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Public Bill Committee

NATIONALITY AND BORDERS BILL

Fourth Sitting

Thursday 23 September 2021

(Afternoon)

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Monday 27 September 2021

The Committee consisted of the following Members:

Chairs: Sir Roger Gale, †Siobhain McDonagh

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Baker, Duncan *(North Norfolk)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Gullis, Jonathan *(Stoke-on-Trent North)* (Con)
† Holmes, Paul *(Eastleigh)* (Con)
† Howell, Paul *(Sedgefield)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McLaughlin, Anne *(Glasgow North East)* (SNP)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Pursglove, Tom *(Parliamentary Under-Secretary of State for the Home Department)*
Richards, Nicola *(West Bromwich East)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Wood, Mike *(Dudley South)* (Con)

Rob Page, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Witnesses

Rossella Pagliuchi-Lor, UNHCR Representative to the UK, UNHCR UK

Elizabeth Ruddick, Senior Legal Associate, UNHCR UK

Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons

Dame Sara Thornton, Independent Anti-Slavery Commissioner

Lisa Doyle, Executive Director of Advocacy and Engagement, Refugee Council

Mariam Kemple-Hardy, Head of Campaigns, Refugee Action

Priscilla Dudhia, Advocacy Co-ordinator, Women for Refugee Women

Alphonsine Kabagabo, Director, Women for Refugee Women

Patricia Durr, Chief Executive, Every Child Protected Against Trafficking (ECPAT)

Patricia Cabral, Legal Policy Officer, European Network on Statelessness

Adrian Berry, Immigration Law Practitioners Association

Public Bill Committee

Thursday 23 September 2021

(Afternoon)

[Siobhain McDonagh *in the Chair*]

Nationality and Borders Bill

Examination of Witnesses

Rossella Pagliuchi-Lor and Elizabeth Ruddick gave evidence.

2.1 pm

The Chair: We will now hear from Rossella Pagliuchi-Lor, United Nations High Commissioner for Refugees representative to the UK, and Elizabeth Ruddick, senior legal associate, both representing UNHCR UK. We have until 2.30 pm for this session. Will you please both introduce yourselves for the record?

Rossella Pagliuchi-Lor: Good afternoon to everyone. My name is Rossella Pagliuchi-Lor. I am the UNHCR representative to the United Kingdom.

Elizabeth Ruddick: Good afternoon. My name is Elizabeth Ruddick. I am a senior protection associate with the UNHCR in the United Kingdom.

Q137 Bambos Charalambous (Enfield, Southgate) (Lab): Welcome, Elizabeth and Rossella. I will ask you a few questions, primarily about the legality of the Bill in relation to international law. In your opinion, do various clauses in the Bill comply with international law?

Rossella Pagliuchi-Lor: Thank you very much for this question, but I would like to start with a short statement, which will also cover that. It is, of course, one of the areas of particular interest and concern to us.

You know, of course, that UNHCR has already published two sets of opinions: one on the policy document and the other on the Bill. I want to start by saying that we actually support the broad intent—the broad aims—of this Bill: combating smuggling networks, having fairer and faster procedures, and facilitating the return of those who are found not to be in need of international protection. However, we believe that the Bill is unlikely to achieve those aims, and may further exacerbate some of the identified issues.

Our concerns revolve around three areas. The first concerns the breach of international law, as the Bill contravenes the UK's obligations under the 1951 refugee convention. The Bill revolves around the notion that refugees are required to seek asylum in the first safe country they find. To be clear, that principle is not found in the refugee convention, and it is not a requirement in international law. It is also unworkable because it would further increase pressure on those few countries that find themselves at the frontier of a crisis. The risk, of course, is that they would be overwhelmed, and that might impact on both their capacity and their good will to provide protection and solutions.

The Bill, as it stands, will cause significant suffering to people who are guilty of nothing more than seeking asylum in the UK. It makes unauthorised arrival and presence in the UK a crime punishable by up to four years in jail, without the defences that are actually provided for by the 1951 convention. It would also keep refugees in a situation of enforced precarity for up to 10 years, with no access to public welfare unless destitute, and under threat of removal to another country, if that were possible. This is really going to create massive problems not only for these individuals at a personal level, but for their communities, local councils and the NHS.

Lastly, the system as described would exacerbate the current backlog and increase costs by making procedures longer. That will delay the integration of those who are eventually found to be refugees, and will hamper the return of those who are not found to be in need of protection. It will have a number of unintended negative consequences that will impact on the very aims that the Bill purports to pursue.

Q138 Bambos Charalambous: Just to paraphrase, you think that the Bill will not achieve its objectives because it will mean that people stay here longer, and because it does not comply with international law as you see it?

Rossella Pagliuchi-Lor: Absolutely. As I said, there is no requirement in international law that refugees should seek asylum in the first safe country they find. We believe that there will be consequences if countries start reneging on or trying to diminish their responsibilities and commitments under the convention. There is a risk of triggering a race to the bottom. We have to perceive that every time we make it harder or try to discourage refugees from reaching our shores, we are diverting them to another country. It risks creating a chain in which refugees will find it harder and harder to find asylum anywhere. The international system is based on the good-faith application of the commitments that have been freely undertaken by states. When states do not fully embrace those commitments, the result is the erosion of international law. International law is nothing more than a contract between states, and it lives or dies by states' willingness to comply with it.

Yes, we are very concerned, and we are concerned also because we are frankly in a position of constantly advocating for asylum and doing so with countries that have way more refugees than the UK. The element that has been lost in this discussion is that the UK, by reason of its geographical position and its relative distance from crisis countries, in fact receives a pretty small number of refugees. I am not suggesting that this is something you want, and there are certainly more than you would wish for, but in the big scheme of things it is a relatively small number. This is also true, by the way, of countries around you. The UK has a fairly stable number of asylum seekers in the range of 35,000 per year. France has just under 100,000 per year, with some variations. Germany has around 150,000, and Spain, Greece and Italy all receive more applications than the UK. Of course, I am not even mentioning countries closer to the crisis. Let us not forget that 73% of all refugees and asylum seekers remain in countries neighbouring their own, and that about 85% or 86% remain in developing or middle-income countries. I would like to encourage you to look at this matter in perspective. The channel crisis is certainly a challenge, but I think it has to be looked at in a broader perspective of a global challenge for all countries with respect to displacement.

Q139 Bambos Charalambous: Just to follow up about other countries that neighbour areas where there are war zones and conflicts, can you talk about an example of one of the countries that border Syria, such as Jordan or Turkey?

Rossella Pagliuchi-Lor: Turkey at the moment has the largest number of refugees, as you know. We are talking about upward of 4 million or maybe even more. At one stage, Lebanon had one Syrian refugee for every four people; a huge percentage of its population were refugees. If you are talking about Afghanistan, there is a registered population of Afghan refugees of 780,000 in Iran, plus probably 1.5 million—maybe more—who are non-registered. Likewise, Pakistan has, between registered and unregistered, well above 2 million people. It has, I think, 1.4 million registered and maybe quite as many unregistered. So you are talking about numbers that are, frankly, enormous, relative to the numbers who come to Europe and, even more so, to the ones who come to the UK.

Q140 Bambos Charalambous: As you have indicated, the Bill seeks to punish people on how they arrive in the UK, by giving them less temporary protection. Are you aware of any other countries that do that apart from Australia? We heard this morning from the high commissioner for Australia.

Rossella Pagliuchi-Lor: There have been attempts by other countries, and of course the case that comes to mind is Denmark, which has been in the media, particularly in relation to the question of returns of Syrians. But I would like really to focus on the UK, rather than on other countries, if you will allow me. First, obviously there are principles that are applicable across the board. Obviously, we are asking all countries to act in a manner that is consistent with their international obligations. I think that we tend to forget that situations are sometimes different in terms of the practical applications. I know that you had the Australian high commissioner here this morning, even though I did not listen to his presentation. But of course the situation in Australia is very different from the situation in the UK. In any case, I would strongly recommend you not to follow that example, frankly.

Q141 Bambos Charalambous: The vulnerable persons resettlement scheme closed. Do you think that the closure of schemes like that has an impact on the increased numbers of people seeking asylum in places like the UK?

Rossella Pagliuchi-Lor: Yes and no. Having resettlement schemes and other legal pathways, such as a well-functioning and perhaps slightly more generous family reunion mechanism, will certainly allow certain people to come legally where they might otherwise have been tempted to do so irregularly. However, the reality is that resettlement programmes—even a generous and well-run resettlement programme such as the VPRS—are really a bit of a drop in the bucket. You have to consider that, in any given year, we manage to resettle a fraction of 1% of the refugees who would be in need of resettlement. There is really a vast disproportion. That is why we say that resettlement is extremely valuable, is a life-saving mechanism—and we really commend the UK for its efforts in this sense—but is not an offset for granting asylum.

Bambos Charalambous: I know other colleagues wish to come in, so I will leave my questioning there. Thank you very much.

Q142 Mr Robert Goodwill (Scarborough and Whitby) (Con): When I visited the refugee camps in Jordan in 2017, I was greatly impressed by the work of the UNHCR selecting the most vulnerable people to bring them under the 20,000 scheme that David Cameron had announced. Could I ask whether you think the best way to select those who are the most needy is by using organisations like the UNHCR, or whether the economic test of who can afford to pay a people smuggler is a better way of going forward? At the moment, we seem to be swamped by people who use people smugglers rather than the legitimate, legal routes using the amazing services of the UNHCR.

Rossella Pagliuchi-Lor: Thank you for this question, because it allows me actually to address what I believe is generally a bit of a misconception about spontaneous arrivals. Certainly—of course—the UNHCR has a system to identify the most vulnerable, but as I said, we only manage to submit a very small percentage of those we have identified, so the system definitely does not cover the needs. But the individuals who come here should not be regarded necessarily as wealthy people who have the means to come here. Typically, the vast, overwhelming, majority of those who move irregularly do so having gathered all the resources of themselves and their families. Homes are sold. Whole families are literally impoverished to gather the money that is required for somebody to make this trip. One of the reasons these trips can last weeks, months, or occasionally even longer, is that sometimes they have to stop in an intermediate place, such as Libya, to gather more money. We should not think of these people as being privileged and wealthy, and therefore having the luxury of travelling irregularly. The reality is quite different; these are journeys of desperation in most cases.

Q143 Mr Goodwill: That is certainly what I heard from the Nigerian Minister of Interior, who said that the most vulnerable people in the areas Boko Haram controlled had no chance, no way to afford paying people smugglers. It was middle-class people—by Nigerian standards—who could afford to send, say, son No. 2 on that hazardous journey.

Rossella Pagliuchi-Lor: I cannot talk about the statement by the Minister about the Boko Haram area, but I can tell you that, first, "middle class" means something different in different countries. Secondly, the people you see applying for refugee status here are not necessarily members of the middle classes. There is a much wider range. I suggest that if someone is truly wealthy, they might be able to come by plane. That is the most expensive kind of irregular journey because it would mean purchasing a passport and a ticket.

Q144 Anne McLaughlin (Glasgow North East) (SNP): Thank you very much for your time today. I have one quick question on that: if a person is middle class in the country they live in, can they still be a refugee, still be in danger and still have protection needs?

Rossella Pagliuchi-Lor: Of course.

Q145 Anne McLaughlin: Thank you. If the Bill is enacted, anyone acting with purely humanitarian motives could be criminalised just for facilitating the arrival of a person who does not have entry clearance for the UK.

[Anne McLaughlin]

They could face a long time in prison. The Canadian Supreme Court found that similar provisions in Canada violated article 31 of the refugee convention. Can you tell me more about that?

Rossella Pagliuchi-Lor: Thank you very much for that question. Being or not being a refugee has nothing to do with economic status. Refugees can be poor, middle class, or very wealthy. What makes a person a refugee is a well-founded fear of persecution for one of the five reasons established in the convention. Since we are talking about this in the Bill, the manner of a person's arrival also has no bearing on this whatsoever. A refugee is a refugee is a refugee. If you are a refugee, you are entitled to certain things. That is really the bottom line.

On the criminalisation of those who may be assisting people to move across borders, there is an important difference to be made between those who do so for gain—the smuggler; we all know that there are criminal networks preying on people's despair, and we commend the Government for their robust action in pursuing these people and bringing them to justice; that is a relief—and those who provide assistance to people in difficulty. They could be organisations rescuing asylum seekers and migrants at sea, for example. That is a completely different kettle of fish, and we definitely believe that it should not be penalised. The difference is between gain and humanitarian purpose.

Q146 Anne McLaughlin: Do you know anything about what happened in Canada?

Rossella Pagliuchi-Lor: I do not. Perhaps Elizabeth does. Otherwise, I can of course let you know

Elizabeth Ruddick: In Canada, there was an attempt to prosecute refugees who had been abandoned by the smugglers and were steering a boat to safety. They were prosecuted for facilitating each other's safe arrival. That was found to be a violation of the convention, because if you criminalise refugees assisting each other to survive during the course of their journey, you are criminalising seeking asylum.

Q147 Anne McLaughlin: It is important for the Government to hear that. They will face the same possible actions if they go ahead with this.

My other question involves the raging debates we have here all the time, which has come down to, "Yes, it does", or, "No, it doesn't". People who are refugees seeking protection do not have to seek protection in the first country that they come to. We say that all the time, but we have debates with our colleagues who say, "Yes, they do. If they don't, they are not refugees." You say, "No, they don't." Will you explain that more?

Rossella Pagliuchi-Lor: The answer is, unequivocally, no. Refugees are not required to seek asylum in the first country, full stop. The manner of travel has no bearing on refugee status—none at all. That said, it does not translate into an unfettered right for people to choose where they want to seek asylum.

What is important to consider here—it has a bearing on your situation—is that UNHCR encourages countries to enter into agreements that allow them to transfer responsibilities for asylum seekers in a manner that ensures that every individual has access to a fair procedure, to decent and appropriate reception and, if found to be a refugee, a viable integration path. They do so by sharing responsibility in such a way that protection space is expanded rather than decreased.

One of the specifics of your Bill is that it makes extensive use of so-called inadmissibility in a situation in which there is no agreement that would allow the UK to transfer these people to another safe country in which it would make sense for them to be assessed. The UK, as you know, was part of the Dublin scheme, which is not perfect by any means but was at least a mechanism that established certain rules allowing states to share responsibility and to decide who should be assessed where.

At the moment, you do not have any such agreement with the EU, so a bit of a strange situation is realising itself. Since the entry into force of the changes to the initial rules, I understand that about 4,500 individuals have been notified of their possible inadmissibility. Seven of them have been found inadmissible, but I do not think that anyone has been returned to anywhere, because this has simply created a very long queue leading to nowhere. It is fundamental to the good management of the international refugee system that there should be strong collaboration between states. I hope that clarifies things.

Anne McLaughlin: That really does help. I have one more brief question. Would you say that you are an authority on the refugee convention?

Rossella Pagliuchi-Lor: The UNHCR is the established guardian of the 1951 convention. Our statute is an annex to a General Assembly resolution. The duty of states to collaborate with UNHCR is enshrined in article 35 of the 1951 convention, so yes.

Duncan Baker (North Norfolk) (Con): When you spoke first, you said that the Bill would not carry out its intentions. To pick up on that, many parts of the Bill have similarities to the Australian model, which was implemented in 2014. As we know, that was very successful—no migrants were crossing after about nine months of that policy coming in. You said that there were differences from the situation that arose in Australia. I get that, there are differences between them and us, but there are also a great deal of similarities. In your eyes, what are the differences that would make this legislation so unsuccessful?

Rossella Pagliuchi-Lor: Let me just take a step back on Australia. The Australian approach was essentially based on offshoring and externalisation, and on turning around the boats. The offshoring and externalisation did not have any impact on the boats, but it did have a terrible, terrible impact on the people who got caught in it. If you read reports of what happened on Nauru and Manus island and so on, there were very high levels of violence, sexual violence against women and children and suicides. Children were found to be the most traumatised that most practitioners had ever seen. Children were essentially withdrawing into themselves and becoming entirely irresponsive to external stimuli. There were also suicides and self-harm. You really need to ask yourselves whether that situation is something you would like to associate your country with, to be entirely frank.

The Chair: I am sorry to interrupt when you are giving such good testimony, but quite a few people want to ask questions and I would like to get them in if I could. We will take Jonathan Gullis, then Paul Blomfield, and then the Minister. Apologies.

Q148 Jonathan Gullis (Stoke-on-Trent North) (Con): I will keep it brief. Stoke-on-Trent North, Kidsgrove and Talke residents, in the overwhelming majority—

Rossella Pagliuchi-Lor: Sorry?

Jonathan Gullis: In the constituency I serve, the residents are livid with the situation in the English Channel. We are more than happy to do our fair share on a global perspective—we have seen that with Afghanistan and Syria—but illegal economic migrants crossing the Channel is totally unacceptable. Do you not think that having a system in place that says that if you enter this country illegally, that will have an impact on your application, that will help to deter people and make them understand that it will harm their opportunity to get permanent residency in this country?

Rossella Pagliuchi-Lor: No, I do not. I think that the reasons why people come are not likely to be affected by what you are saying. Most of the people who arrive here are found to be genuine refugees, not illegal immigrants, by the Government and by your procedures. The fact that they came as they came has got nothing to do with whether or not they are refugees.

The best way of ensuring that the system works is by having a very fast, fair and efficient procedure, because that allows you to move quickly and determine who is a refugee and can stay, and who is not a refugee and needs to be returned, if they have no other legitimate reasons to remain. That can be done if it is done quickly, not if it happens five or 10 years down the line. The Home Office is working now on procedures that will allow it to deliver much faster and, we think, better quality judgments. That would help to deter those who might be trying their luck and at the same time provide protection for those who need proper security.

Jonathan Gullis: We know—

The Chair: Sorry, Jonathan; can I just bring in Paul Blomfield? Paul, I am then going to have to interrupt you to get the Minister in.

Q149 Paul Blomfield (Sheffield Central) (Lab): Of course, Chair, I will be very quick. You mentioned that in your view the Bill will be counterproductive to its own objectives. I think I heard you right in saying that it would hamper returns. Could you develop that point?

Rossella Pagliuchi-Lor: I will. One of the important elements is that if you have a system, there have to be consequences to that system. It does not make any sense to have a system that determines who is a refugee and who is not, and then the results go nowhere. I know that it is difficult to arrange for returns—there are a number of issues and they need a great deal of partnerships internationally—but it is a fact that if somebody is properly looked at in a proper procedure and then found not in need of international protection, it is a lot easier if that happens closer to the time than after a few years, when they have had time to establish a family and when perhaps the whole question of identification is getting a little more vague. It is a fact that good case management increases the chances of people returning, and it increases the chances of people returning voluntarily, too.

Q150 The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): Clearly, one of the fundamental cornerstones of the policy is prioritising safe and legal routes, and I am sure that you would strongly support that. Presumably you also think it is right to try to deter and dissuade people from making those very dangerous crossings across the channel, which pose a grave risk to life. What do you suggest, if not the approach we are suggesting?

Rossella Pagliuchi-Lor: Granted, you will never have a silver bullet that solves all of your issues until and unless people no longer feel the need to seek asylum elsewhere. However, as I said, I think that a fast and fair procedure is your best defence, alongside strong agreements with the European Union on the allocation of responsibility for asylum seekers. That is by far the best way of dissuading people who might sometimes be hopping around countries to choose a jurisdiction or who are just giving it a shot—people whom your colleague referred to as illegal immigrants. There are some who could masquerade as asylum seekers; there is no question about that.

The Chair: Order. I am sorry, but that brings us to the end of the time allotted for the Committee to ask questions. On behalf of the Committee, I thank our witnesses for their evidence.

Examination of Witnesses

Siobhán Mullally and Dame Sara Thornton gave evidence.

2.32 pm

The Chair: We will now hear from Siobhán Mullally, United Nations Special Rapporteur on Trafficking in Persons, and Dame Sara Thornton, the Independent Anti-Slavery Commissioner. We have until 3.15 pm, so slightly longer than the last session. Would the witnesses please introduce themselves for the record?

Dame Sara Thornton: Good afternoon. I am Sara Thornton, the Independent Anti-Slavery Commissioner for the United Kingdom.

Siobhán Mullally: Good afternoon. I am Siobhán Mullally, Special Rapporteur on Trafficking in Persons, especially women and children.

Q151 Holly Lynch (Halifax) (Lab): Thank you to both of our witnesses. On part 4 of the Bill, on modern slavery, I think we can all agree that securing prosecutions against the perpetrators of trafficking and modern slavery has to be a priority. With that in mind, do you think that the Bill will improve our ability to secure prosecutions?

Dame Sara Thornton: It is not for me to have a view on most of the provisions, but part 4 and its impact on modern slavery is my particular focus. One of my concerns about the Bill is the unintended consequences, in particular of clause 51, on disqualification from protection. That is probably my gravest concern about unintended consequences.

[Holly Lynch]

In my view, we currently prosecute far too few traffickers and criminals for those offences, and I am concerned that the Bill could unintentionally undermine that. I say that because in defining the public order exemption, the bar has been set low and the net has been cast wide—whichever phrase you want to use. It has the potential to reduce support for a considerable number of victims of modern slavery through the national referral mechanism, which matters because, if victims are not supported through the national referral mechanism, they are put in a very difficult position in terms of supporting police investigations and prosecutions. That is my concern.

I was trying to be helpful and think what it is about clause 51 that is a particular problem. Clause 51(3) defines the public order exemptions; I have been looking at paragraphs (b) and (f) in particular. Paragraph (b) is where the list of offences is from schedule 4 of the Modern Slavery Act 2015. That list was passed by Parliament six years ago for a very different purpose. It was about which offences were excluded from the protection of the statutory defence. The first question I have had is about whether we are actually going to use that list for a very different purpose.

The second issue is clause 51(3)(f), where the definition of a foreign criminal from the UK Borders Act 2007 is used. Again, that is a very low bar because all it requires is for somebody to be sentenced for 12 months, and sentenced not just in the United Kingdom but anywhere in the world. My concern is that it sets quite a low bar. I have been speaking to colleagues in law enforcement and from charities that provide support for witnesses, and their concern is many people who have given witness evidence in the Crown court would be caught by this, and they would not necessarily be provided with support in the NRM. That is my concern. My other suggestion might be considering an amendment saying that if a victim is supporting a police investigation or a prosecution, then perhaps they should be exempted from this provision.

Q152 Holly Lynch: Thank you. Before I bring in Ms Mullally, with your concerns around clause 51 in particular, do you think it is incompatible with some of the protections in section 45 of the Modern Slavery Act 2015?

Dame Sara Thornton: I do not think it is necessarily incompatible. My main point is that clause 51(3)(b) uses the schedule 4 list of offences passed by Parliament in schedule 4 of the Modern Slavery Act for quite a different purpose. I would hope that somebody has spent some considerable time thinking, "If we use this for a purpose other than that for which it was intended, can we model the consequences?" At the moment, the number of prosecutions is in the hundreds per year. My concern is that if we remove support from victims and witnesses, we will reduce that even more.

Q153 Holly Lynch: Thank you. Ms Mullally, do you think the Bill will help us secure prosecutions?

Siobhán Mullally: Thank you very much for your question. My role as UN special rapporteur on trafficking in persons is to ensure that the highest standards are met in terms of protecting the human rights of victims of trafficking, as well as combating impunity for trafficking in persons by ensuring effective investigations and prosecutions. That is critical to a human rights-based approach because we need to combat impunity, ensure accountability and protect victims of trafficking.

The protection of victims enables us to be effective in investigations and prosecutions. As it stands, with my mandate as UN special rapporteur on trafficking in persons, I have specific concerns around clauses 46 to 51 in particular as not complying with international law, international human rights law and with the state's positive obligations to identify, assist and protect victims of trafficking without discrimination. That in itself will hinder effective investigations and prosecutions and hinder the goal of combating impunity for trafficking in persons and ensuring accountability.

I have very specific concerns about those provisions in relation to the state's positive obligations under the European convention on human rights, in particular articles 4 and 6, and under the Council of Europe convention on action against trafficking in human beings, as well as very specific concerns in relation to the rights of child victims of trafficking, as protected under the UN convention on the rights of the child and many other human rights instruments.

I can talk a little bit more about those specific concerns, but as it stands I would have concerns that the Bill does not comply with the state's obligations under international human rights law.

Q154 Holly Lynch: That is incredibly helpful. On the point about children entering the NRM, Dame Sara, I know that in your written correspondence with the Home Secretary, you have identified concerns about a lack of detail and provision for children that is cause for concern with this piece of legislation? Given that last year 47% of referrals to the NRM were from those exploited as children, what sorts of provisions would you expect to see in this legislation to protect children?

Dame Sara Thornton: Last year in 2020, nearly half of the potential victims referred into the NRM were children, but in this part 4 on modern slavery there is only one mention of children. I have some specific suggestions: on clause 53, which is about the granting of limited leave, there were real concerns about the way that the requirement to consider the best interest of a child appears to be ignored. The best interests of a child goes back to the UN convention on the rights of a child; it is in the Children Act 1989, and it is also in the European convention against trafficking, that decisions should be taken in the best interests of the child. Looking at clause 53, and thinking about where there is a positive conclusive grounds decision that the child has been trafficked, and that they were under 17 at the time they were referred into the NRM, there really should be a presumption for the Secretary of State that leave to remain is given in the child's best interests.

Clause 53 is one example. I am now going out of part 4 into clauses 14 and 15. The equality impact assessment published by the Government last week committed to mitigating the adverse impact on unaccompanied asylum seeking children by exempting them from the inadmissibility process. I do not think that is anywhere in the Bill. I think that it is important that something that has been identified as a problem for children is considered in legislation.

There are two other areas: in clauses 46 and 47, which are about the traffic information notices, there is no comment about whether they would apply to children. It would be really good to have clarity about whether children are going to be given these traffic information notices and asked to respond in a set period. Lastly, I have just covered clause 51 and the exemptions from protection; again, it is not clear whether those would apply to children. I think experts in the rights of children would argue that there are several international legal frameworks that suggest this is not appropriate and not in the children's best interests.

Q155 Holly Lynch: Thank you very much. Ms Mullally, I ask you the same question about what specific protections for children you would expect to see in this legislation?

Siobhán Mullally: First and foremost, it is for the best interests of the child to be the primary consideration when addressing the rights of children under all aspects of the legislation. The convention on the rights of the child is almost universally ratified, and that is a core principle of the convention.

To go back to clauses 46 and 47, in particular: with regard to both adult and child victims of trafficking, there is no attention given to the impact of trauma on victims of trafficking. It is well recognised that this can lead to delays in disclosure of information. The impact that the experience of trafficking has on the disclosure of information and the reporting of the harms that have been endured has also been documented in the case law of the European Court of Human Rights—for example, in Elia in Greece, and Essen in Croatia. That is even more heightened with children.

In the recent judgement of V.C.L. and A.N. *v.* the United Kingdom, the European Court of Human Rights emphasised again that it is a positive obligation on the state to identify and ensure assistance and protection to victims of trafficking. It is not an obligation on the victim to self-identify or report, and certainly not within any specific timeframe. It is a positive obligation on the state. As the European Court of Human Rights said in V.C.L. and A.N. *v.* the United Kingdom—with regard to the two Vietnamese boys in that case who were in an even more vulnerable situation—because of children's vulnerability, they have a right to international protection. It is critical that that informs all elements of the Bill. I am picking out those two because they have a specific impact, in terms of recognising the impact of the experience of trauma on a victim of trafficking. It is a core commitment of the United Kingdom to combat the trafficking of persons, and modern slavery, both at home and abroad. It is critical that we see best practices being incorporated here.

Holly Lynch: Thank you very much, I will leave it there, unless there is time at the end.

Q156 Paul Blomfield: I wondered if I could follow up on clause 48—a clause you did not mention—and the proposals in the Bill that would, effectively, increase the threshold for initial identification for a reasonable grounds decision through the national referral mechanism. Do you think the threshold is currently set too low? Are there risks associated with setting it higher in the way the Bill does?

Dame Sara Thornton: There are two schools of thought on this. Many in the sector will argue that the current, very low bar is appropriate, but I know colleagues in law enforcement think it is too high. The Bill is suggesting that we use the wording in the European convention against trafficking, or reasonable grounds to believe that an individual is a victim of modern slavery and human trafficking. On balance, I think that is appropriate.

Reasonable grounds is a pretty low threshold that people understand. It is more than a hunch or a suspicion, but it is not as much as a balance of probabilities. There needs to be some sort of objective information to base that reasonable grounds decision on. The obvious thing to say is that the guidance given to staff in the competent authority will be key, but it is not an unreasonable proposal—not least because the current legislation in Scotland and Northern Ireland uses the word "is" and, as far as I understand, the competent authority uses the same test across the United Kingdom. I do not think it will make that much difference, and to be consistent with the European convention is a reasonable proposal.

Siobhán Mullally: A concern here would be the possible impact of changing the threshold in terms of potential victims of trafficking accessing support and assistance and in processes of identification. Is it likely to have a negative impact? Is it likely to increase difficulties in identifying victims and referring them in a timely way for assistance and protection? That would be a concern if it is a regressive measure from where we are now; in terms of human rights law, you want to ensure non-regression in the protection of human rights of victims of trafficking.

I have concerns about the impact of that and whether it will increase the difficulty of timely and early identification of victims, because early identification is critical to ensuring effective access to protection. There is a question about how it will be implemented in practice and what the fallout will be in its implementation.

Q157 Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I thank the witnesses for their evidence so far. If I may start with Dame Sara, in answer to Holly Lynch's questions earlier about clause 51 you expressed concern about the range of offences that might end up excluding people from access to the NRM. Are there concerns that some of the offences created by the Bill might also have that effect?

Dame Sara Thornton: That links to a comment I made in my correspondence with the Home Secretary. If the penalty for illegally entering the country is increased to four years, we could have a situation where, as a matter of course, if somebody had been prosecuted for that they would not be able to access the NRM. It is a risk that probably exists more on paper than in reality, because most of the time immigration enforcement does not use the law to prosecute; it tends to use administrative processes.

Q158 Stuart C. McDonald: Something to be aware of, then. On disclosure, you have both expressed concern about the traffic information notices, particularly in relation to children. More generally, how awkward is it to have that sort of system and deadline in place when you are talking about victims of trafficking and their ability to disclose information about their experiences in a timely manner?

Siobhán Mullally: As I said, clauses 46 and 47 pose serious difficulties with regard to both adults and children in terms of the state's compliance with international human rights law on the protection of victims, because of the particular difficulties a victim of trafficking may have not only in disclosing information, but even in identifying as a victim of trafficking. It is not the obligation of the victim to self-identify, but we know that where the context is new, where there may be a distrust or lack of familiarity with officials within a state, where there may be language barriers or delays in accessing legal assistance, or where there may be fears of reprisals for the victims or their families, that can lead to delays.

The European Court of Human Rights has repeatedly addressed that in terms of not properly taking account of the delays that can occur, the inconsistencies that may arise and the trauma that is endured by victims. That is not appropriate in terms of ensuring the fullest protection of the rights of victims of trafficking.

Q159 Stuart C. McDonald: Dame Sara, have you anything to add?

Dame Sara Thornton: Briefly. Siobhán has explained the issue of trauma, what we know about its impact on the brain, the way it affects memory and the way people recall with inconsistencies. We know that in practice that is very often the case with victims, and until they form trusting relationships you do not get a narrative that starts at the beginning and ends at the end; it is very piecemeal. As people trust and become more open, they might disclose more. That is a really big consideration. If we are not careful, these two clauses disregard that. Secondly, I have come across cases where victims are more able to disclose labour exploitation, for example, but it might take several years for them to disclose the most awful sexual exploitation because they may be embarrassed or ashamed about it. That is a concern. Also, of course, we know that some victims just do not identify as victims. They do not see that the awful things that they have endured mean that they are, in fact, victims.

I have been thinking about whether any amendments could acknowledge this issue about trauma. We have slavery and trafficking care standards, which are all about trauma-informed care. Is there a potential amendment that says that when you are doing this process it has to be done with those sorts of standards and principles in mind?

Similarly, the Bill does not talk at all about how long people might be given to respond to a trafficking information notice. Again, I would be really worried if that were just a matter of a few days. Colleagues have looked at arrangements in some asylum cases. It may be 20 days. I think this might be more complex, so you might think about 30 days. Is it worth thinking about putting in the Bill what sort of time period might be appropriate?

Lastly, colleagues have suggested that you might even want to define in the Bill what might be a good reason for disclosure, because at the moment it is left very much open. It could be open to guidance, but one aspect would be to list—whether it is trauma, mistrust of authority, or a threat from traffickers—all the sorts of reasons that could cause late disclosure, and perhaps, as I say, have them in legislation rather than just relying on guidance.

Q160 Stuart C. McDonald: Thank you. In your correspondence with the Home Secretary you query the idea behind the Bill that deterrence is an effective strategy. You also express concern that differential treatment of refugees based on the nature of their arrival may serve only to exacerbate vulnerability. Can you say a little about those two points?

Dame Sara Thornton: I will start with the second first. The earlier witnesses gave evidence about the two-tier approach. The concern would be that that creates vulnerability for people who are in this country in that situation because they have fewer protections, and no recourse to public funds unless they are destitute. I know from my work that people in that situation are driven by desperation to take exploitative work. It is a real concern that it could create vulnerability, which criminals and traffickers would exploit.

On the second point, I referred to material that was in a House of Commons Library report that suggested that when you look at the reasons why people choose or choose not to come to a country, there are many other factors that they consider. There is better evidence that they consider other factors than the nature of the law and the situation when they get there—the policy and practice of the country. My concern would be that you risk making more people vulnerable, because they live lives of precarity anyway, with a hope that this will deter. I completely understand the Government's position that this is a very dangerous way for people to come to this country and we need to stop it, but I am concerned about the extent to which there is evidence that suggests that it might be effective, given that I think it could increase vulnerability.

Q161 Stuart C. McDonald: A final question: what are your thoughts and views on the proposals in the Bill to reduce the recovery period?

Siobhán Mullally: Again, it is disappointing to see that reduction in the recovery period. It is a regressive measure in terms of current standards and protections, so I would have concerns that it is moving backwards the human rights protections of victims of trafficking. There have been previous examples of regressive measures, in terms of attempts to reduce assistance levels to victims of trafficking. Again, it breaches the principle of non-regression in human rights protections, so I would have concerns around that and the longer-term impact, in terms of ensuring effective protection of victims of trafficking and trying to break the cycle of re-trafficking and vulnerability to exploitation.

Dame Sara Thornton: I really welcome the fact that it is going to be in statute, because it was not in statute in the Modern Slavery Act 2015. I acknowledge that the current guidance is 45 days and that this is only 30 days, but 30 days is what is set out in the European convention. The other thing that is worth saying—I do not know whether Members are aware of this—is that the wait from reasonable grounds to conclusive grounds is very, very long. In 2020, the average was 465 days. We have a big debate about 45 days versus 30, but the reality is that when I meet victims and survivors, most of them have a sense of waiting a very, very long time. They are being provided with support, but they feel that their lives are on hold.

I have a couple of other thoughts about the time period. Of course, if people are being supported for a long time, there is some benefit to that, but there is also

a disadvantage, particularly when cases are related to criminal proceedings, the courts are waiting for decisions and the system is grinding very slowly. One particular issue might seem very tactical and technical, which maybe it is, but it is important. One of the weaknesses of the current national referral mechanism is that, historically, all the decisions have been taken by the Home Office—the competent authority. I think a lot of the decisions about whether somebody has been trafficked are best taken locally by local safeguarding partners, and I am really pleased to say that the Home Office established a pilot early this year in 10 local authority areas, whereby local safeguarding boards are making those decisions. You have the right people around the table, and they have a much fuller picture of what has been going on.

Those pilots are going very well. One of the things they are able to do is that, when they meet to discuss what has happened to a child, they are able to take both the reasonable grounds and conclusive grounds decisions at the same meeting—you might imagine how that speeds things up. I would not want anything in the legislation to undermine the really good best practice that is currently being developed, which means that decisions about children's trafficking are being made locally by the people who are best qualified to do them, and it is happening so much more speedily. I would hope that the Bill does not undermine that good practice.

Q162 Stuart C. McDonald: Thank you. To push you a little, imagine that we lived in a country where things moved a bit more efficiently, there was not a 400-odd day wait and, generally speaking, these decisions were made timeously. Would you have concerns if the recovery period had been reduced from 45 days to 30 days, if that was the reality?

Dame Sara Thornton: If it was the case that that meant that people were getting just 30 days' support, it would have a negative impact. If you think about providing people with counselling and helping with their medical support and legal advice—a whole range of things—30 days is not very long. I am just saying the reality in the UK at the moment is that it is taking so much longer that the difference between 45 and 30 is less significant.

Stuart C. McDonald: One more question, Ms McDonagh?

The Chair: I have not seen anybody indicate, so yes.

Q163 Stuart C. McDonald: Dame Sara, another thing that you mentioned is the consultation process. You had some concern that there had not been enough involvement with survivors or people with lived experience of trafficking. Can you say a bit more about that?

Dame Sara Thornton: The period between the new plan for immigration in March and the publication of the Bill in July was very short. We are aware that groups involved in asylum were much more involved in the consultation process than some of the groups that support victims of slavery and trafficking. It is too late now, but it would have been good to see more involvement of survivor groups particularly, so that people could give their views about what this would mean on a personal level, from that survivor perspective.

Q164 Neil Coyle (Bermondsey and Old Southwark) (Lab): Dame Sara, you just mentioned the 10 pilots that the Home Office is undertaking on local safeguarding boards and you said that you would not want to see good practice that is being developed there being undermined by this Bill. Can you please be more specific and say what the Bill could do to undermine other Home Office work—important work?

Dame Sara Thornton: This Bill specifically refers to a minimum of 30 days between the reasonable grounds decision and the conclusive grounds decision, and what I am saying is that, in these pilots, with some cases—not in all cases, but in some cases—the decisions are being taken on the same day, and I would not want that to be undermined. Presumably you would have to say, "Well, today we will make the reasonable grounds decision. We have got to come back after 30 days and make the conclusive grounds decision." Actually, they are able to do both at the same time.

Of course, it matters a lot for children to get these decisions made, particularly when quite a lot of these cases are cases of child criminal exploitation and there are related proceedings in the courts. So it also helps the courts. As you know, there is an issue with backlogs in courts, so the more those decisions can be made in an effective and efficient fashion, the more that helps the courts, as well as being in the best interests of the child, in my view.

Q165 Neil Coyle: Thank you. You mentioned some exemptions in the more recent equality impact assessment that you would like to see for children. What are those specific exemptions that you would like to see in the Bill?

Dame Sara Thornton: This is taken from the equality impact assessment, which I think was published on Friday last week and which talked about the Government continuing to mitigate adverse impacts on vulnerable people. One of the examples given is that it says the Government will mitigate the risk of adverse impacts on unaccompanied asylum-seeking children by exempting them from the inadmissibility process, which I think is set out in clauses 14 and 15. So that was a very specific issue referred to in the equality impact assessment. I do not think there is any kind of read-across to the Bill at the moment.

Q166 Neil Coyle: Ms Mullally, you also mentioned some specific cases where you fear this Bill could contradict existing case precedent—you mentioned a Greek case and a Croatian case. If it has not already been supplied, would you please put in writing to the Committee the detail of those cases?

Siobhán Mullally: Yes, certainly. I will make a written submission, but those are well-established cases from the European Court of Human Rights: L.E. *v.* Greece, and S.M. *v.* Croatia. Then, of course, there is V.C.L. and A.N. *v.* the United Kingdom—the judgment on that was final earlier this year. They are all quite specifically relevant in terms of clause 51, in particular the implications on non-punishment, victims of trafficking, rights of access to the courts and right to a fair trial. V.C.L. and A.N. *v.* the United Kingdom found the state to be in violation of articles 4 and 6 of the European convention on human rights, read in conjunction with the Council of Europe's convention on action against trafficking.

[Neil Coyle]

L.E. *v.* Greece and S.M. *v.* Croatia are particularly important with regard to recognising the trauma endured by victims of trafficking for purposes of sexual exploitation and the need for that to be taken account of in terms of identification processes, referrals for assistance and protection by the state; and recognising that it is a positive obligation on the state, as stated again in the V.C.L. judgment by the court, to ensure effective protection.

Q167 Neil Coyle: In your opinion, are there clauses in the Bill that need to be completely removed for it to be compliant, or are you able to suggest amendments or tweaks that could make it in some way more amenable?

Siobhán Mullally: I think that part 4, as it is currently drafted, is not in compliance, as I said, with international law. It is not in compliance with the state's obligations under the ECHR, the Council of Europe's convention on action against trafficking or the UN's protocol to prevent, suppress and punish trafficking in persons, especially women and children—the Palermo protocol.

So I think that that part of the Bill, in particular, raises very serious questions and concerns. In particular, I would point to clause 51 but also to other clauses—clauses 46 to 51. Other provisions in the Bill raise other concerns. I am speaking particularly about those areas, because they raise very specific concerns in relation to my mandate on trafficking in persons, especially women and children.

Neil Coyle: That is very clear and helpful. Thank you.

Q168 Holly Lynch: It has been put to me by a police officer working on the frontline in this area that, because we have British citizens and migrants entering the NRM, if somebody goes missing from it, it is dealt with primarily in terms of immigration compliance rather than safeguarding concerns. Do you think that is a fair assessment? What are your thoughts on that? Dame Sara, first.

Dame Sara Thornton: This has become quite a topic of discussion in law enforcement. The problem has been that practice has varied from force to force as to whether missing person reports were completed or whether there was a report to immigration enforcement. I know that some interim guidance has been put out by the National Police Chiefs' Council setting out what needs to happen, but to give you an example from June this year, about 140—I think—Vietnamese migrants who had come across in small boats were put in hotels in a variety of cities across the UK, and within 24 hours they had all disappeared. My view is that that was because they were clearly under the control of traffickers. They got sucked into the asylum system; that would not be the plan of the traffickers. As I say, they were gone in 24 hours. The reason I am aware that there has been some debate is that the forces were all then saying, "What's going to be our response? What should we be doing in terms of investigating what has happened?"

One of the difficulties, if I may, is that when people go missing in that situation, we have no biometric data on them, so it is very difficult to ever work out whether you have found those people or not, with all the issues of language and difficulty with names and dates of birth. It is a live and current operational issue at the moment.

Holly Lynch: Thank you. Ms Mullally?

Siobhán Mullally: The state has very specific obligations to protect victims and potential victims of trafficking, and there are very specific provisions under the Council of Europe convention on action against trafficking in human beings with regard to missing children, whether those are foreign nationals or not. Internal trafficking is a very serious concern that is often not recognised sufficiently in many jurisdictions, not exclusively the United Kingdom.

A concern was raised previously by the Council of Europe group of experts on action against trafficking, the treaty monitoring body under the convention on action against trafficking, about children going missing in the UK—particularly unaccompanied, separated asylum-seeking children, but also child victims of trafficking internally. Of course, there are very serious obligations on the state to provide protection to all children without discrimination.

One concern with regard to the trafficking context can be that sometimes the child victims and adult victims go outside of the ordinary protection mechanisms and are not treated with the same urgency that they ought to be, but there are very specific obligations on the state to try to respond effectively and in a timely way to prevent that, and to ensure protection.

Q169 Tom Pursglove: Just a few questions for Dame Sara, if I may. As you will know, we are bringing in more staff as decision makers, and we have brought in the new modern slavery victim care contract. For the benefit of the Committee, can you describe what the principal drivers of the pressure on the national referral mechanism are, from your perspective?

Dame Sara Thornton: Thank you, Minister, and I very much welcome the new staff who are being recruited into the single competent authority, because I have raised the need to speed up decision making with your predecessors on many occasions.

The biggest cause of difficulty, I think, is the increased numbers. Although 2020 was similar to 2019, with about 10,600 referrals into the NRM, that number has doubled in three or four years, so there is substantial pressure. The other thing that is happening, as I mentioned earlier on, is child criminal exploitation and the cases of children. Those decisions need to be made quickly, because there are often related proceedings. Having been to the single competent authority and spoken to the staff, what tends to happen is that all those priorities keep going to the top of the pile and then there are an awful lot of cases in the backlog. On the whole, it has been about increased demand, and the resources just have not been able to keep up with it. So I welcome the fact that there are new staff. It will take a while for them to be trained and to be competent, but that is a good thing.

The second thing, which is identified in a report I published last year, is that one of the difficulties for the decision makers in that competent authority is that they do not always have all the information. They have some information, but they are often having to make decisions on partial information. They might have asked local authorities, they might have asked police forces or they might have asked Border Force. They do not always get the replies and therefore they are having to do the best

in difficult circumstances. Staff have been under huge pressure and I hope we can begin to bring those averages down and bring the weight down.

Q170 Tom Pursglove: Are there challenges around bringing clarity to victims about precisely what their rights are and around how the processes themselves work? Is there more that needs to be done to boost awareness in that area? Does that act as a barrier?

Dame Sara Thornton: There are difficulties. Colleagues might be aware that the process is that you have first responders, who are police officers, members of Border Force, immigration enforcement and local authority staff, who have the ability to refer a potential victim into the national referral mechanism. One of the difficulties, and it is constantly reported on, is that the staff who are doing that do not understand how the national referral mechanism works. They do not understand enough to give good advice. So report after report recommends that there needs to be more training of first responders, and the Home Office recently published some more training.

I am getting to the position now where I wonder whether it is a sensible to expect that every police officer should be able to deal with this—every member of Border Force, every member of a local authority—and whether you might want to have specially trained points of contact who deal with it. If you think about it, even though the numbers have been going up, most police officers in the course of a year will never deal with these situations. I do think there is an issue about that, and we need to think very seriously about the model we have for first responders.

Q171 Tom Pursglove: Obviously, the Government are very clear that we want to send an unequivocal message to those responsible for people smuggling that what they do simply will not be tolerated and that the punishment for that will be harsh. We are proposing through the Bill to introduce life sentences for people smugglers. Is that something that you welcome, and what would you observe about that and the difference that it might make?

Dame Sara Thornton: I think that people who smuggle fellow human beings, or indeed traffic them, are committing a most heinous crime. Think about the 39 people who lost their lives in Essex two years ago. Whether they were smuggled or trafficked is a matter much debated, but the callous way that those criminals treated those victims, in my view, needs the harshest punishment. The only thing I would say is that, as a former police officer, I am on the whole in favour of harsh punishments, but you have life sentence as an option from the Modern Slavery Act 2015 for slavery and trafficking. It has never been used. So there is the point that, I guess, it has a deterrent effect, but there is also an issue about whether, if those powers exist, they really need to be used to be a really effective deterrent.

The Chair: I see no further questioners. I thank the witnesses for their evidence. We will move on to the next panel.

Examination of Witnesses

Lisa Doyle, Mariam Kemple-Hardy, Priscilla Dudhia and Alphonsine Kabagabo gave evidence.

3.15 pm

The Chair: Welcome, everybody. We will now hear from Lisa Doyle, executive director of advocacy and engagement at the Refugee Council and Mariam Kemple-Hardy, head of campaigns at Refugee Action, both of whom are appearing in person. We will also hear from Priscilla Dudhia, advocacy co-ordinator at Women for Refugee Women, and Alphonsine Kabagabo, director of Women for Refugee Women, who are both joining us remotely via Zoom. Given that this panel is split between physical and video link contributions, it is especially important that Members direct their questions at specific witnesses to avoid confusion. We have until 4 pm for this session. Please could the witnesses introduce themselves for the record? Can we start with the witnesses who are present in the room?

Lisa Doyle: I am Lisa Doyle, director of advocacy and engagement at Refugee Council.

Mariam Kemple-Hardy: Hi, I am Mariam Kemple-Hardy, head of campaigns at Refugee Action.

Alphonsine Kabagabo: Hi, I am Alphonsine Kabagabo, and I am the director of Women for Refugee Women.

Priscilla Dudhia: Hello, I am Priscilla Dudhia, policy co-ordinator, also from Women for Refugee Women.

The Chair: Welcome to all our witnesses. Who would like to start?

Q172 Bambos Charalambous: The purpose of the Bill is to increase fairness, better protect people seeking asylum, deter illegal entry to the UK, break the business of human trafficking and remove more easily those who have no right to be in the UK. In your opinion, does the Bill achieve those aims? Can I start off with Lisa?

Lisa Doyle: In our opinion, it does not meet those aims. Previous witnesses you have heard from in the last few days have also said this. There is little evidence that putting deterrents in place actually stops people arriving in the UK. People are pushed into situations where they seek safety. Research that we have conducted, and that the Home Office conducted a while ago, showed that people often did not have information about the rights and entitlements they would be greeted with in the UK.

Because there are not enough safe and regular routes for people to come to the UK, they are forced to rely on smugglers and others to reach here, and they get different types of information. The deterrents do not work. There is not evidence that they work. Our concern with lots of the provisions in the Bill is that they seek to punish or disadvantage or make vulnerable people even more vulnerable, rather than giving them the protection they need.

Mariam Kemple-Hardy: Thank you very much for having me today. I want to say that I will be giving evidence based not just on the work that Refugee Action do as a service provider. Over July and August we held a series of focus groups with refugees and people in the asylum system to consult with them on what they thought the impact of the legislation would be.

First, at Refugee Action we have really welcomed the warm words of the Government recently in response to the Afghanistan crisis. They have said that they want to give a warm welcome to refugees fleeing that horror, and we welcome that. However, that warm rhetoric is not matched by the harsh reality that we see in this Bill.

[Bambos Charalambous]

As Lisa has said, the Bill is about punishment. It is not about protection. We understand there are two key objectives of this legislation, the first being to make a fairer asylum system and the second being to deter people from making dangerous crossings. We believe the legislation fails on both counts.

When it comes to making a fairer asylum system, what we actually see is this legislation creating a deeply unfair system, where, for the first time ever in UK law, refugees will be judged based on how they enter the country, not on their protection needs.

Secondly, when it comes to deterring dangerous journeys, this legislation is likely, as per the Government's own equality impact assessment last week, to make people take even more dangerous routes. Far from breaking the business model of people smugglers, this legislation plays into that business model. If you make it harder to enter the country, smugglers can charge more and encourage people to take even more dangerous routes. We are likely to see more people losing their lives as a result of this.

The key disrupter to that business model is providing safe routes to safety, but we do not see anything said about that in this legislation. There is nothing to increase refugee resettlement, nothing to increase access to family reunion and nothing about humanitarian visas. It is all about punishment. It is not about protection.

Alphonsine Kabagabo: Thank you for giving us this opportunity. We will be focusing on the impact of this Bill on women, because we represent that area. We are an organisation that supports women to safety in the UK and defends their rights. As other people have already said, this new Bill will have a great impact on women.

As you know, quite a lot of women in our network have survived gender-based violence. They have been traumatised through being raped, being forced into marriage, being forced into sexual exploitation or through FGM. For them to access a safe route has got to be an option for me, because it is not a choice. It is an issue that they cannot avoid. This Bill makes it even harder for those victims to access safety.

We are also concerned about some of the detail, such as providing evidence when you arrive, as soon as possible. Women who have been traumatised, because they have been violated, raped and all that, cannot provide that evidence straight away. They need time to heal, to be protected, to access mental health support. They need time to understand the system, so that is retraumatising them even more.

We are also very concerned because there is even a clause about being a member of a particular social group, and gender is not one of the groups. That really will absolutely affect some of the women we are fighting for. We were also surprised that the Bill is at odds with the Government policy on violence against women and girls, which proposes to support survivors of gender-based violence. Instead of offering safety and support, this new Bill will actively harm and traumatise women. So, I will say that, but my colleague Priscilla might want to add something. Over to you, Priscilla.

Priscilla Dudhia: That was fantastic—nothing to add.

Q173 Bambos Charalambous: Picking up on what Alphonsine mentioned about late provision of evidence and disclosing evidence, which is mentioned in clause 23, and about people being penalised for not disclosing evidence that they may not be willing to share straight away, what are your thoughts on that? Also, what are your thoughts on the inadmissibility clause and about clause 10, the two-tier clause about treating people differently based on how they arrive?

Lisa Doyle: In terms of the two-tier system, it seems incomprehensible that you would treat somebody differently based on their mode of arrival, not because of their protection needs. You could have a perverse situation with next door neighbours from Afghanistan, with one fortunately finding their way on to the formal resettlement route and the other being forced to take the decision to make a dangerous journey, then, on reaching UK shores, getting a different level of protection and rights than their next door neighbour, even though they are fleeing the same persecution and threats. People's protection needs are not based on how they travel, how much money they have or what their identity is—in terms of whether men might be more prone to travel or not. People make decisions, when they are forced to rely on smugglers, about who they will prioritise to send to a country, and then hope that they can apply, through refugee family reunion, for others to join them afterwards. Having differential treatment based on mode of arrival seems grossly unfair.

Mariam Kemple-Hardy: I agree with everything Lisa has just said. Afghanistan is a really instructive example. In August, the whole world witnessed what it is like when a country enfolds itself in crisis—how chaotic it is. We saw how few and how precious those places on those planes were.

It is fantastic that the Government have committed to taking in 20,000 refugees from Afghanistan over the next two years, but we know that that is a drop in the ocean. We saw people clinging to the sides of planes. That is how desperate they are to reach safety. Although we welcome the fact that the Government have said that they will take in 20,000 Afghan refugees, we are very concerned about what will happen to the 20,001st Afghan refugee who arrives after this legislation. That Afghan refugee, as Lisa says, will be fleeing the same horror, but they will be treated as a second class of refugee.

When we spoke to our focus groups, they said that if they were to get this second-class version of refugee protection, their life would be one of "You can't. You can't. You can't." They said, "Look, this temporary protection is no protection at all." They thought that, with very unstable immigration status, all the building blocks of rebuilding your life—being able to access a job, to rent somewhere, to send your children to university—would be far, far beyond them. As a result of that, we believe that this whole concept of temporary protection is, as I said, no protection at all. It is a system of punishment, not protection.

Q174 Bambos Charalambous: I ask the same question to Alphonsine and Priscilla.

Priscilla Dudhia: Without repeating what has already been said, we would like to highlight that, as well as distinguishing between refugees based on their mode of arrival, the Bill also distinguishes between refugees based on the point at which they claim asylum and punishes those who have not claimed asylum "without delay".

As an organisation that, as Alphonsine highlighted, supports a large network of women who have survived the most horrific cases of sexual and gender-based

violence, we are concerned about the fact that women who had survived that violence would be punished by this. We know that women who have experienced that kind of violence have issues in disclosing that.

Those issues are well acknowledged in Home Office policy. That policy talks about the barriers that feelings of shame and guilt can create, the stigma that comes with sexual violence and the fear that some women might have of reprisals from community and family members. That same policy goes on to say that late disclosure should not automatically prejudice a woman's credibility. In clause 10, we have a direct contravention of that acknowledgement of the very real challenges that women who have fled gender-based violence face in sharing their experiences.

Alongside that, there are other situations in which women might not be able to claim asylum at the earliest opportunity. For instance, many of the women to whom we have spoken in our network had no idea that they could claim refugee protection on the basis of the gender-based violence that they have faced. There are other women who have fled violence and did not intend to stay in the UK for a long time—who came here on a visa, wanting to escape persecution but with the intention of going back—but later discovered that, "Actually, no, there is a grave threat to my safety still, and I need to stay."

I would like briefly to share the story of one such woman, called Agnes, who is a refugee from a west African country. Agnes fled political persecution. She fled her country—she was in danger—and eventually decided to go to the UK, where her daughter was studying. She was the only family member that she could be with. She wanted to return, but once she was here she realised that political opponents were still being targeted. A lady for whom Agnes was working as an assistant was in prison at the time when Agnes was in the UK, and she realised that it was not safe for her to go back.

Agnes said that she was expecting to go back home quickly, but she could not: "When I realised my visa was going to expire, I went to Croydon to ask what to do to apply for asylum, and that is what I did." Unfortunately for Agnes, she was locked up in detention, which she found hugely traumatising given her previous experience of incarceration. Her claim was refused at the initial stage and on appeal, and she had to lodge a fresh claim. Today Agnes has refugee status and we are immensely honoured to say that she is part of our team at Women for Refugee Women, where she works as a detention campaign spokesperson. I say all this to highlight that there may be legitimate reasons why vulnerable women are not able to claim right away, and we do not think that it is acceptable to be punishing them.

Q175 Bambos Charalambous: Thank you. I have one more question on something that Priscilla touched on, about how the Bill will increase the need for asylum accommodation. We have heard about the issues at Napier Barracks. People from Afghanistan are being kept in hotels at the moment. What are your thoughts on the clauses to do with accommodation and their impact? I will ask Lisa first.

Lisa Doyle: At the Refugee Council we are really concerned about having large-scale accommodation centres set up where people are kept away from communities that, should they get refugee status, they would want to be able to integrate into, so they will have little contact with friends, neighbours and volunteers. Those kinds of things are a real worry. The dispersal policy as it works now is that people are housed within communities. There are little details about the accommodation centres, and we are aware that the Home Office has started to tender out for those, but a lot of the detail on that is privileged to those who want to bid. We want to know who would be put into those centres. Napier Barracks is a really good case of looking at suitability for people. We know that with covid there were particular risks, and independent inspectorates showed that parts of Napier were not fit for human habitation.

In terms of vulnerability, the Home Office has alluded to the fact that it would not necessarily put vulnerable people into large-scale accommodation centres, but it does not have a very good track record of identifying vulnerable people at an early stage. Many people were removed from Napier because of their vulnerabilities, because non-governmental organisations and charities took legal cases against the Home Office and then the Home Office removed them. The safeguards are not there. If people are outside communities, there is not oversight and that will really damage people's chances to integrate and rebuild their lives should they get refugee status.

Mariam Kemple-Hardy: The first thing to say is that asylum accommodation has been in crisis for years. In the last 12 months, five of our clients have had the ceilings where they live fall on them. The two-year-old toddler of one of our clients was hospitalised because their head was split open. We have had whole families having to live in just one room. We have had people stuck in hotels for years. There is a crisis of accommodation. However, what we see in the Bill is that it doubles down on that injustice that we see.

When it comes to accommodation centres, we are against them on a point of principle and also because of the practice at Napier and Penally Barracks over the last 12 months. When it comes to the point of principle, as Lisa says, the idea of segregating part of our society and othering them is something that we disagree with. It takes people away from the communities that they want to integrate into; it takes them away from the healthcare that they may need to access—they are very traumatised people who have particular mental health and physical needs in many instances; and it takes them away from opportunities to get education and so on. On a point of principle, we are very much against that practice. However, in terms of actual practice, over the last year in Napier and Penally Barracks, we have seen appalling situations where people have tried to take their own lives. We saw, at the height of the pandemic, people being forced to live with 28 other strangers in dormitories. In Napier Barracks, there was an outbreak when 197 people tested positive for covid-19. Traumatised people in Penally Barracks were next to an active firing range. In terms of the way this has been put into practice, we are deeply concerned about the plans.

I want to make two quick final points about the how the legislation is currently drafted. First, the legislation would give the Home Secretary the ability to extend the maximum amount of time that someone can be in an accommodation centre. At the moment, the maximum

[Bambos Charalambous]

is six months. The Bill does not say how long someone could be in the accommodation centre—arguably, it could be unlimited.

Secondly, the Bill also allows people in those conditions to be put under residence conditions, such as being told that they were not able to leave that accommodation for a certain period of time during a day. We are seeing the potential for unlimited de facto detention as a result of the Bill. Someone in our focus group said, "Let's be honest; it's not a camp, it's a prison. Let's call a spade a spade". This is not something that we want to see in our refugee protection system.

The Chair: I am terribly sorry to our witnesses on Zoom, but I would like to get some more questions in, if that is okay. I call Jonathan Gullis.

Q176 Jonathan Gullis: We have heard about safe routes to safety. I am interested in knowing why the European Union is not a safe destination.

Mariam Kemple-Hardy: I heard the UNHCR give comprehensive evidence earlier, and I think the points that they made about the need or not to apply for asylum in the first safe country of entry were clear and unequivocal. In addition, I do not think it is up to me, you or anyone else to decide what is safe for someone.

I will give you an example of someone we spoke to. They are from South America, and they fled to the UK, but they had to take a flight to Spain first before moving to the UK. Many of us in the room would say that Spain is a safe country, but that individual was fleeing gang violence, and the gang had extensive networks in Spain, so it was absolutely not a safe country for him. He is deeply concerned about the impact the legislation could have on his claim for asylum in the UK.

Q177 Jonathan Gullis: But he would not have that concern if he came to this country through a safe and legal route. If you enter this country illegally—via the English channel with other illegal economic migrants—that would count against your application. People in Stoke-on-Trent think it is totally fair. I do not understand why coming through safe and legal routes is a problem. People who make dangerous journeys of their own choice, rather than going through safe and legal routes, put money in the hands of criminal gangs, which inevitably leads to more criminality, whether in the UK or in mainland Europe.

Mariam Kemple-Hardy: First, the number of safe routes to this country is vanishingly small. As I said, it is shocking that there is not a word in the legislation that actually increases safe routes to safety. There is nothing about family reunion, refugee resettlement and so on.

However, on the issue of channel crossings—thank you for raising it—we at Refugee Action do not want to see people crossing the channel. It is dangerous and we do not want to see it at all. However, we notice that the rhetoric around this particular debate often focuses on the question of how we can keep people out, not how we can keep people safe. If we were to ask the question, "How do we keep people safe?", there are very clear policy solutions. As I say, it is about family reunion, refugee resettlement and so on, but there is nothing at all in the legislation—nothing—to increase safe routes.

Q178 Jonathan Gullis: Would you not agree, then, with His Excellency George Brandis, the Australian high commissioner, that one of the solutions is to disrupt and deter people from making that dangerous journey, so that they are not endangering their lives or those of their family members? That means regional offshore processing, pushbacks and harsher action, so that if you enter this country illegally, it will count against you when you make an asylum claim. If we do that stuff, people will not make those dangerous journeys, and that will ultimately be what saves their lives.

Mariam Kemple-Hardy: As I said earlier, the evidence is clear that if you make it harder and harder to enter a country, that does not break the business model of the people smugglers. As the Government's own equality impact assessment stated last week, it actually plays into that business model, because you enable them to charge higher prices and people are more likely to go by much riskier routes. In terms of being a deterrent, that is not going to be effective. The most radical way to disrupt this business model is to focus on how we keep people safe, and that is about increasing access to safe routes. In terms of offshoring, I am not sure if Lisa wanted to add anything.

The Chair: I am ever so sorry, but owing to the shortness of time, rather than go to another member of the panel, I would like to get someone to ask a question. I would like to give Alphonsine and Priscilla their first go at answering. I call Robert Goodwill.

Q179 Mr Goodwill: My question is directed to the ladies joining us down the line. When we worked with the French Government to clear the camps at Sangatte and brought 750 asylum seekers across, about 90% of those were men. Do you share my concerns that illegal routes of entry to the UK tend to very much favour men, whereas some of the more organised routes through the UNHCR and the resettlement programmes could ensure that women who are particularly at risk through exploitation or sexual exploitation could be prioritised or allowed to have equal opportunities? By having a situation where we have people coming illegally into the country, that tends to favour men; women are being disadvantaged.

Alphonsine Kabagabo: We certainly welcome a system that will let more women in and will give them the choice to be brought to safety in a safe way—we absolutely welcome that—but that is what we do not see. We do not see those opportunities being available today. We do not see the opportunities being available for the women we work with to reach a safe country in a safe way—even for men, although I do not have those figures. We have women who crossed the Sahara to come here, seeking safety. I will let my colleague add to that.

As someone who has experienced being a refugee, when I was stuck, I would have taken any route. When I was in Rwanda during the genocide, I would have taken any route to get to safety. No one offered me that safe route. The Belgians and the French came to rescue expatriates, not Rwandan people. That is the problem. The problem is that those routes are not available to us.

Q180 Mr Goodwill: I have a quick follow-up questions. We heard this morning from the Australian high commissioner that the people smugglers who were bringing people to Australia did not in the main have connections

with organised criminals in Australia, but we know that the organised smugglers who bring people to the UK most certainly have connections with modern slavery. Vietnamese people are brought to work in nail bars. We have people in car washes, and maybe even also people in garment factories or being brought into prostitution. Do you not agree that if we could deter people from coming from the continent to the UK—where those criminal gangs need to deliver their passengers to get the payback that modern slavery will give them—we would be better encouraging people to claim asylum in France, which is a safe country and a place where they can get the support they need?

Priscilla Dudhia: As my colleagues have already said, the way to deter these gangs and so on is to create more safe and legal routes—to expand the global resettlement scheme; to set a number; to prioritise women who have survived sexual and gender-based violence; to expand family reunification laws, but is also to look towards other routes. My connection cut out for a bit earlier, so apologies if I am repeating what has already been said. We strongly urge the Government to explore humanitarian visas. Right now, there is no asylum visa. We think that all that would minimise the risk of people taking dangerous journeys. As Alphonsine has already highlighted, safe and legal routes are not available to everyone, unfortunately. We must not shut the door on vulnerable women who cannot avail themselves of the routes for reasons that are entirely beyond their control.

Looking to the situation in Afghanistan, for instance, the two-tier system would lead to immense cruelty and absurd results. You could have a female Afghan journalist who is really vulnerable and gets on the resettlement scheme, and then female Afghan journalist B, who is just as vulnerable, but for whatever reasons cannot access the resettlement scheme and has to quickly uproot herself from danger. We have heard reports from civil society organisations about Afghan women being targeted. Because of the way she has journeyed—because of the irregular route she has taken—she is punished. Yes, we need to create routes, but we cannot punish women like that. What is our asylum system if those are the consequences that ensue for vulnerable women?

The Chair: Thank you. I would like to bring in a representative from the SNP now, because they are yet to ask any questions.

Q181 Anne McLaughlin: Thank you very much for your time today and for everything you do for some of the world's most vulnerable people. I have a question for Lisa. You say in your written evidence that the cost of prosecuting and imprisoning those seeking asylum, if we go ahead with this Bill, could be up to £400 million a year more than under the current system. Given that in parts of the UK the prison system is already bursting at the seams, and there is an asylum decision backlog of 70,000 people living in limbo, unable to contribute to the economy, if you could spend that £400 million, how would you use it to improve the immigration system?

Lisa Doyle: Certainly by expanding the safe routes that we have been talking about. A question was asked earlier about women and children. If the Government are serious about prioritising vulnerable women and children, the proposals to limit family reunion rights will run counter to that, because 90% of people who join people on family reunion are women and children.

We have an issue with decision making being too slow. At the Home Affairs Committee yesterday, the Home Office said that the average waiting time is a year now. We all want quick, efficient and accurate decisions, which would mean that anyone entering the UK would have their claim assessed quickly, and that would flow through the system and reduce the pressure on asylum accommodation. Putting more decision makers into the Home Office would certainly help. Improvements in the quality of accommodation and an expansion of safe routes would be a good investment for Britain to play its role in the international protection system.

Q182 Anne McLaughlin: Thank you very much for that. Mariam, the Australian high commissioner was here this morning—you saw that—and I was not able to ask my question, which was about resignation syndrome. You might not know much about that, but I want to talk about mental health generally. My question to him was about how offshoring impacts on everyone's mental health, but particularly on children who suffer from resignation syndrome. I just want to get this on the record, because these children were in a catatonic state. Some of them had not moved for four months, and still the Australian Government were saying, "No, we can't help." Do you know anything about that? If not, you talked about people who attempted to take their own lives in the barracks, so perhaps you could say something about the impact on mental health of living in that type of accommodation.

Mariam Kemple-Hardy: Sure. I am afraid I cannot speak about resignation syndrome. However, on mental health, I have mentioned that there are a few crises in the asylum system, but one of them is definitely a mental health crisis. When we work with and speak to refugees in the asylum system right now, they talk about the impact of the system—not just the accommodation, but the system overall. One person, who has been waiting almost three years for a decision on her claim, said, "It has destroyed me psychologically as a person."

We have a system in which people are left in limbo for years. While they are waiting, they are not allowed to work—in effect, they are banned from working. They have to live on £5.69 a day—effectively, state-sponsored poverty. People tell us that they feel that they have lost all purpose. They feel that their experience of the asylum system is almost like a mental war, a complete retraumatising. These people have made it here, trying to seek safety, after going through a very traumatic process.

As I said, however, this legislation will only double down on that injustice. It will build an additional six months' wait into the process, if someone is inadmissible. If their claim is deemed inadmissible and they have to wait six months to see if the Government will support them, it is unlikely that they will. Then, after six months, they enter the asylum system.

We would like to see policies in legislation that are sensible and humane. For example—I will say one final thing on the right to work—you mentioned how much money the legislation might cost the Home Office. Actually, those sensible policies we believe would save the Home Office a huge amount of money and would really help people in that psychological limbo while they wait for their asylum claim to be processed. If people were given the right to work, we estimate that it

[Anne McLaughlin]

would save the Home Office about £100 million per year, and actually 71% of the public fully support giving people seeking asylum the right to work. However, we do not see such policies in this legislation. Instead, we see policies to punish and not to protect.

The Chair: I am sorry to intervene. Paul Howell.

Q183 Paul Howell (Sedgefield) (Con): Mariam, you were talking about the information that refugees had in terms of the decisions they were making and the outcomes they were expecting. I want to go back to something we heard in discussions yesterday. I have never been in your world, and I really respect the work that you do in this space, but we seem to be getting conflicting information. If the legislation is to make a difference, it has to make more diversions into what actions the refugees take in coming here. On the one hand, you talk about push being what is driving them, not pull, but on the other hand, we hear people talking about how, because of this rule or part of the legislation, it stops them coming or makes them concerned about coming.

How can they be concerned? How do they get that information? I do not see that the information that they are getting about the Bill will be a motivator, because it all seems to be about push—about getting away from where you are—as opposed to any thoughts even about what they will find when they get here. I cannot square that circle—what knowledge refugees actually have about our place when they set off, other than, "It's a nice place to go to."

Mariam Kemple-Hardy: Absolutely. I watched those evidence sessions. I heard, I think, Zoe Gardner and Jon Featonby talking about the misinformation that people get as well. Actually, many people have said that they are more likely to get misinformation from, for example, smuggling gangs that are trying to get them to take these dangerous routes, rather than understanding the ins and outs of the most recent legislation in Parliament.

The people we have spoken to in the asylum system are talking about the legislation they are seeing and the asylum system they are experiencing once they are here. Before they left to come here, many people have explained that they knew very little about how to claim asylum in the UK. It was only when they arrived here that they understood what it would mean. As you say, it is all about the push factor. People explained to us, when they needed to leave, they needed to leave—they did not have any time to sit down, to do the research. One person was living in a refugee camp and thought that only four countries in the world would provide asylum.

One thing that the focus group said was that they felt the legislation fundamentally misunderstands the concept of what being a refugee is, as though it is a choice and you can choose where to go and how to get there. For them it was not a choice. It was not a choice to come to the UK, because the UK was where they believed they were going for safety. One person said, "This is where I felt I was going to be welcomed and where I was going to be free," because they have language ties and family here, and things like that. That is why the UK is the place of the safety for them. They are not shopping around and saying, "Okay, it's a nice place." It is the place of safety for them.

The key thing to try to square the circle—I am not sure that I have—is that people have very limited access to information in that chaotic moment of trying to leave, as we saw in Afghanistan. People come here, and many have said—I think it is quite sad, looking at the legislation—that they believed that the UK was a beacon of human rights that would protect them. That is why they are here. They are then devastated to learn of the plans, and by how they have been treated in the asylum system so far. As I say, the plans will simply double down on the injustice that we already see.

Alphonsine Kabagabo: Can I confirm what you just said, Mariam? Some people choose to come here also because of historical connection and the language. If you have been colonised by the UK, you feel safe to come to a country where you have a historical tie. When I was a refugee, I went to Belgium. I speak French, so I felt safe there. If I am in Belgium, I feel that is where I need to be. We need to understand that we are talking about people here, not numbers—people who are trying not only to survive, but to rebuild life, and rebuilding life sometimes means thinking, "Where do I have a chance to rebuild life—not just to be a refugee, but to be a person again?". That is what I want to emphasise.

Paul Howell: I get that, but my concern is how to get the message back around to the beginning. The refugees who get here and can therefore get messages back to people where they came from—is that not the most efficient method of getting anything true back to those people, as opposed to the noise they get from people smugglers and so on? That message should be that the best way to come is the safe route. If they come across the channel they will run into all sorts of problems, and therefore we want to motivate them to go the safe way, rather than any other way.

The Chair: I am sorry, but I want to get another question in. Neil, do you want to ask your question? That will probably be the last one—both questions can be answered together.

Q184 Neil Coyle: I think Mariam mentioned that there is a vanishingly small number of safe routes, which creates the incentive to take dangerous routes into the UK. Could any of the witnesses say which safer routes they would like to see extended, and how those could be added to the Bill?

Mariam Kemple-Hardy: The first question asked how we can get information to people that they should take the safe routes instead. My very quick and simple answer is that there is a vanishingly small number of safe routes, so that question is completely irrelevant for most people. If you want to know how to help people to take more safe routes, the answer is to create more safe routes. Nothing in the Bill creates more safe routes.

To the second question, we have for a long time been calling for the Government to announce a regular annual global commitment to refugee resettlement. We have been calling for the Government to resettle 10,000 refugees from around the world on an annual basis. We believe that is absolutely possible, and the United Nations High Commissioner for Refugees has said in the past that it is absolutely feasible. We would like to see the Government take the legislation and do what they have set out in their rhetoric by creating safe routes to safety.

There are other different types of routes—I believe the British Red Cross spoke in particular about family reunion—but we would like to see one key thing that the Government could do relatively easily. We previously took in 5,000 Syrian refugees each year. Let us up our ambition, meet the ambitions of global Britain and say, "Yes, we will take in 10,000 refugees from around the world." It was great to see the announcement of the Afghan resettlement scheme, but that answers only today's crisis. We want to see a resettlement programme that addresses not only the crisis of today, but the crises of tomorrow.

The Chair: We have a couple of minutes. Do any other witnesses want to say something briefly?

Lisa Doyle: May I just add to that? I agree that resettlement needs expansion. Refugee family reunion is a really good safe route; it is used by tens of thousands of people, 90% of whom are women and children. The Bill seeks to reduce the rights to refugee family reunion, rather than expand them. Priscilla also mentioned a humanitarian visa that would allow people to travel to the UK to claim asylum. They would still have their asylum claim looked at, but they could formally and legally get on a plane and come to the UK—you have to be physically present in the UK to claim asylum, so that would be helpful.

However, no matter how many safe routes are opened, you should not be closing down routes for people who need to enter irregularly. That is in the convention, as was just highlighted very strongly by the UNHCR. There will be categorisations and formal processes and criteria that people will have to meet for all of the safe routes, and not everyone will be covered yet. There will still be people who fall outside of those who have protection needs, and we should honour those.

Q185 Craig Whittaker (Calder Valley) (Con): I have a quick question on what you just said. For absolute clarity, are you saying that we should not be closing down routes where people are drowning and dying to get here?

Lisa Doyle: We do not want people to drown and die to get here.

Q186 Craig Whittaker: But you said that we should not be closing those routes down.

Lisa Doyle: We should not be punishing people who feel they are forced to travel irregularly to enter a country. There is a precedent in international law to do that. All the evidence in previous days has said that if you build your walls higher, the people smugglers become more and more sophisticated and have to take—

Q187 Craig Whittaker: So for absolute clarity, you would rather see people drown—

Lisa Doyle: Of course I would not want to see people drown. What I am saying is that there will always be a need for people to enter countries and to seek safety not on formal safe routes, because formal safe routes are not broad enough to encompass everybody. The reality is that people are desperate. They need to move and they want to rebuild their lives.

The Chair: Thank you. I am afraid that brings us to the end of the time allotted for the Committee to ask questions. I thank our witnesses on behalf of the Committee for their evidence.

Examination of Witnesses

Patricia Durr, Patricia Cabral and Adrian Berry gave evidence.

4 pm

Q188 The Chair: We will hear from all the next panellists remotely. They are Patricia Durr, chief executive of Every Child Protected Against Trafficking UK, Patricia Cabral, legal policy officer at the European Network on Statelessness, and Adrian Berry from the Immigration Law Practitioners Association. We have until 5 pm for this session. Could the witnesses please introduce themselves for the record?

Patricia Durr: Hello. My name is Patricia Durr. I am the chief executive of ECPAT UK. We are a child rights and anti-trafficking charity working directly with child victims and those at risk, and advocating for their rights to protection and care.

Patricia Cabral: Good afternoon. I am Patricia Cabral, the legal policy officer at the European Network on Statelessness. We are a civil society alliance working to protect stateless people, and to reduce statelessness throughout Europe. We have more than 170 members across Europe in 41 countries, including the UK. There are 45 of us in the UK.

Adrian Berry: Hello. I am Adrian Berry, patron of the Immigration Law Practitioners Association. We represent barristers, solicitors and other immigration advisers who work in the field of migration policy to secure just and equitable immigration law and practice.

Q189 Holly Lynch: I thank our witnesses for joining us this afternoon. To ECPAT first, you said in your written evidence that, although the Government's stated intention is to improve support for child victims of trafficking, that is incompatible with their plans in the Bill. Can you explain that?

Patricia Durr: Thank you for the opportunity to give evidence to the Committee. One of our concerns has been what little attention has been paid to child victims in consideration of the measures in the Bill. We welcome the focus in the earlier evidence session with Dame Sara Thornton and Siobhán Mullally, and some of the questions from the Committee on that. One of our key concerns is that the measures in part 4 of the Bill will affect all child victims of trafficking, including British national children, who currently form the majority of those who are referred into the national referral mechanism; yet it is being dealt with within an immigration context. For us, consideration of child victims of trafficking and modern slavery is a child protection matter solely.

We are also concerned that the measures in the Bill will be detrimental to unaccompanied children, who we know are at particular risk of exploitation, abuse and trafficking. We know that increasing numbers of children are being identified as victims; yet the barriers are huge. We support some of the stated intentions of providing more support for child victims, but this measure seems to be increasing vulnerability and increasing punishment of children who are already too often criminalised for their own exploitation.

[Holly Lynch]

We also think that the Bill is not compatible with the UK's current obligations towards children, principally the Council of Europe convention on action against trafficking in human beings and the UN convention on the rights of the child, and that all decisions about children, including that of immigration leave, must be taken with their best interest as the primary consideration. They must not face discrimination due to their immigration status, nor must they be disqualified from protection in the UK. There should be a safeguarding response to all children.

We are concerned about all the clauses in part 4 of the Bill, but we have particular concerns about identification, the conclusive grounds provisions, the recovery period, which will potentially have an impact on child victims, and the disqualification from protection, as well as the leave to remain provision in clause 53. We think there is an opportunity to improve and strengthen that in terms of particular provision for children, whereas there is nothing in there now that meets the international legal standard for children.

Q190 Holly Lynch: Thank you very much; that is incredibly helpful. Looking at some of the statistics for last year for the national referral mechanism, the data suggests there was an increase of nearly 10% in children being identified as potential victims of trafficking. Do you have a sense of what some of the reasons might be for that increase in children being referred?

Patricia Durr: We need to bear in mind that the biggest single form of exploitation of children who are being referred is criminal exploitation, and to a large extent some of that is about increased awareness and better identification of children and young people. We are not sure yet what impact covid may have had on some of that; we know that the numbers of adults went down, maybe as a result of the access into work environments where they are being exploited. There may be some of that, but there is a broad understanding that there is an increase in exploitative behaviour towards children.

Q191 Holly Lynch: With that in mind, looking at clause 51 specifically and given the prevalence, as you have just said, of children in the NRM who have been subject to child criminal exploitation, to what extent are you concerned that the measures in clause 51 will not only make it harder for children to come forward to seek support having been exploited, but make it harder to secure prosecutions against those who have been exploiting them?

Patricia Durr: We are really concerned about that, because the definition of the threat to public order is not appropriately drawn. It is so broad that, as you say, a significant number of child victims would potentially be disqualified from that protection. The consequences for children and young people are huge. As we have said, criminal exploitation is the most commonly reported form of modern slavery for potential child victims, and a significant number of those cases are for drug-related offences, including some of the so-called county lines crimes, which may carry custodial sentences of more than 12 months, which this provision brings in. Those children would be disqualified from protection if they were identified on appeal for serving custodial sentences.

We also know that data on arrests of children aged 10 to 17 for drug-related offences show that more children are arrested for possession with intent to supply class A drugs. We are also concerned about the terrorism subsections of clause 51, which will exclude child victims exploited by non-state armed groups from accessing protection. The international legal framework on the use of children in armed conflict defines this form of exploitation as the worst form of child labour, and exclusion of children recruited by armed groups on public order grounds will significantly hinder their ability to be safeguarded from harm and to access support and protection. We draw particular attention to the impact it will have, not only on migrant children. It may include the identification of children domestically, such as those in Northern Ireland who are recruited into paramilitarism.

Q192 Holly Lynch: In the light of what you have just said, do you have concerns that clause 51 may not be compatible with section 45 of the Modern Slavery Act 2015 in particular?

Patricia Durr: Yes. It is a principle set out in international—and also our domestic—law that children should not be punished for their own exploitation and abuse. That non-punishment of trafficked children was recently judged in the European Court of Human Rights. I think Siobhán Mullally mentioned this case of V.C.L. and A.N., two Vietnamese teenagers who were criminalised and not identified as child victims of slavery. Yes, we are very concerned about this clause. We think that child victims should not be included within its remit.

Q193 Holly Lynch: Thank you very much. I have just one more question for Adrian, if I may, Ms McDonagh. Turning to access to legal advice, particularly in relation to the NRM, could I get your thoughts on whether the system would be improved if people received legal advice upon entering the NRM, and whether that is appropriate?

Adrian Berry: It is certainly appropriate for people to receive legal advice. The key element in that regard is whether or not people have public funds in order to secure the appropriate advice, and whether there is adequate funding for that. Yes, we would support that at all stages. Of course, it does not correct any of the defects in strengthening the tests for making a reasonable grounds decision or changing a standard of proof in respect of conclusive grounds decisions. What it does do is enable people to assert their rights, so it is a basic jumping-off point.

Q194 Holly Lynch: We are still waiting to probe some of the information around these trafficking information notices, perhaps in Committee, but do you have a sense that it would be appropriate to receive legal aid and legal advice at the point at which you receive a trafficking information notice, as well?

Adrian Berry: Yes, of course. As you know, there is a whole series of notices, including in relation to trafficking, which increasingly assimilate it to the asylum process where you get punished for producing evidence or material after an arbitrary cut-off date. There is no safeguard in the Bill for when that cut-off date is—it could be too soon, before you have had an opportunity to recover, to produce the information and receive support. Legal aid is one way of enabling people to properly frame their

case at the earliest possible opportunity. The use of notices throughout the Bill, whether trafficking, asylum or priority removal notices, is a subject of serious concern in terms of procedural fairness and ensuring convention compliance, whether that is the trafficking convention or the refugee convention.

Q195 Stuart C. McDonald: I will address this question to Patricia Cabral and the European Network on Statelessness. Could you just explain what the implications of this Bill are for children who face statelessness, and how this might impact on them?

Patricia Cabral: Thank you for the question. Clause 9 proposes to amend and restrict a vital safeguard in British nationality law that was initially introduced with the aim of preventing and reducing childhood statelessness. It is important to note that the UK has international obligations in this area, so the existing safeguard implements those international obligations by enabling a child who was born in the UK and has always been stateless to acquire British citizenship after five years of residing here. We are concerned that the amendment proposed by clause 9 restricts children's ability to access that safeguard and acquire British citizenship. It is not in line with the UK's international obligations, and it clearly risks leaving even more children in the UK stateless and in limbo throughout their childhood.

In the last year, we developed a project to understand the issue of childhood statelessness specifically in the UK, so we have gathered some evidence about the barriers these children are facing and who the stateless children in the UK are. Perhaps it would be useful for us to share some of our findings in this area. I will just note that the stateless children in the UK are mainly children who are currently affected by statelessness because their parents belong to a recognised stateless community—for example, the Kuwaiti Bidoon, Rohingya, Palestinian or Kurdish populations—but many of them are also children in care, especially where they have a migrant background. There may be issues with acquiring parental consent if it is required for the child to access nationality, because the documentation may be missing. Children in care are at particular risk of statelessness, because there is a general lack of awareness from local authorities about nationality issues. There may also be children of Roma families or children affected by domestic abuse, trafficking or other forms of exploitation. We are generally talking about children who are already vulnerable and marginalised, and who are also stateless.

We should also bear in mind that clause 9 would amend the provision that applies only to children who were born in the UK and who have lived here for at least five years. We are talking about children who were born here, who grew up here and who really feel that they belong in the UK. They do not know any other country, they feel British and they wonder where else they belong, if not in the UK. We have received some statements from children who grew up in the UK without British nationality, and it really has an impact on them. They describe feelings of alienation, a loss of self-confidence and the challenges to their identity. We have heard from a child who told us that she could not join her class on a trip to France, and she felt that the situation was really insecure and that it was not safe for her to make close friendships. We can only imagine the emotional burdens of this.

We can see how children feel the impact of being stateless, but they really do not understand why they are stateless, and they feel disempowered to change this. That is because the power to change this is really with the UK authorities—for them to grant nationality and a sense of belonging to the UK. Therefore, that starts with simply not amending the existing safeguards that are in line with international law, so clause 9 of the Bill should simply be dropped.

Q196 Stuart C. McDonald: Adrian Berry, you wanted to come in on that question. At the same time, can you say whether the Home Office has explained why it wants to make it more difficult for already vulnerable children not to have access to recognition of statelessness?

Adrian Berry: There are two things to say. First, there is a real problem with the efficacy of this provision. At the moment, you can apply for registration under this route only when you reach the age of five. But at the age of 10, any child, regardless of whether they have a nationality, can apply for registration as a British citizen under a different provision—section 1 of the British Nationality Act 1981. This is a provision on the face of the Bill that is designed to capture children between the ages of five and 10, because you have another route once you reach the age of 10. The question needs to be asked: what is the point of doing that? You have to have some compelling advice about the cohort aged between five and 10 in order to do it, and there is no evidence at all that that particular cohort of people are the subject of concern. There is no data adduced to show that there is any abuse of the current provision in schedule 2 to the British Nationality Act 1981, which deals with stateless children. There is no reason why you would just leave a child stateless between the ages of five and 10, knowing that there is another provision in law once they reach the age of 10. There is no gain by using this provision. On the question of—*[Inaudible.]*—simply that the provisions become more available.

Q197 Stuart C. McDonald: On a slightly different question, perhaps one area where we can all be fairly positive is clauses 1 to 8. This is about correcting historical unfairness in the nationality system—is that right? Are we right to welcome these provisions but with the caveat that we have to see how effective the provisions become, how accessible they are, what fees are charged and so on?

Adrian Berry: Yes. Clauses 1 to 8 are good stuff, as far as they go. They correct—*[Inaudible.]*—on the grounds of sex discrimination, discrimination on the grounds of illegitimacy, and historical unfairness in relation to people who might have been prejudicially treated in the Windrush scandal. There is not much not to like about that. There are some omissions. They cure prejudices against people who would be British citizens and overseas territory citizens today, but they ignore the people who would be British overseas citizens today. You will know that their concern is directly because they have no ability to come to the UK, but they still have British nationality. So there is more work to do, but so far, so good, and there are some welcome developments in clauses 1 to 8.

Q198 Stuart C. McDonald: Can I ask about the scope of the criminal offence created by the Bill for coming into the United Kingdom irregularly? The Government's

[Stuart C. McDonald]

focus is on boats, but does that catch other people who arrive here and claim asylum? For example, if I arrived here on a visit visa and then sought to claim asylum, and clearly I had applied for the visit visa only for the purposes of coming to claim asylum, would that be a criminal offence? Is it clear from the Bill?

Adrian Berry: If you apply for a visit visa, you are making a representation that you intend to return to your country of origin. At some point, unless you claim on arrival when you land, you may be declared an illegal entrant under existing provisions. The problem with clauses 37 and 38 is that they criminalise arrival and assisting arrival in the UK. So it is the crime of arrival or assisting arrival, if you want to think about it like that. What that does is that applies to asylum seekers. So you say, "Of course, we are not impeding the efficacy of the refugee convention". In the explanatory notes the Home Office says that, but in practice it is. If you criminalise arrival, that is precisely what you are doing. You cannot see those provisions separately from clause 12, which prohibits you from claiming asylum in UK territorial waters.

When you fit them all together, you have the criminal offence of arrival: you do not have to have entered the UK, you are still on a vessel. You are in UK territorial waters because you are on your way to the UK and you cannot claim asylum there. However, the maritime enforcement powers, which the Home Office gives itself under schedule 3, allow it not only to board your vessel and not take your asylum claim, but require you to go back to the port from which you came and require you to leave UK territorial waters. If you look at the package—criminal offence, not being able to claim asylum, and power to board your vessel and require you to leave—not only might that put you at risk in your insecure vessel, but it just shuts you out from the refugee convention. It is a full-scale assault on being able to claim territorial asylum in the UK.

Q199 Stuart C. McDonald: In essence, the only part of the asylum system that would be left would be people who happened to be in this country and there was a dramatic change of circumstances in their home country—refugee sur place. It is not so much an objection to shutting down unsafe routes; it is an objection to shutting down the UK asylum system, pretty much.

Adrian Berry: Yes. The whole point of the refugee convention is not about resettlement; it is about people making it to the territory and processing and determining their claims. That is why you have the prohibition on penalties in article 31. It is all about coming to the UK to claim asylum and being a refugee on an irregular route. If you shut that out, all that is left is sur place claims, as they are called, where you are on the territory, as you suggest.

Q200 Paul Howell: I have a question for Patricia Durr, more focused on children. One of the things we hear about is people claiming to be children when they are not, and where the boundary is in that. There are questions about what the boundary of assessment is. Do you have an opinion on that, because I do not think we have heard anything so far on that? Where do you feel that sits? Obviously, it is very important that we keep adults separate from children in any holding pattern.

Patricia Durr: We are waiting for more information about the age assessment, given the placeholder clauses in the Bill. I guess our biggest concern is about children being treated as adults. I know that the Committee has expressed some concern about adults being treated as children, but we need to consider that the greater risk is that children are being pushed into adult systems through inappropriate age assessments. Obviously, it is a concern all round, but that is the greatest concern, I think, because the consequences of the adultification of children who are then also criminalised are huge. In any provision for children and young people in this country, we should have in place very strong, robust safeguarding measures that provide better protection for children and young people there than would be provided for a child in adult provision. That is the way I would consider that.

We are concerned that age assessment should remain within a safeguarding framework and remain with professionals who are skilled in children's development and care. I think the British Medical Association has given written evidence to the Committee to disavow the idea that there is a scientific method or approach to age assessment. It is obviously about professional judgment by skilled professionals—in this case, social workers—who have a better understanding of child development.

Paul Howell: I agree that it is a difficult one either way—children to adult or adult to children. It is just a question of where the boundaries sit and making sure we get those in the right place.

Q201 Bambos Charalambous: I have some questions for Adrian about enforcement and the legal parts of the Bill. I will start with clauses 23 and 24. This is about the late provision of evidence, giving weight to the late provision of evidence and then, following on from that, appeals. What are your thoughts in relation to that? You probably need to look at it in conjunction with clauses 16 to 20. Just give us your assessment of those clauses.

Adrian Berry: This is an attempt to be prescriptive on the way in which, first, the Home Office and, secondly, judges will assess credibility in a range of situations in relation to claims on human rights grounds and asylum claims. It is not the first time that we have had credibility clauses put into Bills to tell judges what their job is and how to approach witness evidence. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 tried to do that, and now we see a range of these provisions spattered across the Bill. The problem is that they always set early cut-off dates for providing evidence and then say, "Well, if you provide the evidence late, you're penalised on credibility." But the obvious question is this: what is the instrumental connection? If the evidence is good and proves that you are in need of international protection, why is your credibility damaged? You have done what you are supposed to do, and the UK obligations are engaged.

It attempts, effectively, to usurp the judicial function, to take it away from judges, who are expert at assessing past facts of what has happened in foreign countries, foreign laws and protection risks, and to say, "Well, here we're going to discipline the task for you, regardless of the merit of the application, and penalise a person who may have difficulty getting evidence, who may be traumatised by their journey to the UK and who may lack funding to get things properly translated or to

commission expert reports." It says to them, "We're going to penalise you, regardless of the merits of your claim, because we have set an early cut-off date and you haven't met it." It is introducing yet one more hurdle. It has not worked before, under the 2004 Act, and it is unlikely to work in this Act.

Q202 Bambos Charalambous: I also want to ask about the impact on appeals, because there is a limit on where you can appeal to. What do you think the impact of that will be on decision making?

Adrian Berry: Severe, in fact. If you look at the provision for priority removal notices and expedited appeals, there are some serious concerns. If you introduce a claim for asylum and you provide evidence after the cut-off date given, in a priority removal notice you are given what is called an expedited appeal. That begins in the upper tribunal. Your first punishment is that you lose your right of appeal and hearing in the first-tier tribunal. The second punishment—much more serious—is the return of the ouster clause. It is that the upper tribunal hearing is final; there is no onward appeal to the Court of Appeal. That is something that was first tried in clause 11 of the 2004 asylum and immigration Bill, before it became the 2004 Act. And it is wrong—one first-instance appeal on human rights grounds or asylum grounds in the upper tribunal. Mistakes happen. They need to be corrected. There would be a reason for the Court of Appeal to be available, and thereafter the Supreme Court. And there is no vice in allowing that, because of course the appeal tests, for permission to appeal, are tightly controlled and policed by judges making permission decisions. An expedited appeal leaves you with one shot—no rights of appeal. It has serious implications for the rule of law that the first-instance tribunal decision cannot be reviewed.

Q203 Bambos Charalambous: Adrian, still on the issue of telling judges and courts what to do, clauses 62 and 63 are on wasted costs orders. I just wondered what your thoughts were on those clauses.

Adrian Berry: There are three things. First, there is no need for them. We already have three ways of controlling advocates in court. First, there are case management powers in the tribunal system to regulate conduct of a case. Secondly, under section 29 of the Tribunals, Courts and Enforcement Act 2007, there is a wasted costs and unreasonable costs jurisdiction, which is applied in the tribunals. Thirdly, there is the ability of tribunals and courts to refer practitioners who are considered to have behaved improperly or negligently to their regulatory bodies, such as the Solicitors Regulation Authority. We already have all those constraints.

Adding in charges, which would be paid to the state, rather than being costs between the parties, and making provisions for unreasonable costs orders, is absolutely unnecessary. There is not any evidence in the explanatory notes as to why that needs to be done, because there is no evidence of any deficiencies in the existing three mechanisms that I have outlined. It will chill the ability of other people to take difficult points on behalf of vulnerable people.

Q204 Bambos Charalambous: Looking at the enforcement part of the Bill, I am looking at clause 41, which is about maritime enforcement and introduces new schedule 5, which relates to the Immigration Act 1971. It is to do with pushbacks and other associated measures. What is your interpretation of what this clause does and how effective it will be?

Adrian Berry: Maritime enforcement provisions butt up against the United Nations convention on the law of the sea and its article 98 duty of rescue. That is a part of customary international law. If you are at sea as master of a ship and see someone at risk of losing their life because they are in an insecure vessel or are in distress and they ask for assistance, you are obligated to help them. That is the basic position. This provision not only creates powers to allow Home Office vessels to leave UK territorial waters and enter international and foreign waters, but it enables them to stop, board and then divert vessels away from the UK and back to foreign ports.

That creates a situation where there may be a risk to life and limb, because these vessels are often very insecure. Although Home Office staff may not board them, in circling them and trying to press them back, they are making those lives insecure. There may be a question of extraterritorial jurisdiction under the Human Rights Act 1998 for such behaviour. It also risks their lives. It cuts across the duty of rescue, which applies not just to the Royal National Lifeboat Institution or to merchant vessels; it also applies to those very Home Office vessels. They, too, are subject to the duty of rescue, regardless of the fact that they are trying to hustle asylum seekers back out of UK territorial waters.

Q205 Bambos Charalambous: There is a clause in the Bill that removes the words "for profit" from one of the pieces of legislation on rescuing, so that would clearly impact on anybody rescuing anybody in distress. Is that your reading of it?

Adrian Berry: Yes, that is clause 38, which removes the "for gain" provision from assisting an asylum seeker to enter the United Kingdom. That could prejudice a prosecution that is brought on people who are involved in search-and-rescue operations, which is also part of the UN Convention on the Law of the Sea, by the way. In addition, an asylum seeker who might be piloting an unsecured vessel across the channel could be prosecuted, even though they too are an asylum seeker. There is no article 31—of the refugee convention—defence to that criminal charge, and it would undoubtedly be a penalty, because it would be frustrating the operation of the refugee convention, in terms of the UK's obligations under that.

Q206 Bambos Charalambous: A number of clauses seek to interpret the 1951 refugee convention, particularly clauses 27 to 36. By trying to do that, does it put the UK in a better position or would that be laughed out of court, for want of a better phrase?

Adrian Berry: Judges are not necessarily meant to laugh in court, but the question is: what is the purpose of it? When we were in the European Union and had the common European asylum system, we had a system of common standards, so the refugee qualification directive specified the way in which refugee convention terms were to be applied, because we needed to have common methods and systems throughout the European Union. We have left, as we all know, and the status quo ante ought to apply, where we just apply the refugee convention as determined by our courts and the provisions thereunder.

[Bambos Charalambous]

This specification in primary legislation is unnecessary. These terms are well understood. The only attempt here is to change the settled law, including from the highest judicial courts—the previous judicial House of Lords, now the Supreme Court—and other decisions of binding authorities. We see an attempt to change the standard of proof for the assessment of past facts in refugee cases from "reasonable chance" to "the balance of probability". That cuts straight across binding authority in this jurisdiction in the case of Karanakaran *v.* Secretary of State for the Home Department. We see an attempt to revise the definition of "particular social group" so that the two tests are now cumulative rather than the alternative. Again, that cuts across binding authority. It is an attempt to write out the settled view of the courts on the interpretation of the United Kingdom's international obligation, where the UK courts' interpretation is consistent with international practice and the terms as defined in the Bill are not.

Q207 Bambos Charalambous: A final question from me. Looking at the Bill as a whole, bearing in mind that it seeks to make the system fairer, to deter people from using illegal routes and to break the smuggling model, do you think that it will achieve any of those objectives?

Adrian Berry: No, not at all. If you want to end smuggling routes, you have to open safe and legal routes to claim asylum in the UK, which may mean humanitarian corridors. It may mean bringing people to the UK to claim asylum rather than allowing them to be exploited by smugglers and traffickers. It may mean improving and having a fast and fair procedure in the United Kingdom that allows claims to be determined swiftly and robustly. The main reason why there is a smuggling industry is that there are no safe and legal routes, and therefore one can make a profit out of these vulnerable people.

The Chair: Thank you. I call the Minister.

Q208 Tom Pursglove: I have a question for Mr Berry. Do you see any benefit whatsoever in streamlining the processing of applications in the way that the Bill seeks to do, and providing clarity for the claimants sooner?

Adrian Berry: I do not think it provides clarity to take away the ability to properly prepare a protection claim. What you need are proper resources and proper funding in order for that claim to be properly advanced, and then you need a robust determination mechanism to assess it. The difficulties relate to gathering evidence, taking witness statements from people who have been traumatised in their home country and traumatised by their journey, and obtaining other evidence in terms of other witnesses of fact and expert evidence in a case. These things take a little bit of time, and the existing procedure creaks even without accelerating the procedures. So long as people are treated with dignity and the resources are available, determinations will be made that are good and do not require challenge. That alone would foreshorten the procedure.

Q209 Tom Pursglove: If you had the opportunity, what would you do to better shape the system to remove those with no right to be here and to deport foreign national offenders?

Adrian Berry: Foreign national offenders are a completely separate issue. We are talking about asylum, and the Bill is focused on protection claims in the section that we are concerned with. It is very important not to confuse foreign national offenders with people who are claiming asylum.

Tom Pursglove: To be clear, I am talking about the Bill as a whole.

Adrian Berry: Yes, and the Bill as a whole contains provisions on asylum, not extra removal provisions, so I was talking about the Bill as a whole as well. You already have everything you need. We are almost returning to the stage where immigration Bills happen every couple of years, attempting to address problems that had apparently been solved by earlier immigration Bills. The Home Office has a vast array of powers at its disposal. What is needed is that it properly uses them.

Tom Pursglove: No further questions.

The Chair: Are there any other questions? Mr McDonald, I stopped you on a question. Would you like to carry on?

Q210 Stuart C. McDonald: Thank you, Ms McDonagh. I have just a couple more questions. Mr Charalambous was very comprehensive in his own questioning. Can I go back to the change to the standard of proof? How problematic is it having this balance of probabilities test in there alongside the refugee convention definition of a refugee, which talks of real risk?

Adrian Berry: It is extremely problematic, and not just because it is deprecated in other jurisdictions, but because it makes the judge's task so much harder—they have to have a split personality. They have to weigh some of the evidence—including the question of whether the person has a refugee convention reason, such as a political opinion or membership of a particular social group—on the balance of probability standard, and then they have to assess the question of what happened in the past on that standard. Then they have to evaluate future risk, which is intimately bound up with how you have been treated in the past, on the lower civil standard of reasonable degree of likelihood.

It is a charter for errors of law creeping into decision making and for onward appeals. It will almost certainly lead to more onward appeals, which will lengthen the process. It will add to costs and uncertainty, and ultimately it will leave people without protection, when there is a commonly understood threshold test, with the reasonable degree of likelihood across the piece, whether it is past facts or future risk, that has applied in this country and other common law jurisdictions and is endorsed by the United Nations High Commissioner for Refugees.

Q211 Stuart C. McDonald: Thank you. Finally, can I ask Patricia Cabral about statelessness? You have indicated what is wrong with the Bill and how it makes access to recognition of statelessness for children more difficult. What would you like to see in the Bill? Is it fair to say that the system for applying to be recognised as stateless in the United Kingdom is fairly good by international standards, but there are still hurdles and problems that need to be improved? What could be put in the Bill to improve the system for recognising statelessness in the UK?

Patricia Cabral: Yes, there are a number of issues with statelessness in the UK anyway, but with this Bill we want to focus on clause 9, in particular. Our research shows that children who are brought up stateless in the UK already face a number of significant issues in acquiring British citizenship. There is a lack of legal advice and quality legal support. Legal aid is not always available. There are a number of challenges in evidencing and proving statelessness. There are already all these barriers for children trying to acquire British nationality, which might be the only nationality available to them.

What we are really aiming for today is just to make sure we do not create even more barriers for these children, and that we remove clause 9 to ensure that we do not amend any of the existing safeguards. Paragraph 3 of schedule 2 to the British Nationality Act 1981 is in compliance with international law—the 1961 convention on the rejection of statelessness and the convention on the rights of the child. We simply do not need to touch those safeguards or make this amendment.

Stuart C. McDonald: Thank you very much.

Q212 Holly Lynch: I have a question for Every Child Protected Against Trafficking. Patricia, in your written submission you were very critical of the lack of due process. Could you take me through just how dissatisfied you were with the consultation process and why?

Patricia Durr: We have talked about how children's rights are exercised by the provisions in the Bill. A children's rights impact statement would really have assisted consideration of some of the measures, by setting out which children's rights are invoked and how they are impacted. It is something the Committee on the Rights of the Child has asked the UK Government to do systematically. It is safe to say that the length of the consultation period was not sufficient.

We were quite surprised that the part 4 provisions are being included in this asylum and immigration Bill, particularly given that there is currently a review of the modern slavery strategy. On the lack of consultation, certainly from our perspective, what implications might there be for child victims of trafficking? Their experience of waiting in limbo, and the lack of provision for leave to remain as recognised child victims of trafficking, rather than through asylum provisions within the immigration rules are certainly a huge concern for the young people we work with, and that would come through very strongly from them. It was that combination: why these provisions in this Bill, and the lack of engagement with children and young people—from our perspective—but also, survivors of trafficking and exploitation more broadly.

Q213 Holly Lynch: Based on what you have just said, this came as a bit of a surprise. Would it be fair to say that you think that part 4, on modern slavery, does not belong in a piece of legislation around borders? Perhaps it should be removed, the consultation process should be done properly, and then revised proposals around properly tackling modern slavery and trafficking, supporting victims and bringing perpetrators to justice, could come back in a way that we would all like to see?

Patricia Cabral: I think that would be preferable, given that we have got a review of the whole of the modern slavery strategy. What we do not want to risk is the progress that has been made, and the good provisions that have been made, through the UK's modern slavery strategy, potentially getting rolled back. That is the big concern. What we should be doing is improving things. I would support looking at the provisions around modern slavery and trafficking as safeguarding matters, rather than immigration matters. Obviously, there are enforcement matters related, but there is confusion. I draw the Committee's attention to the Government's 2014 review, by Jeremy Oppenheim, which led to revisions of the national referral mechanism to separate immigration decisions from matters of modern slavery. The provisions in part 4 are rolling that back quite considerably.

Q214 Tom Pursglove: I have one further question. On Tuesday, one of the issues that the local government witnesses referred to as being particularly problematic was around age assessments. I would be interested to know whether any of the witnesses have come into contact with that challenge? They mentioned that sometimes those cases end up in quite long and protracted judicial review processes. I would be keen to hear any reflections that the witnesses have around the Bill's approach to this.

Adrian Berry: I do not know whether the other witnesses have had experience of age assessment trials—I have. This Committee cannot scrutinise that clause in the Bill, because all you have put in it is a placeholder clause, with the detail said to be coming later on. We are not in a position to scrutinise it, and I cannot tell you what it says, because you had not finished the Bill before publishing.

Age assessment trials are trials; although they take place within a judicial review context, they are full trials with witnesses, and over time the courts have developed a system for case managing those trials. The difficulties that arise would arise in any context. In other words, it is very difficult to tell how old someone is. It is a process that requires expert evidence and the gathering of timelines and the chronologies of people's journeys, and their explanations. That would take time in any context. Until we see the detail of what you propose, the age assessment provision simply cannot be assessed. We hope you bring forward the actual clause by Report.

The Chair: Are there any further questions?

Q215 Anne McLaughlin: I have a question for Patricia Durr from ECPAT. When trailing the Bill, the Home Office talked about the widespread abuse of the system by child rapists and criminals—foreign national offenders. We heard the Minister alluding to that earlier. Of course, nobody wants to have a system that is abused, but I understand that ECPAT submitted a freedom of information request on that. I wonder whether you could tell us how widespread that abuse was.

Patricia Durr: We did not submit the FOI, but the response back indicated that that information is not available, so evidence of widespread abuse does not exist as far as we know.

Anne McLaughlin: Perhaps the Minister will get it for us for the next meeting. Thank you very much.

The Chair: If there are no further questions from Members, I thank the witnesses for their evidence. That brings us to the end of our oral evidence sessions. The Committee will meet again after the recess on Tuesday 19 October at 9.25 am to commence line-by-line consideration of the Bill.

Ordered, That further consideration be now adjourned. —(*Craig Whittaker*.)

4.50 pm

Adjourned till Tuesday 19 October at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

NBB13 Migrant Voice and Amnesty International UK (joint submission)

NBB14 Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK (joint submission)

NBB15 Mermaids