



## Public Accounts Committee

### The Asylum Transformation Programme June 2023

#### Introduction:

1. The Committee is to consider the report of the National Audit Office (NAO) on *The asylum and protection transformation programme*.<sup>1</sup> However, the Committee is also to:

*“...question senior officials at the Home Office on how planned changes to the asylum system fit with its wider transformation plans, and how it is managing the risks.”*

2. For reasons elaborated in this submission, we consider that the risks currently being created and exacerbated by ministerial policy are considerable. We draw particular attention to the Government’s Illegal Migration Bill; and the impact of ministers’ inadmissibility policy of recent years which this Bill seeks to dramatically extend. The critical question concerning risk, in which the Committee is particularly concerned, is how any risk can be managed by the Home Office when the legislative intention is, by this Bill, to require by statute that the department must act or not act in various ways. If the impact of this is to continue or exacerbate the disaster of the inadmissibility policy on which it is to be built, the legislation will not permit an alteration of course. The NAO report expressly does not consider this. We urge the Committee to do so.

#### The Call for Evidence:

3. The Committee’s Call for Evidence includes the following statement:

*“The effectiveness of the asylum system depends on well-functioning case-working at the Home Office to support timely and accurate decisions. Making decisions quickly, fairly and accurately is important for the wellbeing of vulnerable service users, the outcomes achieved and, ultimately, value for money.”*

4. We intend no disrespect by highlighting two matters of difference with the Committee; and we emphasise that this difference should not detract from our

---

<sup>1</sup> Report of Session 2022-23, 16 June 2023, HC 1375

general support for the core of the position described by the Committee. The two matters are as follows:

- 4.1. The first concerns use of the word “quickly”. Our concern is no more than one of emphasis. Decisions ought to be made as quickly as is reasonably possible, but speed ought not undermine fairness and accuracy. That is especially important given the nature of what is at stake; and the circumstances of some people, who seek asylum, will on occasion not reasonably allow for a decision that might ordinarily be described as quick.
- 4.2. The second concerns use of the term “service users”. This is a term that has become favoured by the Home Office, along with similar terms such as “customers”. The primary responsibility upon the Home Office in relation to the asylum system ought to be recognising and respecting the right of refugees to asylum.<sup>2</sup> People seeking asylum are not, therefore, in the position of customers and the guarantee and provision of the rights of those of them entitled to asylum is not in the nature of providing a service. Services may be withheld or withdrawn. Regarding people seeking asylum as service users may, therefore, have the unfortunate effect of enabling a misplaced notion that the ‘services’ that are to be provided may properly be withheld or withdrawn as distinct from a recognition that the ‘rights’ that belong to those who are refugees are required to be delivered.<sup>3</sup>
5. With these two caveats, we readily acknowledge the Committee’s emphasis on the need for timely and accurate decision-making on people’s asylum claims to be delivered by an efficient and fair process. We agree that an asylum system’s effectiveness is properly measured in such terms; and that any deficiency in this regard is harmful to the wellbeing of people seeking asylum, undermines the decisions that are made and cannot be regarded as value for money. Indeed, doing harm to people seeking asylum and undermining asylum decision-making is costly in many ways (both to the Home Office and to other government departments, public bodies and wider society).

### **The Asylum Transformation Programme:**

6. On 28 September 2020, the then Parliamentary Under-Secretary of State at the Home Office, Chris Philp, in response to a Written Question, stated:<sup>4</sup>

*“The Home Office are taking steps to reform the asylum system by developing an asylum transformation programme that seeks to simplify, streamline and digitise processes as part of the plans to speed up asylum decision making.”*

---

<sup>2</sup> In fulfilment of the UK’s obligations under Article 14 of the 1948 Universal Declaration of Human Rights and the 1951 UN Convention relating to the Status of Refugees (together with its 1961 Protocol) (“the Refugee Convention”).

<sup>3</sup> Those rights derive, first and foremost, from the Refugee Convention and extend significantly beyond mere guarantee against *refoulement* to a place where a refugee’s life and freedom are at risk (Article 33).

<sup>4</sup> In answer to the written question of Sir John Hayes, UIN 91824, 18 September 2020.

7. Home Office immigration statistics show<sup>5</sup> that on 30 September 2020, two days after the Parliamentary Under-Secretary's response, the number of asylum claims awaiting a decision after more than six months stood at 36,093. There were a further 11,961 claims awaiting a decision (which claims had been made within the previous six months).
8. Two years later, on 15 November 2022, the Parliamentary Under-Secretary of State at the Home Office, Lord Murray of Blidworth, in response to a Written Question, stated:<sup>6</sup>

*“The Home Office have an asylum transformation programme which will help bring down the backlog in cases by increasing the number of decision makers processing cases, improving the use of digital technology, including remote interviews, to speed up the process and concentrating on deciding older claims, cases with acute vulnerability and those in receipt of the greatest level of support, including Unaccompanied Asylum-Seeking Children.”*

9. The Home Office immigration statistics<sup>7</sup> show that on 31 December 2022, the number of asylum claims awaiting a decision after more than six months had grown to 88,929. The number of claims made within the previous six months that remained outstanding had also grown to 43,253. Claims being treated as inadmissible will not be awaiting a decision so not counted in these figures.
10. It is necessary to consider what the Government has done between these two statements, and what it is currently doing, to the UK asylum system. We take these in turn.

***What the Government has done to the UK asylum system between September 2020 and November 2022:***

11. On 10 December 2020, the Home Secretary laid new immigration rules, which took effect at 11pm on 31 December 2020.<sup>8</sup> These permitted her to treat asylum claims as inadmissible, and make no decision upon them, if the person making the claim had, in the opinion of the Home Secretary, a connection with another country she regarded as 'safe'; or could have made their claim in such a country.<sup>9</sup> The rules included provision to admit a claim previously treated as inadmissible if the Home Secretary concluded that it would not be possible to remove the person to such a country within a reasonable period of time or, on the particular facts, it would not be appropriate to do so.<sup>10</sup> On 14 December 2020, Amnesty International wrote to the Home Office warning, amongst other

---

<sup>5</sup> Immigration system statistics, last published on 25 May 2023

<sup>6</sup> In answer to the written question of Lord Empey, UIN HL3088, 1 November 2023.

<sup>7</sup> Immigration system statistics, *op cit*

<sup>8</sup> Immigration Rules (HC 1043)

<sup>9</sup> Paragraphs 345A-C as introduced by HC 1043, *op cit*

<sup>10</sup> Paragraph 345D as introduced by HC 1043, *op cit*

things, that applying these rules could be expected to cause delay and backlogs in the asylum system.<sup>11</sup>

12. On 6 July 2021, the Home Secretary introduced to Parliament what is now the Nationality and Borders Act 2022. Section 16 of that Act, which was commenced on 28 June 2022,<sup>12</sup> replaced the inadmissibility regime introduced by the immigration rules laid on 10 December 2020 with a statutory regime. Essentially, what had initially been introduced as policy given effect by the immigration rules was made law given effect by primary legislation. During the passage of the 2022 Act, Amnesty International continued to warn about the consequences, including delays and backlogs.

13. For some years, the backlog in asylum claims has risen every quarter.<sup>13</sup> These two developments – the immigration rules laid in December 2020 and the Act passed in April 2022 – have significantly contributed to that.<sup>14</sup> It was inevitable that these developments would have that effect. Ministers have, over the period, made frequent reference to a notion that the UK asylum system is ‘broken’.<sup>15</sup> By these developments, in particular (though also others), Ministers have indeed broken it. The inefficiency and cost of this is a matter of public record. The impact on the lives of people seeking asylum is dreadful; and that in turn impedes capacity to engage with the asylum system and does other harm that all adds to inefficiency and cost.

***What the Government is now doing to the UK asylum system:***

14. There are essentially two steps now being taken. One generally positive, the other far from it.

15. First, there is some attempt to address the asylum backlog that has been created; also, to remove some further inefficiency and cost that Government had introduced via the Nationality and Borders Act 2022. There is now focus on quickly deciding the claims of thousands of people, whose claims have been stuck in the backlog, particularly where the person’s nationality provides very strong indication that the person is a refugee.<sup>16</sup> There has also been a ministerial statement announcing the cessation of the two-tier system, created

---

<sup>11</sup> Correspondence available here: <https://www.amnesty.org.uk/resources/amnesty-uk-letter-immigration-minister-ministers-reply-regarding-immigration-rules>

<sup>12</sup> Commenced by the Nationality and Borders Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022, SI 2022/590.

<sup>13</sup> Immigration system statistics, *op cit*

<sup>14</sup> The inadmissibility policy is a key point of focus in the NAO report, *op cit*. However, more could be done to interrogate the data over the relevant period concerning the rise in the backlog of asylum claims, the number of claims delayed and/or left in limbo by this policy and the link between the two. In this submission, we draw attention to the significant rise in the backlog over the period of the inadmissibility policy to which we refer; the warnings that we gave concerning its impact immediately before its introduction; and invite reflection upon the inevitable consequence of delaying the possibility of a person passing through the asylum system (whether to being recognised as a refugee or refused that recognition) on the backlog in that system.

<sup>15</sup> See e.g., written answer of Chris Philp, Parliamentary Under-Secretary of State of 12 July 2021 to the written question of Steven Bonnar, UIN 902542 of 12 July 2021.

<sup>16</sup> Briefly referred to at the close of the written statement, UIN HCWS837 of 8 June 2023, Robert Jenrick, Minister of State for Immigration.

by the Act. That two-tier system would have required repeated determinations by the Home Office over many years of a refugee's continued entitlement to asylum, adding to departmental work and cost while imposing significant uncertainty and impediment to the refugee's successful integration.<sup>17</sup>

16. Second, the Government has forced its Illegal Migration Bill through the House of Commons via a process that has deprived that House of any opportunity for effective scrutiny;<sup>18</sup> and is seeking to secure the Bill's passage through the House of Lords.<sup>19</sup> This Bill is expressly designed to simply refuse to consider the asylum claims of the great majority of people who may ever seek asylum in the UK, to require their expulsion from the UK and to bar the Home Secretary from ever permitting them to stay.<sup>20</sup> Ministers describe this Bill as "*novel*";<sup>21</sup> and have stated that they cannot declare it to be human rights compatible.<sup>22</sup> The impact will be that thousands of people who may seek asylum in the UK will simply not be officially recognised or considered as seeking asylum here. Their claims will never be admitted and so never add to the backlog. But – unless the Government can persuade other countries to relieve the UK of its asylum responsibilities and add those responsibilities to their own – the many thousands of people caught by this Bill will remain either detained or reliant on Home Office asylum support and accommodation (perhaps on barges or in disused military barracks, hotels, hostels or other accommodation centres).

## Conclusion:

17. The NAO report draws the following conclusion:<sup>23</sup>

### ***“Conclusion on value for money***

*18. The Home Office expects the asylum and protection transformation programme to reduce its costs by making asylum decisions more quickly, so it supports people seeking asylum for a shorter time; and by*

---

<sup>17</sup> See written statement of Robert Jenrick, *op cit*, in which he announced this "*differentiation policy*" to be "*paused*".

<sup>18</sup> The Bill was committed to a Committee of the whole House, with Committee stage over two consecutive days providing no opportunity for line-by-line consideration, any or any effective probing of ministers, or evidence to a public bill committee. This was followed by Report and Third Reading on a single day, immediately before which the Government published well in excess of 100 amendments to the Bill. And all of this was exacerbated by the Governments failure to prepare or publish vital impact assessment.

<sup>19</sup> The Bill is currently awaiting its Report stage in that House.

<sup>20</sup> Amnesty International UK and the Immigration Law Practitioners' Association (ILPA) have produced an explanation of the Bill's structure, purpose and key operating parts: *Illegal Migration Bill*, 21 June 2023, which is available here: <https://www.amnesty.org.uk/files/2023-06/Illegal%20Migration%20Bill%20FINAL.pdf?VersionId=JEF153sXwkipzKCvuSNmJE38KBcXicGf>

<sup>21</sup> See e.g., *Hansard* HL, Second Reading, 10 May 2023 : Col 1921 per Lord Murray of Blidworth describing the design of "*a scheme that is novel and ambitious*".

<sup>22</sup> When introduced in the Commons, the Bill was accompanied by the following statement: "*Secretary Suella Braverman has made the following statement under section 19(1)(b) of the Human Rights Act 1998: I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill*"

<sup>23</sup> Report, *op cit*, p12

*increasing its supply of dispersal accommodation, to reduce its reliance on costly hotels...*

*19. The changes the Home Office plans to implement through the asylum and protection transformation programme are necessary, but not on their own sufficient, to address the pressures in the asylum system. The changes will only work if all parts of the end-to-end asylum system can effectively manage the demands placed on them..."*

18. However, the NAO report expressly states:<sup>24</sup>

*"This report examines the Home Office's progress in delivering the asylum and protection transformation programme. The report does not evaluate the wider policy changes..."*

Those wider policy changes are identified in the report and expressly include the Government's Illegal Migration Bill. As part of the NAO's focus on a 'whole-system approach', the report considers the impact of the programme on HM Courts and Tribunal Service and on Immigration Enforcement.<sup>25</sup> However, in accordance with the earlier statement concerning wider policy changes, the report also makes express that the 'estimated potential change in activity' affecting these bodies:<sup>26</sup>

*"...does not include any impacts from the Illegal Migration Bill, which was announced after this estimate was made."*

19. The profound difficulty here for the Committee is that the primary conclusion of the NAO concerning value for money is derived from analysis significantly founded upon a connection between asylum decision-making and asylum support costs. Yet, the Bill will fundamentally break that in a way that is similar to the previous Government policy discussed in this submission, but which differs from that previous policy in being emphatic and irreversible.

19.1. The previous policy sought to exclude decision-making on thousands of claims by an inadmissibility policy that could nonetheless be lifted. It placed thousands of people in a position of limbo, either detained or dependent on Home Office asylum accommodation and support; and significantly enlarged the backlog of people awaiting asylum decisions as and when the claims of people placed in this limbo were admitted to the decision-making process.

19.2. The Bill will bar admission to that process. Unlike the previous policy, as drafted, the Bill does not allow that bar to be lifted. It is, in this respect, an extreme gamble – emphatically and irreversibly extending an inadmissibility policy that has already proven calamitous with the

---

<sup>24</sup> Report, *op cit*, p7

<sup>25</sup> Report, *op cit*, pp33ff

<sup>26</sup> Report, *op cit*, fn 1 to fig 11, p34

aspiration, for which there is no evidential support,<sup>27</sup> that making the policy emphatic and irreversible will have precisely the opposite consequences (in terms of the number of people seeking asylum and financial cost to the asylum system) to those that policy has had to date.

20. Amnesty is emphatically opposed to this Bill for reasons that extend far beyond, and indeed are far from primarily founded upon, the prospect that it will prove even more financially disastrous than the policy it is set to dramatically extend.<sup>28</sup> However, we are conscious of financial consequences – not least because these are undermining both capacity and will to meet the asylum responsibilities that fall to the UK, responsibilities that continue to be substantially less onerous than those taken and received by many countries in Europe and elsewhere.<sup>29</sup> We are also acutely aware of the risk that driving more people into the clutches of enslavers, human traffickers and other abusers – both on journeys to the UK and within the UK – as we have warned in relation to this Bill,<sup>30</sup> is likely to have baleful financial consequences in addition to the human and societal consequences, which are our prior concern.

---

<sup>27</sup> The Government has belatedly published an impact assessment, dated 26 June 2023. The first page of that assessment confirms that the Government has considered nothing more than ploughing on with its Bill as against retaining its pre-existing policy – i.e., continuing the current inadmissibility policy either by making it mandatory and inflexible (implementing the Bill) or by retaining the possibility of withdrawing or not applying the policy (the existing position). That first page also confirms that a full cost-benefit analysis has not been undertaken and that it is ministers' position that it cannot be done – in significant part because the option of the Bill is "*novel and untested*". It is extraordinary that Government is pursuing an option that will require it to act in certain ways, with no flexibility or possibility to change course (save for securing new legislation), but of which it has no clear notion, or it says capacity, to assess the impact. Moreover, the comparison between implementing the Bill and continuing the current policy builds what has proven to be an immensely costly policy (inadmissibility) into the economic modelling. A plainly more reasonable consideration would be to compare costs of the Bill against costs of returning to operating the asylum system as it was prior to the implementation of this policy.

<sup>28</sup> Our various briefings and submissions (including to the Joint Committee on Human Rights for its legislative scrutiny inquiry) on this Bill are available here: <https://www.amnesty.org.uk/resources/government-immigration-bill-session-2022-23-entitled-illegal-migration-bill-1>

<sup>29</sup> UNHCR's online 'refugee data finder' is one means by which comparisons may be drawn.

<sup>30</sup> See e.g., our joint briefing with Migrant Voice on *Modern Slavery* in relation to the Bill available at the briefings and submissions page, *op cit*