trafficking and people fleeing persecution, although they are not framed in that way. For example, introducing tougher criminal offences for people entering the UK illegally is inconsistent with the finding that a significant majority of people who are legally recognised as survivors of trafficking and as refugees entered the UK illegally because of the lack of safe, legal routes.

We are concerned that these proposals will not stop smuggling and trafficking of people but rather will increase the risk of vulnerable groups falling into exploitation and human trafficking.

Removing support from asylum seeking families who are currently supported by local authorities

In Scotland, social work support to destitute families is provided under Section 22 of the Children (Scotland) Act 1995. The New Plan includes a proposal to seek the agreement of local authorities to systematically exclude some children and families from the operation of Scots child welfare law.

It is important to underline that current support for asylum seeking families is provided following an assessment that those families have a clear and identifiable right to remain in the UK – even if a further application to the Home Office (often requiring payment of a fee) requires to be made in order to secure that right.

There is no evidence that this legal standard is not working from the perspective of ensuring child welfare and the human rights of the children and families involved – although it does create increasing pressure on local authority financial resources as Home Office policies push more and more people into destitution.

Evidence published in September 2020 by the NRPF Network indicated that 77% of families supported by local authorities are eventually granted leave to remain in the UK; however the cost to local authorities is significant, with a quarter of such families requiring more than three years of support and a rise in referrals for local authority

support due to the impact of "hostile environment" policies.[2]

This evidence suggests that the key issue for children, families and local authorities is actually inefficient and (where there are successful appeals) challengeable Home Office decision-making – an issue that cannot be addressed by reforming how local authorities provide support.

It is therefore unclear what this further proposal could seek to achieve, and we are concerned that its impact – in an area clearly devolved to the Scottish Parliament – is potentially unlawful.

Disproportionate impact of reforms on women victims of gender-based violence

The New Plan sets out a range of reforms that we are concerned will have a negative impact for all people in the UK fleeing persecution. For example, there are proposals to create a two-tier system that will make some asylum claims inadmissible, to reintroduce plans for a "detained fast-track" appeals system and for strictly enforcing aminimum notice period of 72 hours before a person can lawfully be removed.

These reforms reduce procedural safeguards and substantive rights for all people seeking protection. For example, the "detained fast-track" appeals system previously operated by the Home Office was suspended in 2015 following a finding by the Court of Appeal that it was unlawful because: "*the time limits are so tight as to make it impossible for there to be a fair hearing of appeals in a significant number of cases*."[3]

However, we are aware from evidence and research that the UK asylum system's rules and procedures have a disproportionately negative impact on women seeking asylum.[4]

It is therefore important to highlight the impact that these reforms will have on women, including female survivors of gender-based violence, who are very likely to have suffered sexual abuse in their countries of origin or other violence inflicted on them because they are women. This could include trafficking for forced prostitution, forced marriage or rape during war.

The identification and protection of female survivors of gender-based violenceliving

[2] NRPF Network, "Councils achieve cost savings despite rising referrals and challenges obtaining immigration outcomes," September 2020, https://www.nrpfnetwork.org.uk/news/nrpf-connect-data-report-2019-20.

[3] *Lord Chancellor v Detention Action* [2015] WLR 5341

[4] See Women for Refugee Women, "Consultation on the New Plan for Immigration: A Guide," April 2021, https://www.refugeewomen.co.uk/campaign/new-plan-for-immigration/.

in Scotland is – similar to the analysis for trafficking above – a matter wholly devolved to the Scottish Parliament. The mechanisms of protection in Scotland include our criminal justice system and the local safeguarding and child protection frameworks operated by our local authorities. It is important to recognise that in some cases the violent crime may be an ongoing matter in Scotland – for example, forced prostitution, forced marriage, rape and domestic abuse.

We are concerned that these proposals increase vulnerability and risks to women survivors of gender-based violence, both abroad and here in Scotland. We are also concerned that these reforms will have the effect of increasing the complexity of casework and the cost of providing practical support to these women – and will, in a substantial number of cases, shift the burden of meeting our international commitments to protect and support victims of gender-based violence from the Home Office to our local authorities and third sector organisations – at significant cost and without clear justification or evidence for any requirement for change.

Age assessment of children seeking asylum whose age is disputed

In Scotland, age assessments are conducted by local authority social workers to assess eligibility for support under the Children (Scotland) Act 1995. They are closely linked to obligations around the presumption of age of victims of human trafficking, set out in the Human Trafficking and Exploitation (Scotland) Act 2015. They are conducted in line with practice guidance issued by the Scottish Government in March 2018.[5]

The proposals recommend: requiring social worker age assessments to be made against Home Office criteria; forcing social workers to either complete age assessments or refer cases to a Home Office panel for age assessments to be carried out; using this Home Office panel as a review mechanism for social work assessments; and using unspecified "up to date scientific technology" in age assessments.

Again, we do not believe the Home Office can lawfully set standards for, or compel, Scottish local authorities to either complete age assessments against their professional opinions or refer age assessment cases to a Home Office panel.

As the Scottish Government practice guidance states, local authorities are conducting assessments to determine whether they have duties arising to children under Scots child welfare law, and often linked to their obligations to protect child victims of trafficking under Scottish human trafficking legislation. As regards the use

[5] Scottish Government, "Age Assessment: Practice Guidance," March 2018, https://www.gov.scot/publications/age-assessment-practice-guidance-scotland-good-practice-guidance- support-social/.

of scientific technology, the British Society for Paediatric Endocrinology and Diabetes have stated that physical examination, bone age assessment and dental x-rays do not add anything to the existing process, having a margin of error between 2 and 4 years.[6] More recently, the UN Committee on the Rights of the Child has found in a series of cases that Spain breached the rights of migrant children under the UN Convention on theRights of the Child by relying on x-ray evidence in reaching a determination on age assessment.[7]

We would again emphasise that age assessment of children in Scotland is a matter firmly devolved to the Scottish Parliament, and that we have a process for age assessment of children in Scotland which is based on a holistic assessment by experienced social workers, with multi-agency input, and that there is no evidence or convincing argument that this approach is not workingto identify and safeguard children in Scotland.

We would also express our concern at any proposal that would supplant this approach with "up to date scientific technology" without robust evidence for any advantage gained, and express our concern that previous use of "objective" medical evidence in age assessment has been heavily criticised and rejected as variously unreliable, indeterminate, or in some cases, unethical.

Access to justice and judicial review reform

The Scottish justice, courts and tribunals system lie within the devolved competence of the Scottish Parliament, and are entirely separate to the justice and courts system of England and Wales. Whilst the UK Government can make changes to how appeals are dealt with to and from the First-Tier and Upper-Tier Tribunals (Immigration and Asylum Chamber),[8] any Judicial Reviews of Home Office decisions are to the Court of Session in Scotland –and the rules that govern those appeals are set out by the Court of SessionAct 1988 and the Rules of the Court of Session 1994.

The New Plan includes proposals to amend how immigration Judicial Reviews are dealt with by the Court of Session. It is unclear whether, and how, the HomeOffice or the UK Ministry of Justice could propose to limit or change the right of Judicial Review, or amend the procedural rules for Judicial Review, in a legal action arising

[6] Royal College of Paediatrics and Child Health, "Refugee and unaccompanied asylum seeking children andyoung people: guidance for paediatricians," https://www.rcpch.ac.uk/resources/refugee-unaccompanied-asylum-seeking-children-young-people-guidance-paediatricians#age-assessment.
[7] UN Office of the High Commissioner for Human Rights, "Spain's age assessment procedures violate migrantchildren's rights, UN committee finds," 13 October 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26375&LangID=E.
[8] For example, appeals from the Upper Tribunal to the Court of Session are governed by Section 13 of theTribunals, Courts and Enforcement Act 2007.

in Scotland before the Scottish Courts.

We maintain that our legal framework for accessing justice (Judicial Review) and for supporting and protecting children, survivors of domestic violence and trafficking – which are duties grounded in devolved Scottish social work legislation should not be altered by immigration legislation in order to achieve UK Home Office policy goals without robust evidence-based analysis and due consideration to the wider impact for all people in Scotland of those changes.

Public Sector Equality Duty

We have highlighted in our response that we believe that many aspects of the New Plan will increase inequality for groups with protected characteristics under the Equality Act 2010.

We would point out that the Home Office has a poor track record of assessingthe equalities impact of its own policies, most recently having been found by the Equality and Human Rights Commission to be in breach of the PSED when developing and implementing "hostile environment" policies, particularlyin relation to the Windrush generation.[9]

We also reiterate the duty that clearly lies with the Home Office to comply with the PSED in developing its New Plan, will not be discharged by reviewing and relying on responses in this or any other consultation exercise but must be a transparent and robust exercise conducted by the Home Office, with respect to adequately articulated proposed reforms. We reiterate this process must also include meaningful participation of people with lived experience of migration to the UK.

For the reasons set out above, it is not possible for us to provide a detailed response to this question, but we highlight here some of the potential risks:

- An increase the number of people in Scotland who cannot achieve legal protection status but who cannot safely return home, because of reforms that make it more difficult to claim asylum, or restrict routes to safety in the UK, will:

  - increase the number of people vulnerable to labour exploitation andtrafficking
  - increase the number of people vulnerable to physical harm –including gender-based violence within intimate relationships
  - have wider impacts in terms of public health, public welfare and public safety if people are afraid to access universal services due toa fear of removal or

[9] Equality and Human Rights Commission, "Home Office failed to comply with equality law when implementing'hostile environment' measures," 25 November 2021, https://www.equalityhumanrights.com/en/our- work/news/home-office-failed-comply-equality-law-when-implementing-%E2%80%98hostile- environment%E2%80%99.

deportation

- An increase in the number of people in Scotland who have legal protection status or the right to such status, but who are excluded from social assistance including social work support, will also increase vulnerability to exploitation and physical harm, and prevent people from seeking protection or exercising their rights when they need to.

- We often support families with mixed immigration status. For example, families seeking asylum are often separated when they flee their home countries, and arrive in the UK at different times, by different means. It isoften the case that some members of the family are refugees or British, and other members do not have any status and the Home Office is seeking to remove them. Policies that keep families apart, or that divide families by seeking to interfere with the right to family life under Article 8 ECHR have harmful impacts on families and children living in Scotland**.**

- These impacts are likely to fall disproportionately on groups that already experience greater discrimination and inequality – with unequal impact for women survivors of gender-based violence, survivors of trafficking and exploitation, separated and unaccompanied children and young people in the care system, disabled people, LGBT people, and people of colour.

Responses to the Consultation Questions

Foreword

1. The foreword provides a high-level outline of the New Plan for Immigration, including reforms to make the system fair, but firm. Overall, how far do you support or oppose what is being said here?

Strongly Oppose

We are members of the Immigration Law Practitioners Association (ILPA) and co-conveners of ILPA's Scottish Working Group. We refer to and adopt their response to this question here:

1. "Refugee status is something that a person has, regardless of when and how it is recognised by the state in which sanctuary is sought.[10] The Policy Statement in explicit in its intention to punish refugees who seek safety in the UK, and we condemn those proposals, which are anything but firm and fair, and instead seek to actively cause harm to people.

2. We do not accept the underlying premise of the Policy Statement, which is that the asylum system in the UK is viewed as attractive to people, such that they will choose to come here on that basis, as opposed to other reasons, such as their having family here, or wishing to seek safety in a country whose language they speak. The government's response to this false premise is to make the system unattractive and punitive. In fact, this is already the case, as is detailed in a vast number of reports, including Freedom from Torture's report "*Lessons not Learned: The failures of asylum decision-making in the UK*", published in 2019, which summarised the system as follows:

> *The United Kingdom asylum determination system is both inhumane and inefficient. People who have suffered horrific events, often face further suffering once they come to the UK. Poor Home Office decision-making on asylum claims is*

[10] Most recently reiterated by the Supreme Court in *G v G* [2021] UKSC 9 [81] https://www.bailii.org/uk/cases/UKSC/2021/9.html

endemic, with almost two in five asylum refusals corrected on appeal.[11]

3. Asylum accommodation in the UK has been in an unacceptable state for several years, as set out in the British Red Cross' report "Far from Home" published in April 2021:

> *There have been many detailed reports over several years raising concerns about poor quality, unsanitary and, in some cases, unsafe accommodation provided to people seeking asylum. Among other serious issues, these reports have described vermin-infested accommodation, ceilings falling in, pregnant women struggling to access healthcare and survivors of torture and human trafficking being forced to share a bedroom with strangers.*[12]

4. Due to delays in decision making, people, including families with children, are left in these conditions for years. These delays are the biggest issue within the asylum system, yet are not mentioned in the Policy Statement, which instead sets out a series of proposals that would create a significant amount of additional work for the Home Office, as well as HMCTS. A properly functioning system whereby the Home Office makes quality decisions quickly would achieve the objectives set out in Question 3, the proposals in the Policy Statement will not."

We are also concerned about the scope of the proposed reforms and the lack of scrutiny in terms of examining what authority the Home Office holds to take forward reform which will have wider impacts on government bodies and devolved authorities that have not been consulted in this process.

We have set out above a range of areas in which reform is proposed in areas that are devolved to the Scottish parliament.

[11] Freedom from Torture, "Lessons not learned: the failures of asylum decisionmaking in the UK," September 2019, https://www.freedomfromtorture.org/sites/default/files/2019-09/FFT_LessonsNotLearned_Report_A4_FINAL_LOWRES_1.pdf, pg 3.

[12] British Red Cross, "Far from a Home: Why Asylum Support Needs Reform," https://www.redcross.org.uk/far-from-a-home, March 2021, pg 12.

Chapter 1: Overview of the Current System.

2. The UK Government is committed to building an asylum system that is firm and fair, based on three major objectives:

- **To increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum.**
- **To deter illegal entry into the UK, thereby breaking the business model of criminal trafficking networks and protecting the lives of those they endanger; and**
- **To remove more easily from the UK those with no right to be here.**

How effective, if at all, do you think each of the following will be in helping the UK Government achieve this vision?

We have chosen not to respond to this question.

3. Please use the space below to give further detail for your answer. In particular, if there are any other objectives that the Government should consider as part of their plans to reform the asylum and illegal migration systems.

We have chosen not to answer Question 2 because it only asks whether these proposals will achieve the UK Government's vision – set out below:

1. Strengthening safe and legal routes for those genuinely seeking protection in the UK.
2. Reforming legal processes to ensure improved access to justice
3. Reforming legal processes to ensure speedier outcomes.
4. Requiring those who claim asylum and their legal representatives to act in 'good faith' by providing all relevant information in support of their claim at the earliest opportunity.
5. Enforcing the swift removal of those found to have no right to be in the UK, including Foreign National Offenders.
6. Eliminating the ability for individuals to make repeated protection claims to stop their removal, when those follow-up claims could have been raised earlier in the process.
7. Preventing illegal entry at the border, for example, by making irregular channel crossings unviable for small boats or deterring other activities such as hiding in the back of lorries.

For reasons explained elsewhere in our response, we either do not agree with the assumptions underlying the stated objectives, or we do not have sufficient information about the detail of each set of proposals in order to provide a reasoned response to the effectiveness of these proposals in a multiple-choice format.

We propose, in the alternative, that the Government use the consultation process, working effectively with people with lived experience of the immigration system, to advance asylum reform along the following principles set out in the Asylum Matters response:

- *Effective access to the asylum process – all people seeking protection should have the opportunity to be able to do so.*
- *A fair, humane and efficient asylum system – all people seeking asylum should have their claims assessed fairly, humanely and efficiently.*
- *Reception conditions that promote dignity, liberty, empowerment and integration – support provided during the asylum system must ensure liberty, promote dignity, empower people and support their integration in the community from the moment of arrival.*
- *Integration – policies should support people to realise their full potential and empower them to make a positive contribution to their communities.*
- *Dignity, liberty and humanity for those found not to be in need of protection – people refused asylum should not be detained and be treated in a safe, dignified and humane way at all times.*
- *Global solidarity and responsibility sharing – the UK should play a role in providing sustainable solutions to forced migration.*

We add that the Scottish National Party (SNP) has previously commissioned a report on how an alternative system of international protection might work within Scotland – and recommend that future consultations on the reform of the UK immigration and asylum framework also include meaningful dialogue with local and regional governments and devolved authorities.

Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny

4. The Government is reviewing safe and legal routes for protection claimants to enter the UK. Further details of this can be found in Annex A.

The intention of the UK Government is to maintain clear, well-defined routes for refugees in need of protection, ensuring refugees have the freedom to succeed, ability to integrate and contribute fully to society when they arrive in the UK.

In your view, how effective, if at all, do you feel each of the following proposals

will be in ensuring the Government can provide safe and legal ways for refugees in genuine need of protection?

- **Maintaining a long-term commitment to resettle refugees from around the globe to the UK, including ensuring a full range of persecuted minorities are represented.**

Very effective

- **Granting resettled refugees immediate indefinite leave to remain on their arrival in the UK so that they benefit from full rights and entitlements when they arrive.**

Very effective

- **Reviewing the refugee family reunion routes available to refugees who have arrived through safe and legal routes.**

No answer

- **Ensuring resettlement programmes are responsive to emerging international crises – so refugees at immediate risk can be resettled more quickly.**

Very effective

- **Working to ensure more resettled refugees can enter the UK through community sponsorship, encouraging stronger partnerships between local government and community groups.**

Very effective

- **Introducing a new means for the Home Secretary to help people in extreme need of safety whilst still in their country of origin in life-threatening circumstances.**

Not at all effective

- **Enhancing support provided to refugees to help them integrate into UK society and become self-sufficient more quickly.**

Very effective

- **Reviewing support for refugees to access employment in the UK through our points-based immigration system where they qualify.**

Fairly effective

5. In maintaining clearly defined safe and legal routes, how important, if at all, are each of the following practical considerations? Please select one response for each statement.

- **Linking the numbers of refugees, the UK resettles to the capacity of local areas to provide help and support.**

Very important

- **Prioritising refugees on the basis of their vulnerability or risk.**

Very important

- **Prioritising refugees based on their potential to integrate in the UK (e.g., English proficiency, pre-existing ties to the UK, or skills).**

Not very important

- **Prioritising refugees from persecuted minority groups.**
- **Prioritising the family members of refugees already in the UK.**

Very important

6. The intention is to continue to provide support to all those granted refugee status so that they are equipped to properly integrate and contribute to society when they arrive in the UK.

How far do you agree or disagree that each of the following proposals will help to meet this aim of developing refugee support?

- **An integration support package should focus on progress to employment (including self-employment).**

Strongly agree

- **An integration support package should consider elements such as well-being, language, employment and social bonds.**

Strongly agree

- **An integration support package should be delivered at local level to national standards (to an agreed mandatory framework), so that all refugees receive the appropriate level of support, delivered in a way that is appropriate to where they live.**

Strongly agree

7. Please use the space below to give further feedback on the proposals in chapter 2. In particular, the Government is keen to understand:

a) If there are any ways in which these proposals could be improved to make sure the objective of providing well maintained and defined safe and legal routes for refugees in genuine need of protection is achieved; and
b) Whether there are any potential challenges that you can foresee in the approach the Government is taking to help those in genuine need of protection. Please provide as much detail as you can.

We agree that creating safe and legal routes for those seeking protection in the UK would be a very effective method of achieving the above objectives. However, unfortunately, this is not what is being proposed. It remains the case that it is not possible to claim asylum in the UK from overseas, there is no visa route to the UK to claim asylum, and that existing safe and legal routes into the UK, for example the Dublin III Regulation and the so-called 'Dubs Amendment', have been closed down by the UK. For many people, the only way to seek protection from the UK is to travel to the UK and enter without leave or seek asylum at the UK border.

The proposals in this consultation set out a two-tier system of leave for those refugees the UK has recognised as being in need of protection, dividing applicants based on how they entered the UK. We believe all refugees – however they entered the UK – should be granted indefinite leave to remain and equal rights to protection, as well as access to benefits and to family reunion application routes. We note this was the case prior to 2005.

They seek to extend hostile environment policies, including the imposition of NRPF conditions, which have recently been found unlawful in practice, and to revive an earlier attempt to restrict access to fair appeal rights, by proposing to reinstate the detained fast-track procedure, a system previously suspended after being found unlawful in 2015.

We see the Government's proposals as unfair, unworkable and unlawful. We also note that they do not address the record backlog of people waiting in inhumane conditions for a decision on their claim for asylum. Further, they do nothing to address

the longstanding issues of unsafe and inappropriate accommodation, poverty and destitution that people seeking sanctuary in the UK face.

8. The Government recognises the importance of reuniting those who are in the UK who are in genuine need of protection, with their family members. How important, if at all, do you think each of the following proposals would be in meeting this objective? Please select one response for each statement. Reuniting an adult with refugee status in the UK with…

- **Their spouse or partner, wherever their spouse/partner may be in the world.**
- **Their own child who is under the age of 18, wherever their child may be in the world.**
- **Their own adult child who is over the age of 18, wherever their child may be in the world.**
- **A close family member (e.g., sister, brother), wherever that family member may be in the world.**
- **Another family member (e.g., uncle, aunt, nephew, niece), wherever that family member may be in the world**

Very important.

9. Now that the UK has left the European Union (EU), protection claimants who have sought international protection in an EU member state can no longer join family members in the UK using EU law.

This means those seeking international protection in the EU must apply to join family members in the UK under the Immigration Rules like those from the 'rest of the world'.

To what extent do you agree or disagree with this approach to apply the same policy to protection claimants seeking to join family members in the UK, regardless of where they are?

Strongly disagree.

This answer applies to Q9-Q11.

We operate the Scottish Family Reunion Service (SFRS) in partnership with British Red Cross which is the only service in Scotland offering a specialist case-work service for refugees seeking reunification with their families. Our work focuses mainly on complex family reunion cases where we see overly restrictive law and procedure

creating barriers for reunification of refugee families that we do not see justification for in practice. The refugee family reunion process is, in our experience, fraught with difficulty. These issues are set out in detail in the British Red Cross Report titled 'The Long Road to Reunion' (2020). They include logistical matters such as there being no Visa Application Centres in certain countries, requiring applicants to travel across conflict zones to process their biometric information, as well as substantive legal restrictions on which family members attract the right of family reunion.

We would refer to and adopt the response of the Law Society of Scotland as regards this matter, set out here:

> **"**There requires to be a clear distinction drawn between: (1) safe and legal routes to enter the UK for unaccompanied asylum seeking children (UASCs) in order to claim asylum with their family in the UK, and; (2) safe and legal routes to join family who already have protection status in the UK.
>
> The former refers to the Dublin III Regulation, which allowed many family members, including UASCs, in the EU to be reunited with family members in another EU country pursuant to Articles 7(3), 8, 10 and 16. The Dublin III meaning for 'family members' is broad insofar as it includes spouses, unmarried partners, the children of an adult applicant – whether born in or out of wedlock or adopted as defined by national law, and the parents or another responsible adult of a child applicant.
>
> Additionally, Article 6(1) of Dublin III provides that 'the best interests of the child shall be a primary consideration for Member States' and affirms in Article 6(3)(a) that whilst assessing the best interests of the child Member States shall take due account of family reunification possibilities.
>
> In accordance with Article 10 regarding family members who are applicants for international protection both family members could be seeking asylum at the time in their respective countries. This was an accessible route and a lifeline to many children in the EU. To take Greece as an example, between 2013-2020 there were over 29,000 requests from Greece to other EU countries in order to reunite a family member elsewhere. Around 11% of these were to the UK. This safe and legal route has now ceased to exist after the UK left the EU.
>
> The latter refers to the existing immigration rules which may reunite some families. These bear very little resemblance to the Dublin III Regulation. There are two important differences. The first is that the relative in the UK requires to have some kind of protection status – either Refugee Status, Humanitarian Protection, or Settlement Protection. This means that a UASC outside the UK needs to wait for their family member to successfully claim asylum in the UK to

be reunited. There is no safe and legal route contained in the immigration rules for them to unite otherwise.

The second difference is that the only free application, with no onerous financial maintenance requirement on the UK-based relative, is for a UASC to reunite with a biological parent (see paragraphs 352D and 352E of the Immigration Rules) If there is any other relative in the UK – e.g. an aunt, uncle, grandparent, sibling – then not only does the UK-based relative need to have obtained protection status, but they require to pay large sums of money to make the application, and demonstrate that they can accommodate the child without access to public funds pursuant to paragraphs 297(iv), 298(iv) and 319X. This is an onerous burden on an individual who has just been granted protection status. Our members' experience tells us that it is vanishingly rare for Refugees to be able to secure enough capital and income in order to meet this aspect of the immigration rules. This is unsurprising given they have fled persecution, have spent months or often years in the UK asylum where they are prohibited from working, very often do not speak English, and are often experiencing trauma-related ill-health.

We believe that these legal distinctions are important when considering the proposals in this consultation and the alleged purpose. The routes through the immigration rules are at present far more restrictive than the now extinct Dublin III Regulation. The consultation does not specify what other safe and legal routes will be created and how they will be applied.

The final – and most significant consideration – is that the proposals put forward in the New Immigration Plan all but guarantee that persons seeking asylum in the UK will face longer delays in obtaining protection status (see answer on "safe third countries" questions). This means that UASCs in the EU and beyond will be waiting longer, possibly years, before any prospect of reunification under the immigration rules occurs. They may "age out", i.e. turn 18 and therefore lose the right altogether. Furthermore, even if the UK-based relative is granted some form of protection status, it is understood that their family reunion rights will be "limited". There is no further detail on what this means.

It is clear that the cessation of Dublin III and the proposals put forth in this consultation combine to severely limit the safe and legal routes for UASCs to enter the UK. As such, we would assert that the proposals are actually more likely to force UASCs who are desperate and in need to their family to take perilous and dangerous routes. This is actually the opposite of the stated intention of this consultation."

10. Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for unaccompanied asylum-seeking children in the EU wanting to reunite with family members in the UK?

See above.

11. Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for unaccompanied asylum-seeking children in the rest of the world (outside the EU) wanting to reunite with family members in the UK?

See our answer to question 9 above.

12. Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes to the UK for protection claimants in the EU?

We have no comment to make.

13. Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for protection claimants who are adults and/or families (adults and accompanied children) wanting to reunite with family members in the UK?

We refer to and adopt the Law Society of Scotland's response in full here:

> "The suggestion of including dependent children over the age of 18 and under the age of 21 is welcomed.
>
> There is already extensive provision in case law for establishing that a family life can exist under Article 8 ECHR for family members which are not currently outlined in the Immigration Rules, including dependent children over the age of 18.
>
> The present case law, as set out both in the UK Courts and the ECtHR, already outlines that any assessment, of whether Article 8 ECHR is engaged in entry

clearance cases (including family reunion), is fact sensitive.[13] Article 8 ECHR can be engaged outside of the current immigration rules where the applicant is an adult child (over 18) where further elements of dependency exist, involving more than the normal emotional ties.

The rules should be amended to reflect the recognition in case law that Article 8 ECHR can be engaged by family members out-with spouses, cohabiting partners and direct descendants under the age of 18.

However, the policy suggests the introduction of different family reunion rights for those who enter on "safe and legal routes" and those who enter otherwise.

There is already legislation and extensive case law outlining the public interest considerations which should be taken into account when assessing whether refusal of entry clearance is proportionate under Article 8 ECHR.

The method by which a person seeking protection enters the UK has no bearing on the assessment of proportionality which must be taken when a family reunion application is considered. It should therefore not be a consideration for decision makers in family reunion cases. Otherwise, the policy would be in breach of the current domestic law as well as the UK's obligations under the ECHR.

In addition, given that the route identified in the policy as "safe and legal" extends only to the extremely limited route of resettlement via the UNHCR, and this route is not open to all nationalities or categories of individuals who genuinely come to the UK to seek protection, such a policy would breach the non-discrimination provisions of Article 3 of the 1951 Refugee Convention."

14. Are there any further observations or views you would like to share about safe and legal routes to the UK for family reunion or other purposes for protection claimants and/or refugees and/or their families that you have not expressed?

We refer to and adopt the ILPA submission:

"The Immigration Rules should be amended to permit children, whether waiting for a decision on their application or already recognised as a refugee, to sponsor their siblings and parents to come and join them, and the Home Office should consider applications flexibly and humanely. All family reunion applications should be fee free, with no income and accommodation requirement. The 'serious and

[13] KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC)

compelling' considerations requirement in 319X(ii), that a child applying to join a relative must meet in order to be granted leave, should be removed.

We also endorse all of the recommendations in the British Red Cross' report 'The Long Road to Reunion':[14]

- *Only require family members overseas to travel to a Visa Application Centre to submit their biometrics after a provisional positive decision has been made. Refusals should be sent by email and not require a journey to the Visa Application Centre.*
- *Be flexible in when and how biometrics are required to be submitted if a family is unable to reach a Visa Application Centre safely.*
- *Allow TB tests to be undertaken once an applicant has travelled to the UK, rather than being required in advance of arrival.*
- *Allow flexibility of ID requirements for entering a Visa Application Centre and obtaining a TB certificate."*

Chapter 3: Ending Anomalies and Delivering Fairness in British Nationality Law

15. How effective, if at all, do you feel the following changes will be in contributing to the objective of correcting historic anomalies in current British Nationality law?

- **Introducing new registration provisions for children of a British Overseas Territories Citizen (BOTC) to acquire citizenship more easily.**

Very effective.

We agree with this proposal subject however to the registration process being free and access to legal advice is adequate and available free to those who require it.

- **Fixing the injustice which prevents a child from acquiring their father's citizenship if their mother was married to someone else.**

No response.

We require further detail in order to comment on this proposal.

[14] British Red Cross, "The Long Road to Reunion," 2020 https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/improving-the-lives-of-refugees/refugee-family-reunion, pg 31.

- **Introducing a new discretionary adult registration route to give the Home Secretary an ability to grant citizenship in compelling and exceptional circumstances where there has been historical unfairness beyond a person's control.**

Fairly effective.

We agree with the principle behind this proposal so long as the criteria for the exercise of the discretion does not impose unduly onerous burdens on the applicant or result in an overall reduction in the number of cases in which the Secretary of State relies on an exercise of discretion in grants of citizenship.

- **Creating further flexibility to waive residence requirements for naturalisation in exceptional cases. This will mean those impacted by Windrush are not prevented from qualifying for British Citizenship because they were not able to return to the UK to meet the residency requirements through no fault of their own.**

Very effective.

We agree with this proposal subject to clarification about what "exceptional" means in this context.

16. The Government wants to change the registration route for stateless children, who were born in the UK and have lived here for five years. The Government wants to ensure that those who are genuinely stateless can benefit. People should not be able to acquire these benefits if they purposely fail to acquire their own nationality for their child. To what extent, if at all, do you agree that this is the right approach?

Strongly disagree.

We note that the European Network on Statelessness has submitted a response to this consultation and refer to and adopt the key recommendation in their submission – which is that no change is required to the existing provision and makes a number of other recommendations to the UK Government.

Whilst we agree with maintaining a registration route that ensures "that those who are genuinely stateless can benefit," we question the underlying assumption that people are purposely failing to acquire nationality for their own children in order to "acquire benefits." This appears to be based entirely on a numerical increase in applications, with the current number still being relatively small. There is no further analysis provided for the allegation of abuse of the route.

Nationality law is a matter for each sovereign state, and there is no international system for coordination of the registration of people even where they hold a clear right to a nationality. For people who live outside the territory of their nationality, there are legal and practical barriers to straightforward activities – such as renewal of valid identification documents – and these are compounded for more complex matters, such as registration of a persons' right to nationality by descent. Furthermore, there is substantial evidence that other nation states use reform of nationality law and procedure in order to deprive or exclude people of their own nationality, whether as a punishment for a political act, or as part of a wider policy of discrimination on the basis of race, ethnicity or religion.

These are the reasons why people across the world are, or become, stateless. In recognition of the gaps in protection that arise when someone is stateless, the 1961 Convention on the Reduction of Statelessness was developed and forms binding legal obligations on state parties to prevent statelessness.

Returning to the proposal in the New Plan, we are concerned that the Government is seeking to propose a policy that will increase overall the number of children in the UK who are both stateless and unlawfully resident – with their families potentially facing further immigration penalties which reduce or eliminate any other route to obtaining leave to remain or British Citizenship.

We oppose any change in policy that would risk this outcome. Whilst it is difficult to further evaluate the lawfulness of such a proposal without further detail, we would also caution that any reform requires to comply with the Government's obligations under 1961 Convention on the Reduction of Statelessness, Article 8 of the ECHR and the UN Convention on the Rights of the Child.

17. The law currently allows some discretion around naturalisation, to account for exceptional circumstances. However, it is currently an un-waivable requirement that a person must have been in the UK on the first day of their 5 (or 3) year residential qualifying period. The Government is seeking to change the law so that discretion can be exercised when a person was not in the UK on that day in appropriate cases, whilst maintaining the principle that people should have completed a period of continuous residence. This might be used, for example, where a person was a long-term resident of the UK but had been prevented from returning to the UK after a trip overseas five years ago by mistake, as was the case for a number of the Windrush generation, or due to unforeseen compelling circumstances. To what extent, if at all, do you agree that this approach provides sufficient flexibility to allow people with a strong connection to the UK to qualify for naturalisation?

Strongly agree.

We agree with the principle behind this proposal on the basis that the criteria for the

exercise of the discretion do not impose unduly onerous burdens on the applicant.

18. Please use the space below to give further feedback on the proposals in chapter 3. The government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of correcting historic anomalies in our nationality laws is achieved; and

We refer to and adopt the points raised in the ILPA submission as follows:

Transnational marriage abandonment

"Further flexibility to waive residence requirements for naturalisation in exceptional cases" could help to rectify an injustice with respect to people who suffer transnational marriage abandonment. Transnational marriage abandonment is the deliberate abandonment of a spouse abroad, with the specific intention to prevent the return of the spouse to the UK, often referred to those spouses as "stranded spouses".

Many stranded spouses never manage to return to the UK, including because they struggle to find legal assistance to secure Entry Clearance. For those stranded spouses who do manage to secure a return to the UK, this is often after having spent years abroad

Some stranded spouses might have indefinite leave to remain on return to the UK (e.g. stranded spouses who had indefinite leave to remain before they were abandoned abroad, and who return with returning resident visas); or might manage to secure indefinite leave to remain shortly after their return, on the basis that they were victim of domestic abuse at the hand of their settled spouses.

For those stranded spouses, the only reason they are not eligible for naturalisation soon after their return is the residence requirement. Stranded spouses are often eager to naturalise as British citizens. This is, among others, because of their experience of abandonment abroad. British citizenship is the only status which would prevent abusive spouses to abandon them abroad with no means of return."

Abandonment of Children of British Citizens

"Another issue is that too many people, often children, have their rights to British citizenship denied because their rights are dependent on a third party from whom they are estranged or who will not or cannot assist them. A common scenario is of a child under the sole care of their mother who has separated from an abusive father from whom the child derives citizenship rights. Without

proof of that father's British citizenship or settled status, the child is unable to assert their own rights to citizenship. In many of these cases, the Secretary of State has access to information that could prove the child's entitlement, but routinely refuses to assist.

An amendment to the British Nationality Act 1981 is required to create obligations on the Secretary of State for the Home Department to assist individuals to establish their automatic right to British citizenship or right to register as a British citizen. Such obligations should include a duty to make reasonable enquiries on behalf of an individual where the individual is unable to provide information or documents to prove their claim but the Secretary of State has access to information or documents which could. Such enquiries should include searches of own Home Office records as well as other government department records the Secretary of State has powers to access."

(b) Whether there are any potential challenges that you can foresee in the approach being taken to reform nationality laws. Please provide as much detail as you can.

We have outlined in our response above key areas in which these proposals could breach international treaty obligations of the UK Government.

We would add that there are other potential legal challenges to the operation of British nationality laws that are not addressed in these proposals, but can and should form the basis of a more comprehensive approach to ensuring the fair operation of British nationality laws.

We refer to the recent report by British Futures: Barriers to Britishness 2020 which recommended (pages 10/11):

"Citizenship by registration should be free for those who become British by this route. This group mostly comprises children and those with subsidiary categories of British nationality, such as British Overseas Territories Citizens and British National (Overseas) passport holders from Hong Kong who now have a route to citizenship through the bespoke British National (Overseas) visa.

We further propose that Nationality law should be amended to allow children born in the UK to British citizens automatically, restoring a policy that applied before 1983.

Vulnerable groups of people should be encouraged to take legal advice, which should be affordable and widely available in all parts of the UK".

We specifically refer to recent legal challenges to the Home Office practice of charging a fee for nationality applications that substantially exceeds the average global fee for similar categories, and which is purposefully set to obtain a profit from processing such applications. We note that on 18 February 2021, the Court of Appeal in *PRCBC & O v Secretary of State of the Home Department* [2021] EWCA Civ 193 held that the fee of £1,012 for certain applications by children to register as British citizens is unlawfully high, and that this case has been appealed to the UK Supreme Court.

Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System

19. To protect life and ensure access to our asylum system is preserved for the most vulnerable, we must break the business model of criminal networks behind illegal immigration and overhaul the UK's decades-old domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?

- **Ensuring that those who arrive in the UK, having passed through safe countries, or have a connection to a safe country where they could have claimed asylum will be considered inadmissible to the UK's asylum system.**
- **Seeking rapid removal of inadmissible cases to the safe country from which they embarked or to another third country.**
- **Introducing a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin (as it would breach international obligations) or to another safe country.**
- **Bringing forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of inadmissible asylum seekers.**
- **Making it possible for asylum claims to be processed outside the UK and in another country.**

Not at all effective.

We note that the framing here of "protection" the asylum system is not reflected in the evidence that relatively few people seek asylum in the UK, nor that many of the ongoing delays in the asylum process lie with the Home Office's own failings.

20. To protect the asylum system from abuse, the Government will seek to reduce attempts at illegal immigration and overhaul our domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?

- **Changing the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK.**
- **Supporting decision-making by setting a clearer and higher standard for testing whether an individual has a well-founded fear of persecution, consistent with the Refugee Convention.**
- **Creating a robust approach to age assessment to ensure the Government acts as swiftly as possible to safeguard against adults claiming to be children and can use new scientific methods to improve the Government's abilities to accurately assess age.**

Not at all effective.

Again, we believe the framing of this question is misleading and note that there is no evidence in the New Plan for Immigration Policy Statement itself, or elsewhere, of widespread 'abuse' of the asylum system. We again reiterate our concern that these proposals are not grounded in evidence, are dangerous, unworkable and potentially unlawful.

21. The UK Government intends to create a differentiated approach to asylum claims. For the first time how, somebody arrives in the UK will matter for the purposes of their asylum claim. As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?

As set out above, we are opposed to a differentiated approach to adjudication of asylum claims, either whilst a claim is being decided or once status is granted. We also doubt whether such an approach is workable in practice, and whether it is lawful.

We support the position of Asylum Matters and the FAIR principles that "Everyone who claims asylum in the UK should be able to live in safety and dignity and be supported to rebuild their lives." We affirm the belief that a person's route of entry to the country has no bearing on their need for protection or their rights to fair treatment.

We also take this opportunity to briefly summarise some key points outlined in the Asylum Matters response:

- There is no obligation in the Refugee Convention to claim asylum in the first safe country that someone reaches. We further note that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 already provides a mechanism for differentiating between claimants if their method of entry to the United Kingdom raises concerns.

- The proposed use of reception centres is a concerning direction of travel for the UK Government, in light of the very poor and dangerous conditions that have been documented over the last year in the use of former MOD sites and hotels to house asylum seekers. Outside of the UK, this type of institutional provision has been widely criticised; for example, in Ireland Direct Provision is now being wound down. Rather than expanding a type of institutional provision that has been found to be harmful and dangerous, the Government should make a full commitment to housing people seeking asylum in safe, humane and dignified accommodation.

- A new temporary protection status subject to NRPF will increase the vulnerability of people to destitution – this is an extension of a policy that has repeatedly been challenged recently as unlawful in practice. Restricting the right of people with temporary protection to reunite with their families is unfair, will cause irreparable harm and is potentially an unlawful breach of Article 8 ECHR.

- Proposals to "offshore" asylum seekers have been around for decades and have always proved unworkable. The use of offshoring by Australia has been widely criticised as leading to widespread breaches of human rights. A recent report by Refugee Rights Europe has established that offshore detention is contrary to international law, is inhumane, and would exacerbate mental and physical health issues that we refugees seeking protection face.

22. The UK Government intends on introducing a more rigorous standard for testing the "well-founded fear of persecution" in the Refugee Convention. As the Government considers this change, what, if any, practical considerations should be taken into account?

We refer to and adopt the response from the Law Society of Scotland:

> "The consultation puts forward no evidence that there exists an issue with "unmeritorious" claims for asylum.

It is notable that Home Office statistics reveal that numbers of asylum claims in 2019 are around half of those from 2002, and that in 2020 the number of asylum applications fell 20% on 2019's figure. This is despite the increase in small boat crossings.

It is also notable that First-Tier Tribunal statistics tell us that asylum appeals are on a sharp downward trend, having fallen from approximately 200,000 per year in 2008/9 to approximately 40-45,000 per year in 2020. Judicial Review applications to the Upper Tribunal in England and Wales have also fallen by approximately 60% since 2014/5.

Meanwhile, the same tribunal statistics tell us that approximately 48% of Home Office refusals are overturned in the First Tier Tribunal.

The consultation also does not make any connection between any perceived difficulties in the asylum process and the legal test of "well-founded fear of persecution". It is proposed that the aspect of the test regarding credibility as to identity and past experiences is heightened to "balance of probabilities". We disagree with this proposal.

This element of the legal standard takes into account the difficulties in asylum seekers obtaining evidence which corroborates their account of their past experiences. The test is long established through extensive legal scrutiny at almost every level of the UK-wide judiciary. We believe that, after this detailed legal assessment spanning almost 30 years, the current legal standard should remain in place.

The leading case for the standard of proof test to determine a 'well-founded fear in persecution' for asylum cases goes all the way back to 1996 in *Ravichandran v SSHD [1996] Imm AR 97*. In *Karanakaran v. Secretary of State for the Home Department, [2000] EWCA Civ. 11,* the Court of Appeal affirmed that the standard of proof adopted in civil proceedings was not suitable for immigration matters. Instead, what was important was making an assessment of all material considerations such that it *'must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur'*. Sedley LJ described the civil standard of proof (balance of probabilities) as *'…part of a pragmatic legal fiction. It has no logical bearing on the assessment of the likelihood of future events or (by parity of reasoning) the quality of past ones* '.

For the last 20 years, the *Karanakaran* approach has consistently been followed. In other words, it is not controversial and is consistently applied.

The Outer House of the Court of Session re-affirmed *Karanakaran* as the correct standard of proof approach to be applied in the 2020 case of *MF (El Salvador) v Secretary of State for the Home Department [2020] CSOH 84.* In that case, it was held the First-Tier Tribunal Judge had erred in law by applying the wrong standard of proof in respect of an application for permission to appeal brought by an asylum seeker. It was observed *that 'in neither his analysis of the individual facts nor his overall discussion when summing up, did he use then language of "reasonable likelihood" or "serious possibility" of persecution*' and *'and crucially, it is not obvious that the FtT judge followed the approach said to be required in Karanakaran, supra at 469-470, in that either he has not carried out a balancing process at all, or, if he has, he has arguably excluded matters totally from consideration in the balancing process simply because he believed that they probably did not occur, rather than discarding matters only because he had no real doubt that they were not true'*

Most recently, on 28 April 2021 in *Kaderli v. Chief Public Prosecutor's Office Of Gebeze, Turkey [2021] EWHC 1096 (Admin)*, the High Court of England and Wales re-affirmed (while referencing *Karanakaran*) that the question as to determining a well-founded fear of persecution is that of an evaluative nature about the likelihood of future events. In this case it was held that *'the judge erred in holding that it was for the appellant to prove on the balance of probabilities that the corruption alleged had occurred. The true test involved the application of a lower standard: whether there was a real risk that the appellant's conviction was based on a trial tainted by corruption. This was consistent with the approach to the fact-finding in the immigration context.'*
In summary, we are therefore opposed to this proposal in the consultation. It lacks evidence, appears to be unrelated to the purported intention of the consultation, and flies in the face of 25 years' worth of judicial scrutiny."

We also refer to and adopt ILPA's explanation as to why a "split test" as set out in the Policy Statement (a) is unlawful and unworkable and (b) diverges unlawfully from the Refugee Convention.

23. The Government is aware that currently it can take many months to consider asylum applications and intends to ensure that claims from those who enter the UK illegally are dealt with swiftly and efficiently. To help achieve this, in your view, which of the following steps would be the most important? Please rank the following statements from most to least important.

- **To use asylum processing centres to accommodate those who enter the UK illegally, whilst they await the outcome of their claim and / or removal from the UK.**
- **To have an expedited approach to appeals, particularly where further or repeat claims are made by the individual.**

- **To ensure there are set timescales for considering claims and appeals made by people who are in immigration detention, which will include safeguards to ensure procedural fairness. This will be set out in legislation.**
- **To ensure those who do not qualify for protection under the Refugee Convention, but who still face human rights risks, are covered in a way consistent with our new approach to asylum.**

We have chosen not to respond to this question.

We do not believe it is appropriate to rank proposals in this manner on the basis that they are all potentially harmful to people seeking asylum and are not a reasonable response to tackling the Home Office's backlog of asylum applications. We would encourage the Home Office, in the alternative, to bring forward reforms aimed at addressing its own institutional inefficiencies and tackle its own failures to adjudicate cases lawfully, or even, correctly. We note that there are now nearly 50,000 asylum seekers who have been waiting for over six months for a decision on their asylum application, up from 11,500 only three years previously. Our own experience at JustRight Scotland tells us that our clients – including children and victims of trafficking – routinely wait over 1 year, with multiple examples of individuals waiting up to 4 years for a decision.

We reiterate our opposition to creating "asylum processing centres" for the reasons outlined elsewhere in our response.

24. The Government is committed to strengthening the framework for determining the age of people claiming asylum, where this is disputed. This will ensure the system cannot be misused by adults who are claiming to be children. In your view, how effective would each of the following reforms be in achieving this aim?

- **Bring forward plans to introduce a new National Age Assessment Board (NAAB) to set out the criteria, process and requirements to be followed to assess age, including the most up to date scientific technology. NAAB functions may include acting as a first point of review for any Local Authority age assessment decision and carry out direct age assessments itself where required or where invited to do so by a Local Authority.**

Not very effective

- **Creating a requirement on Local Authorities to either undertake full age assessments or refer people to the NAAB for assessment where they have reason to believe that someone's age is being incorrectly given, in line with existing safeguarding obligations.**

Not very effective

- **Legislating so that front-line immigration officers and other staff who are not social workers are able to make reasonable initial assessments of age. Currently, an individual will be treated as an adult where their physical appearance and demeanour strongly suggests they are 'over 25 years of age'. The UK Government is exploring changing this to 'significantly over 18 years of age'. Social workers will be able to make straightforward under/over 18 decisions with additional safeguards.**

Not very effective

- **Creating a statutory appeal right against age assessment decisions to avoid excessive judicial review litigation.**

No answer – not enough detail.

25. Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform. Please provide as much detail as you can.

Our Scottish Refugee & Migrant Centre works with unaccompanied asylum seeking children, and age assessment forms a significant part of our work. We see first hand the devastating effects on a child being wrongly found to be an adult. They are often dispersed into adult accommodation away from any social networks, forced to reside with other adults. They lose out on accessing child-appropriate education, social work support, independent advocacy such as a Guardian, and their credibility is often damaged in the eyes of the Home Office. We often hear from our young people the damage to their mental health. Age is often a key aspect of a young person's identity; the effects of being told you are not what you are, cannot be overstated.

Again, we refer to and adopt the response of the Law Society of Scotland:

> "This answer relates to the proposals about age assessment of unaccompanied asylum-seeking young people. Our membership attended a roundtable hosted by the Home Office to explore these options where some further detail was revealed.

The first aspect which requires to be set out is that age assessment is a matter of Scots child law. It therefore sits in an area devolved to the legislative competence of the Scottish Parliament under the Scotland Act 1998. In Scotland, age assessments are conducted by local authority social workers to assess eligibility for support under the Children (Scotland) Act 1995. It must be understood that that is their function; they are not an immigration function. Indeed, they are most closely linked to obligations around the presumption of age of victims of human trafficking, set out in the Human Trafficking and Exploitation (Scotland) Act 2015. This is also a devolved area of law. They are conducted in line with practice guidance issued by the Scottish Government in March 2018.

Many of the proposals set out in the consultation around age assessment are, if applied in Scotland without a legislative consent motion, unworkable and unlawful. Other proposals lack sufficient detail to provide a clear view.

We find it difficult to engage with the proposal of the NAABs due to a lack of detail. It is unclear who would sit on a NAAB, what qualifications they would have, and what experience of Scottish devolved law they would have. We have concerns that the NAABs would be located within the Home Office. This strikes us as a conflict of interest and, indeed, a blurring of the line between devolved and reserved functions.

As regards the use of scientific technology, the consultation makes no mention of what this would constitute and we understand from Home Office stakeholder engagement that it has not been decided upon. What we do know is that the British Society for Paediatric Endocrinology and Diabetes have stated that physical examination, bone age assessment and dental x-rays do not add anything to the existing process, having a margin of error between 2 and 4 years. More recently, the UN Committee on the Rights of the Child has found in a series of cases that Spain breached the rights of migrant children under the UN Convention on the Rights of the Child by relying on x-ray evidence in reaching a determination on age assessment. The controversy of these methods was considered and affirmed in the Court of Appeal in *London Borough of Croydon v Y [2016] EWCA Civ 398* as well as by the Upper Tribunal in *R(ZM and SK) v London Borough Of Croydon [2016] UKUT 559 (IAC)*. For the avoidance of doubt, we do not support the introduction of scientific methods were they to merely mirror those already tried.

The consultation contains a proposal to legislate to place a duty on a local authority to either undertake an age assessment or refer to a NAAB. There is a lack of detail as to how this would operate and what the threshold would be for such a duty to kick in, therefore it is difficult to comment on the mechanics of such a proposal. However, for the reasons set out above, it appears that

such a move in Scotland would be unlawful without a legislative consent motion. In any event, our members' experience around age assessments tells us that local authorities are better placed than the Home Office to make decisions around whether, and how, to conduct age assessments. In practice, the local authority workers will have significant experience of working with children and young people, training on conducting assessments, and will have met the young person.

The consultation contains a proposal to legislate to allow immigration officers to make initial assessments of age, according to the standard of "significantly over the age of 18". We do not support this proposal. Firstly, as noted above, local authority workers are better place to make these decisions and detailed Scottish Government guidance is in place to help them do so. Secondly, we note that the Court of Appeal in *BF (Eritrea) [2019] EWCA Civ 872* held that the standard proposed by the consultation was unlawful. This has been appealed to the Supreme Court and is awaiting judgment. We find it difficult to understand why a proposal is being made for a legal standard which has been found to be unlawful, has been changed in practice as a result, and is pending judgment in the Supreme Court. It would be more appropriate, in our view, for this proposal to await the finding of the Supreme Court.

The consultation makes a proposal for a statutory appeal to be implemented. We agree that Judicial Review is an unsatisfactory remedy for the challenge of age assessments. However, there are several questions as regards how a statutory appeal would operate. After attending a stakeholder event with the Home Office, we understand that the following about the proposal:

- It is designed to be a right of appeal against a local authority which either refuses to age assess, or conducts an assessment which can be challenged. For the reasons set out above, this would require a legislative consent motion to be considered lawful in Scotland.

- It would allow for interim relief to be sought so a young person can be accommodated pending the appeal. We submit that this should be an automatic aspect of any statutory appeal.

- Legal aid will be available for the appeal. We welcome the views of the Scottish Legal Aid Board as regards this.

- It is not clear how this appeal right interacts with other aspects of the asylum process, including reforms proposed in this consultation. We believe any statutory appeal would require to "pause" ongoing asylum claims, inadmissibility decision processes, and returns processes.

Those in detention would require to be released pending the outcome of the appeal.

- It is not clear what time-limits would apply to lodge an appeal. We would submit that a 14 day period would be too short. This is particularly the case where a local authority refusal to assess is under challenge. In those situations, it is often difficult to identify a date from which the time-bar clock would run, e.g. what if the local authority refuse to see a young person and assess him, but do not provide anything in writing?

- The appeal would not be against immigration officers' "short-form" age assessments, and instead would be solely against local authority decisions/omissions. Bearing in mind the comment above as regards it being difficult to procure a written decision from a local authority in practice where they are refusing to assess, our submission would be that the decision of the immigration officer would still be subject to judicial review. In many cases in practice, this would in fact be the only remedy, meaning that the proposal may not reduce the reliance on judicial review as a remedy.

In summary, besides the constitutional questions set out throughout, we believe that more detail is required to be able to answer these proposals with any more clarity."

Chapter 5: Streamlining Asylum Claims and Appeals

26. The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

- **Developing a "Good Faith" requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.**

- **Introducing an expanded 'one-stop' process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively**

– setting out full details and evidence to the Home Office and not adding more claims later which could have been made at the start.

- **Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the 'one-stop' process.**

Not at all effective.

27. The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims:

- **Providing more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims.**

Fairly effective.

- **Introducing an expedited process for claims and appeals made from detention, providing access to justice while quickly disposing any unmeritorious claims.**

Not at all effective.

- **Providing a quicker process for Judges to take decisions on claims which the Home Office refuse without the right of appeal, reducing delays and costs from judicial reviews.**

Not at all effective

- **Introducing a new system for creating a panel of preapproved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by parties.**

Not at all effective.

- **Expanding the fixed recoverable costs regime to cover immigration judicial reviews (JRs) and encouraging the increased use of wasted costs orders in Asylum and Immigration matters.**

Not at all effective.

- **Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.**

Not at all effective.

28. The Government believes that all those who are subject to the UK's immigration laws, including those who have arrived here illegally or overstayed their visa, should be required to act in good faith at all times. Currently, the system is susceptible to being abused and there has to be an onus on individuals to act properly and take steps to return to their country of origin where they have no right to remain in the UK. This duty will apply to anyone engaging with the UK authorities on an immigration matter.

As a part this requirement, to what extent do you agree or disagree with each of the following principles:

- **Individuals coming to the UK (as a visitor, student or other legal means) should leave the country on their own accord, by the time their visa expires.**
- **Individuals seeking the protection of the UK Government should bring their claims as soon as possible.**
- **Individuals seeking the protection of the UK Government should always tell the truth.**
- **Failure to act in good faith should be a factor that counts against the individual, when considered by the Home Office or judges as part of their decision making.**
- **Where an individual has not acted in good faith, this will be a relevant and important factor which decision makers and judges should take into account when determining the credibility of the claimant.**

We have chosen not to respond to this question.

Again we do not believe it is appropriate to rank proposals in this manner, and we question the purpose of this exercise. Further we note that if "the system is susceptible to being abused" any proposed reform should be underpinned with transparent and verifiable evidence of the most prevalent forms of abuse, and an evidence based proposal demonstrating how a specific reform would lead to a reduction in that abuse, without causing greater or unacceptable harm elsewhere.

We note that the law currently requires all applicants to tell the truth, as well as already compels people with limited leave to remain to leave the UK before expiry of their

current visa, and all people seeking to claim asylum are already subject to a requirement to bring their claims as soon as possible. It is unclear therefore why the UK Government is seeking to consult on these provisions.

We are particularly concerned about the introduction of a "good faith" requirement – over and above the require in immigration law that claimants do not make material misstatements or omissions.[15] This, coupled with an ongoing duty to positive disclose to the Home Office any material changes of circumstance, which or risk breach of any current valid leave to remain, is arguably stronger and also more consistently applicable in law and procedure than a new "good faith" requirement.

If the proposal is for a novel "good faith" requirement to lower this established standard, we would oppose it on the basis that there is no evidence for the reform, and it would likely decrease legal certainty. We are concerned that if this reform is motivated by a desire to make it easier to refuse applications that – under current standards – would be granted as lawful, a lowering of standards could be challengeable as unlawful, should it come into practice.

To illustrate: in our work with survivors of trafficking and survivors of gender-based violence (such as rape) it is recognised that asylum claimants will often make "late" disclosures of abuse and will delay claiming asylum – this is often accepted as a reasonable excuse due to feelings of shame and the experience of ongoing and complex trauma that can be linked to these events. As the system currently stands, there are concerns that survivors of trafficking and gender based violence are disproportionately disadvantaged by the application of the current rules[16]. Where errors have been made in misapplying those standards, successful legal challenges have been brought on that basis. A lowering of those standards would likely be challengeable on the same grounds.

29. The Government propose an amended 'one-stop process' for all protection claimants. This means supporting individuals to present all protection-related issues at the start of the process. The objective of this process is to avoid sequential and last-minute claims being made, resulting in quicker and more effective decision making for claimants. Are there other measures not set out in the proposals for a 'one-stop process' that the Government could take to speed up the immigration and asylum appeals process, while upholding access to justice? Please give data (where applicable)

[15] Section 8 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004* and other similar provisions place a similar obligation on those seeking international protection to act in good faith.

and detailed reasons.

As set out above, the Government already operates a "one-stop" process for protection claims.

We refer to and adopt ILPA's submission which states:

> "The obligation to consider 'fresh claims' arises from the prohibition on *refoulement* drawn from the 1951 Convention Relating to the Status of Refugees ('the Refugee Convention'), summarised in *R. v Secretary of State for the Home Department, ex p. Onibiyo* [1996] EWCA Civ 1338 (28 March 1996), 'The obligation of the United Kingdom under the Convention is not to return a refugee (as defined) to a country where his life or freedom would be threatened for any reason specified in the Convention. That obligation remains binding until the moment of return.' The European Convention on Human Rights further requires that claims under article 3 ECHR receive anxious scrutiny, independent and rigorous examination and that the remedy must have automatic suspensive effect (*M.S.S. v. Belgium and Greece*, App. no. 30696/09).
>
> However, in order to discharge these obligations without unduly burdening the state, the United Kingdom already operates a one-stop process for protection claims. Applicants are required to raise all the reasons why they wish to remain in the United Kingdom if the Home Office serves a 'section 120' notice on them (s.120 Nationality, Immigration and Asylum Act 2002). If they fail to mention something which they then raise after their appeal has been determined, the Home Office can prevent them from accessing the appeals process again (s.96 Nationality, Immigration, and Asylum Act 'NIAA' 2002). Meanwhile, in any asylum appeal, the government has to consent before the First Tier Tribunal considers any matter which it has not yet decided, so that it is never ambushed by new issues being raised late in an appeal (s.85 NIAA 2002). Applicants for asylum are also required to claim asylum as soon as possible after they enter the United Kingdom. If they fail to do so, judges are instructed to treat this as potentially damaging to the credibility of their claim (s.8 of the Asylum and Immigration (Treatment of Claimants) Act 2004). The Home Office also has the power to certify a claim which has no prospect of succeeding as 'clearly unfounded', under s94(1) NIAA 2002. The consequence will be that any appeal to the First Tier Tribunal must be brought from outside of the UK per s.92 NIAA 2002. A challenge to a certification decision can only be made by judicial review.
>
> When repeat claims are made, the United Kingdom also already operates a truncated decision-making process which enables the Home Office to dismiss such claims without granting the applicant a second right of appeal (Immigration Rules HC 395, §353 and s.82 NIAA 2002). A second right of appeal is given to the applicant only if the Home Office is satisfied that there is a realistic prospect of the

appeal succeeding. The burden is on the applicant to satisfy the Home Office that circumstances have changed sufficiently for that prospect to be real (*WM (DRC) v SSHD and SSHD v AR* [2006] EWCA Civ 1495). Desperate applicants who make unmeritorious repeat claims are thereby weeded out and prevented from taking up judicial time.

These measures all work to minimise the repeat claims which Ms Patel says are "often" made, while striking a balance with the SSHD's obligations not to *refoule* people to a place where their life or freedom will be threatened. No evidence has been provided as to how many repeat claims are now being made under the present system, and no analysis is offered as to why they occur."

As stated in our response above, if the Government already operates a "one-stop" process it is unclear what further purpose or reform consultation on this point is in aid of.

We also reiterate our point, set out above, that there are many justifiable and practical reasons why claimants may not raise asylum claims at the earliest possible stage. In addition to fear, stigma and trauma, we have also found other examples in our own practice of very relatable situations in which a bright line rule that excludes people from protection would be unfair and unlawful. See, for example, in the Law Society of Scotland's response:

> "To take the example of the LGBTQI+ community, all of these factors may play a part in why a claimant does not mention issues relating to sexuality or gender, it is only after they have been able to access support from the wider LGBTQI+ community that many are able to speak more openly about something they may have been concealing for their entire life, this may be months or even years after they have made their initial claim."[17]
>
> The proposals to introduce 'new powers' regarding the weight given to evidence which has not been submitted do not appear to differ significantly from those contained in section 8 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004* as used by Home Office Decision makers or the Devaseelan principles (Devaseelan v Secretary of State for the Home Department [2002] UKIAT 702, [2003] Imm AR 1). The current system provides adequate powers for dealing with evidence and claims not raised at the earliest possible opportunity."

[17] UKLGIG, Still Falling Short: The standard of Home Office decision-making in asylum claims based on sexual orientation and gender identity, 2018.

30. Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand: (a) If there are any ways in which these proposals could be improved to make sure the asylum and appeals system is faster, fairer, and concludes cases more effectively; (b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around streamlining appeals. Please provide as much detail as you can.

We refer to and adopt the Law Society of Scotland's submission:

> "The proposals in relation to requiring representatives to act in 'good faith' fail to take into account that all representatives in immigration matters are already required to act in 'good faith by the codes of conduct to which they are subject by their respective regulatory bodies. In relation to Scottish Solicitors these requirements are reflected in The Law Society of Scotland Practice Rules Rule B1.2. As discussed at length above, Section 8 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004* and other similar provisions place a similar obligation on those seeking international protection to act in good faith."

Chapter 6: Supporting Victims of Modern Slavery

31. The Government believes there is a need to act now to build a resilient system which identifies victims of modern slavery as quickly as possible and ensures that support is provided to those who need it, distinguishing effectively between genuine and vexatious accounts of modern slavery. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

- **Improving First Responders' understanding of when to make a referral into the National Referral Mechanism (NRM) and when alternative support services may be more appropriate.**

Not at all effective

- **Clarifying the Reasonable Grounds threshold.**

Not at all effective

- **Clarifying the definition of "public order" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security.**

Not at all effective

- **Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain.**

Don't know

- **Bringing forward other future legislation to clarify international obligations to victims in UK law.**

Fairly effective

- **Continuing to strengthen the criminal justice system response to modern slavery, providing additional funding to increase prosecutions and build policing capability to investigate and respond to organised crime.**

Don't know

- **Introducing new initiatives (as set out in Chapter 6 of the New Plan for Immigration) to provide additional support to victims, improve the Government's ability to prevent modern slavery in the first place, and increase prosecutions of perpetrators.**

Don't know

32. Please use the space below to give further feedback on the proposals in chapter 6. In particular, the Government is keen to understand: (a) If there are any ways in which these proposals could be improved to make sure the objective of building a resilient system which accurately identifies possible victims of modern slavery as quickly as possible and ensures that support is provided to genuine victims who need it is achieved; and (b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around modern slavery. Please provide as much detail as you can.

Our Scottish Anti-trafficking and Exploitation Centre represents survivors of trafficking and exploitation and are the only specialist anti-trafficking legal centre in Scotland.

We refer to the Law Society of Scotland's response, which notes:

> "We cannot see any evidence for the central justification for the proposals made in Chapter 6; that the National Referral Mechanism is being abused by "illegal migrants" to avoid detention and frustrate removal from the UK. The consultation notes that between 2017 and 2019, NRM referrals more than doubled. This is true, however, it is not an indicator of abuse of the NRM. Indeed, we note that the consultation fails to mention the Home Office's own statistics that 92% (9,765) of reasonable grounds and 89% (3,084) of conclusive grounds decisions were positive in 2020. These statistics are stark and certainly lend no credibility to accusations of abuse."

We also endorse the positions put forward in the consultation response of the Anti-Trafficking Monitoring Group (ATMG), of which we are a member, with respect to key overarching matters relating to immigration control UK-wide, including this observation:

> "The foreword does not explain why reforms to the support system for people who have survived slavery are set within the Plan for Immigration. This dangerously conflates two issues in a way which is confusing and which undermines the realities of slavery and exploitation in the UK. It is correct that these issues are sometimes linked; insecure or restrictive immigration status combined with the hostile environment on immigration, data sharing with immigration enforcement and a well founded fear that people with insecure status who report a crime against them will end up in immigration detention means that people with insecure status are vulnerable to exploitation. Continuing to muddle the issues undermines the slavery support systems, the authorities who should be focusing on identifying and addressing crimes against people, and of course exploited individuals themselves. UK nationals, who made up the most common nationality of all referrals to the NRM in 2019, accounting for 27% (2,836) of all potential victims, and non British nationals, whatever their immigration status need to know that the system is there to identify them and support them to justice and to rebuild their lives."

We would add the following, key points from a Scottish legal perspective, as set out in the Law Society of Scotland response:

> "Human trafficking and exploitation (or Modern Slavery as it is known in England) as a legal issue – including the criminal prosecution of traffickers and the identification and safeguarding of victims – is devolved to the competence of the Scottish Parliament under the Scotland Act 1998….It is concerning therefore that there are wide-ranging reforms of the law and procedure around human trafficking set out in an immigration consultation. Human Trafficking is

fundamentally not an immigration issue, evidenced by the fact that the top nationality for NRM referrals is consistently UK nationals.

As regards the proposal to heighten the legal test at "Reasonable Grounds" stage (RG), we note that this intends to amend the Modern Slavery Act 2015 as well as the Statutory Guidance. Neither of these apply in Scotland. We assume, therefore, that the proposal does not extend to Scotland. For avoidance of doubt, were it intended that this would apply in Scotland then it would likely be unlawful on the basis that the Human Trafficking and Exploitation (Scotland) Act 2015 covers this aspect of the legal test. Section 9(8) allows Scottish Ministers to make regulations about when Reasonable Grounds and Conclusive Grounds are met, and section 9(9) specifies that these regulations can set out the criteria, procedure and personnel making these decisions.

In any event, we feel compelled to stress that the current threshold for an RG decision is in line with international law as set out in the Council of Europe Convention on Action against Trafficking in Human Beings ("Trafficking Convention"). The RG decision is the entry-point of a process designed to identify if someone is a victim of trafficking. It should not pre-empt identification or act as a sift. As detailed in Chapter 4 of the OSCE NRM Handbook, trafficking is a hidden and complex crime. The nature of the relationship between the victim and perpetrator is also highly complex. In order to comply with the UK's positive obligations to promptly identify potential victims of trafficking and to provide support and assistance, under Article 4 ECHR and the Trafficking Convention, then the legal test at the RG stage requires to be able to take account of these complexities and the highly vulnerable status of the potential victims. We are alarmed at the consultation's focus on assessing credibility, "carefully considering the implications of contradictions and previous opportunities" for a victim to self-identify. The consultation makes no mention of the fact that survivors of trauma – in any guise, including child abuse or domestic violence – rarely provide full disclosure of their experiences at the outset, and that feelings of fear and shame are often acutely felt. We view the proposal in this regard as regressive, harmful to the positive progress that has been made UK-wide, and potentially in violation of Article 4 ECHR and the Trafficking Convention. The ramifications are further aggravated by the fact that, as stated above, there appears to be no evidence base upon which to make the proposal.

Finally, we would also oppose the proposals made around the "public order grounds exemption". Firstly, for the reasons set out above, this proposal seeks to place limits on how and when support is provided to victims of trafficking. In Scotland, this is devolved and set out in section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015. A legislative consent motion therefore would

be required in our view. Secondly, it is common for victims of trafficking to commit criminal offences in the course of their trafficking. Under Article 4 ECHR and Article 26 of the Trafficking Convention, there is an obligation on member states to put in place measures that prevent the punishment of persons for such offences. Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015 puts this into domestic law in Scotland, with the European Court of Human Rights having recently issued a judgment finding a violation of Article 4 ECHR in relation to this (*A.N. and V.C.L. v UK*). We have concerns that an additional "public order grounds exemption" would compound injustices which are already being experienced by victims of trafficking in the UK. … The UK is therefore already able to withdraw support on that basis. Finally, reading the proposals in Chapter 6 in the round with the rest of the consultation, is appears that this proposal is directed at the removal of migrants in the immigration context. Again, this is the insertion of an immigration agenda into the human trafficking process; we do not believe that the two should be conflated in this way."

Chapter 8: Enforcing Removals including Foreign National Offenders (FNOs)

33. It is an essential responsibility of any Government to enforce and promote compliance with immigration laws, ensuring the swift return of those not entitled to be in the UK. The Home Secretary is also under a duty to remove any foreign national offender who has been served a sentence for an offence in the UK of 12 months or more. In your view, how effective, if at all, will each of the following reforms be in helping us to build on these principles?

- **Consulting with Local Authority partners and stakeholders on implementing the provisions of the 2016 Act to remove support from failed asylum-seeking families who have no right to remain in the UK.**

Not at all effective.

34. Please use the space below to give further feedback on the proposals in chapter 8. In particular, the Government is keen to understand.

(a) If there are any ways in which these proposals could be improved to make sure the objective of enforcing and promoting compliance with immigration laws, ensuring the swift return of those not entitled to be in the UK is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach the Government is taking around removals. Please write in your answer in full, providing as much detail as you can.

We strongly object to proposals to reform provisions of the Immigration Act 2016 which allowed the Home Office to make significant changes to who can access asylum support, following a refusal. The changes to the Immigration Act 2016 included removing eligibility for ongoing Section 95 support for families with children that have been refused asylum. If families have a "genuine obstacle" to leaving the UK, they will be able to apply for a new type of support known as Section 95A, but must do so within the 90 day period to be eligible.

We refer to and adopt ILPA's position with respect to the implementation of these changes on a UK-wide basis.

The New Plan also proposes to seek the agreement of local authorities to systematically exclude some children and families from the operation of Scots child welfare law. In Scotland, as set out above, social work support to destitute families is provided under Section 22 of the Children (Scotland) Act 1995.

There is no evidence that this legal standard that governs social work support for destitute asylum seeking families in Scotland is not working from the perspective of ensuring child welfare and the human rights of the children and families involved – although it does create increasing pressure on local authority financial resources as Home Office policies push more and more people into destitution.

Evidence published in September 2020 by the NRPF Network indicated that 77% of families supported by local authorities are eventually granted leave to remain in the UK; however the cost to local authorities is significant, with a quarter of such families requiring more than three years of support and a rise in referrals for local authority support due to the impact of "hostile environment" policies.[18]

This evidence suggests that the key issue for children, families and local authorities is actually inefficient and (where there are successful appeals) challengeable Home Office decision-making – an issue that cannot be addressed by reforming how local authorities provide support.

It is therefore unclear what this further proposal could seek to achieve, and we are concerned that its impact – in an area clearly devolved to the Scottish Parliament – is potentially unlawful.

In conclusion, we reiterate that enforced homelessness and poverty should never be a built-in feature of the UK's asylum system; our asylum system should be designed to protect, not to punish.

[18] NRPF Network, "Councils achieve cost savings despite rising referrals and challenges obtaining immigration outcomes," September 2020, https://www.nrpfnetwork.org.uk/news/nrpf-connect-data-report-2019-20.

Public Sector Equality Duty (and other general questions)

35. Below is a list of protected characteristics under the Equalities Act:

- **Age**
- **Disability**
- **Gender reassignment**
- **Marriage and civil partnership**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Sex**
- **Sexual orientation**

From the list of areas below, please select any areas where you feel intended reforms present disproportionate impacts on individuals protected by the Equalities Act.

Please expand on your answer for any areas you have selected, providing data (where applicable), further information and detailed reasons.

- **Protecting those Fleeing Persecution, Oppression and Tyranny (Chapter 2)**
- **Ending Anomalies and Delivering Fairness in British Nationality Law (Chapter 3)**
- **Disrupting Criminal Networks and Reforming the Asylum System (Chapter 4)**
- **Streamlining Asylum Claims and Appeals (Chapter 5)**
- **Supporting Victims of Modern Slavery (Chapter 6)**
- **Disrupting Criminal Networks Behind People Smuggling (Chapter 7)**
- **Enforcing Removals including Foreign National Offenders (FNOs) (Chapter 8)**
- **None of these**

We believe the proposals in the New Plan for Immigration will have significant impacts on all individuals with protected characteristics under the Equality Act 2010, for the reasons set out in our responses above. Therefore, we have selected all of the above areas.

We also refer here specifically to the specific evidence of impact on individuals and groups in Scotland set out in the consultation responses submitted by our partners in Scotland including: The Scottish Refugee Council, Together Scotland, the Equality Network, the Trafficking Awareness Raising Alliance (TARA), Govan Community Project and our JustCitizens project.

36. And in which areas, if any, of the intended reforms do you feel there are likely to be the greatest potential equalities considerations against the listed protected characteristics? (tick all that apply)

- **Strengthening safe and legal routes (Chapter 2)**
- **Delivering fairness in British nationality laws (Chapter 3)**
- **Reforming the asylum system (Chapter 4)**
- **Streamlining and speeding up removals (Chapter 5)**
- **Reforming the Modern Slavery System (Chapter 6)**
- **Defending the Border and strengthening enforcement (Chapter 7)**
- **Enforcing removals, including of Foreign National Offenders (Chapter 8)**
- **None of these**

As above, we believe most of the intended reforms have the potential to cause significant harm to people seeking refugee protection, with disproportionate impact on all individuals with protected characteristics under the Equality Act 2010, for the reasons set out in our responses above. Therefore, we have selected all of the above chapters.