Response to the Home Office's 'New Plan for Immigration' Consultation

Children's Law Centre
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Children's Law Centre
Rights House
2nd Floor
127 – 131 Ormeau Road
Belfast
BT7 1SH

Tel: 028 90 245704
Website: www.childrenslawcentre.org

For further information contact –
Maria McCloskey mariamccloskey@childrenslawcentre.org
Barbara Muldoon barbaramuldoon@childrenslawcentre.org

Introduction

The Children's Law Centre is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination, and where every child can achieve their full potential.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

The Immigration Department at Children's Law Centre was formally established in September 2019. We provide advice in relation to all looked after children who are in the care of social services and whose immigration status is insecure. We also advise and represent the vast majority of unaccompanied asylum-seeking children in Northern Ireland. Children's Law Centre works in collaboration with the Health and Social Care Board and all five Health and Social Care Trusts in Northern Ireland. This response is based upon our experiences of representing unaccompanied asylum-seeking children who have been subject to the asylum application, NRM and other immigration application processes.

A Note on the Format of the Consultation

This publication summarises the Children's Law Centre's response to the consultation as closely as possible. Due to the format of the consultation, it was not possible to accurately select an answer for a number of the questions without challenging the basis of the question itself. In those instances, the most appropriate answer to select was 'decline to answer'. However, the substantive points were then made in subsequent answers. This publication reflects those answers and makes it clear where CLC felt unable to answer closed questions of this nature.

Views on the New Immigration Plan's Foreword

The Children's Law Centre strongly opposed this section of the consultation.

Response to 'Chapter 1: Overview of the Current System'

> **Question 2:** Proposals to achieve aims of 'increasing fairness and efficacy', deterring illegal entry, and aid removals.

CLC Response: We are unable to answer question 2 given that the vision is not a statement of fact. Nor do we consider it to be an accurate reflection of the outworking of the proposed plan for immigration. The vision does not reflect what is in the plan.

We are concerned that, were CLC to answer many of the 'closed' questions in this consultation, there is the potential for our responses to be misunderstood or misrepresented. CLC is also concerned that, because we feel unable to answer the questions for the stated reasons, our views (and the views of many others who felt unable to engage with this consultation for a number of reasons) may be disregarded. Please take into account all views of CLC outlined in the open questions.

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

CLC Response: At the outset, we wish to express our deep concerns at the overarching narrative of criminality and illegality that runs throughout the proposed plan. It is quite remarkable, given that this is a plan that relates to victims of persecution, torture and trafficking; many of whom are children. CLC has contrasted this emphasis, with the emphasis that has been given to the impact that the changes would have on children. An obvious example of this is that the words illegal/illegality appear 74 times in the document. The words criminal/criminality appear 45 times. Safeguarding appears on 4 occasions, 3 of which are in relation to the safeguarding of non-migrant children, from adult asylum seekers who are posing as children. There is not a single mention of the Home Office's Section 55 Borders Citizenship and

Immigration Act 2009 statutory duty, to protect and safeguard children. There is not a single mention of the best interests of the child. There is not a single mention of the Convention on the Rights of the Child. It appears to CLC that if any thought has been given to the rights of children, such thoughts have been completely dismissed.

There are a vast number of issues of considerable concern, including the lack of detail with regards to how the majority of the proposals would impact upon children. Other particular issues of concern are: changes to the NRM; front-loading cases with all issues (meaning that traumatised children would be denied the opportunity to raise issues at a later stage); curtailing appeal rights; undermining access to judicial review; reception centres (potentially of the shocking type lambasted in the inspections into the former army barracks sites at Napier and Penelly); no recourse to public funds for those who are refugees. This is even more shocking when you consider that on 29/04/21 the High Court in England found the entire 'NRPF' policy, in relation to ordinary Leave to Remain, to be in breach of the Section 55 'best interests' duty; removal to third countries; the proposal for an Age Assessment Board – all of these issues will have a significant impact on unaccompanied children and also on children who form part of asylum seeking families. They also significantly undermine the efforts of the Northern Ireland Executive in relation to the Trafficking Strategy; the Public Prosecution Service NI in relation to the new guidance to protect victims of trafficking and punish offenders; Social Services, in terms of their safeguarding of trafficking victims, their carrying out of lawful age assessments and the general care of UASCs; and place a financial burden on children's services, for those affected by NRPF.

CLC is of the view that all of these issues also drive a 'coach and horses' through the UK's obligations under a wide range and vast number of international legal treaties and conventions, including the Refugee Convention, the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (UNCRC), the EU Trafficking Directive (now transposed into UK law) and the Palermo Protocol.

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We are concerned that, were CLC to answer many of the 'closed' questions in this consultation, there is the potential for our responses to be misunderstood or

misrepresented. CLC is also concerned that, because we feel unable to answer the questions for the stated reasons, our views (and the views of many others who felt unable to engage with this consultation for a number of reasons) may be disregarded. Please take into account all views of CLC outlined in the open questions, with reference to the immediately preceding closed questions.

The proposals include a two-tier system for those seeking asylum in the UK. Only those who arrived by so-called "safe and legal routes" will be considered for refugee status.

All others, which would include all of our asylum clients – separated and unaccompanied asylum-seeking children (UASCs) – will only be eligible for temporary protection status. CLC considers this to be anything but fair and also a blatant breach of the UK's international human rights obligations including under the UNCRC and international refugee law.

We will leave it to other organisations to comment in relation to the implications of temporary protection status, instead of refugee status with a route to settlement, in relation to asylum seekers in general. In relation to unaccompanied minors, we are satisfied that this will exacerbate the already heightened risk of trafficking and retrafficking. Different forms of temporary protection status are in operation in a small number of European countries. Commentators have reported on the weaknesses and inappropriateness of this type of status, particular with regards to children. CLC is satisfied that it will increase the risks to which unaccompanied minors are exposed, and is likely to push them 'underground' and into the hands of traffickers.

CLC also wishes to make the very basic point at the outset of the submission that refugee status is declaratory. As summarised in the recent ECtHR decision of KI v France (application no 5560/19):

> "*A refugee does not stop being a refugee simply because formal status is revoked…*"

As set out in the UNHRC Handbook:

> "*Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee by recognition, but is recognised because he is a refugee.*"

Refugees flee from many countries, as a result of many different circumstances relating to the five bases of persecution as set out in the Refugee Convention. The means by which a person enters the UK, and whether or not they have been in, or travelled through, a “safe country” has no bearing on whether or not they are a refugee, under the Refugee Convention.

The New Plan for Immigration rides roughshod through these basic tenets of international refugee law.

We are troubled by statement D in the Immigration Plan, relating to the ‘good faith’ requirement. In relation to asylum seekers, this statement does not recognise the trauma, fear and misunderstanding of the complex legal processes, that most asylum seekers experience, particularly those who are not proficient in the use of the English language.

In relation to statement E, this, as the government has done repeatedly in recent history, conflates the plight of refugees with the criminality of those who facilitate clandestine entry to the UK. This is not only entirely misleading but we are of the view that it has damaged and will continue to damage race relations in the UK.

In relation to statement F, there is already a ‘one-stop’ process in place. Furthermore, we consider that it is necessary to see the proposed legal definitions of many of the terms used within the plan (for example: “could have been raised earlier in the process”) before we can comment further in any meaningful way.

With regard to statement G, and proposals to prevent illegal entry to the UK, it is harrowing to think that what might be meant by “making irregular channel crossings unviable”. We are of the view that it is extremely disrespectful to those who have lost their lives during any journey undertaken with the aim of seeking sanctuary. Again, further detail in relation to this proposal is required before it can be commented on in any meaningful way. It is also another example of the troubling conflation between asylum seekers and criminality.

In relation to proposed inadmissibility rules, if they broadly reflect what is contained within the current inadmissibility policy, they are, in our view, entirely unworkable and ripe for legal challenge. This is likely to result in a notable increase in legal aid spend.

It is notable that the UK has not yet secured any agreements with third countries with regards to the return of refugees. Accordingly, all the policy does, and the proposed legislation is likely to do, is add at least 6 months to the delays experienced by those who are seeking asylum who do not arrive through a 'safe and legal route'. This is likely to result in an increase spend on asylum support services. It will also have a significantly adverse effect on the mental health of those who are seeking asylum, which in turn will impact on the ability to integrate with and contribute to society, if leave to remain is granted.

Finally, returning to statement D, and the proposed 'good faith' requirement for legal representatives, we consider such a proposal to be an affront to the legal profession. As legal professionals, we are officers of the Court and are regulated by our respective Law Societies and Bar Council or Chambers. It is neither helpful nor appropriate to include a proposal of a 'good faith' requirement for legal professionals within immigration legislation. Continuing to undermine the role of legal professionals in this way is shameful, regrettable and extremely dangerous, particularly given the life-threatening attacks perpetrated on legal professionals in the recent past. CLC is of the view that the ongoing, sustained attack on human rights lawyers completely undermines the rule of law.

Response to 'Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny'

> **Question 4:** Proposals for ensuring the Government can provide safe and legal ways for refugees in genuine need of protection.

CLC response: CLC was unable to answer this question in the parameters of the consultation options. The substantive points are outlined in the answer to question 7.

> **Question 5:** Proposals for certain consideration in determining what are clearly-defined safe and legal routes, how.

CLC response: CLC was unable to answer this question in the parameters of the consultation options. The substantive points are outlined in the answer to question 7.

> **Question 6:** Proposals for support packages.

CLC response: CLC was unable to answer this question in the parameters of the consultation options. The substantive points are outlined in the answer to question 7.

> **Question 7:** Please use the space below to give further feedback on the proposals in chapter 2. In particular, the Government is keen to understand: (a) If there are any ways in which these proposals could be improved to make sure the objective of providing well maintained and defined safe and legal routes for refugees in genuine need of protection is achieved; and (b) Whether there are any potential challenges that you can foresee in the approach the Government is taking to help those in genuine need of protection. Please provide as much detail as you can.

CLC is of the view that it is not possible to answer questions in this section above given the manner in which they have been asked and given the wider context and nature of the main proposals for reform. Our lack of response to the specific questions should not be taken as support of any of the proposals in question. We are extremely concerned by the presentation of statistics in the government's plan. The plan refers to 'broadening the scope of the UK's protection offer' while simultaneously making a raft of proposals which seek to deny refugees their legal right to protection under the Refugee Convention.

We take issue with the prolific use of the term 'safe and legal' routes and the way in which the entire plan is presented. To suggest that only those who arrive by 'safe and legal' routes are entitled to the protection of the UK suggests that those who make dangerous journeys could not, as a result, be refugees and are less deserving of the protection of the law; it is the perpetuation of the notion that there are 'good' refugees and 'bad' refugees and is in breach of the UK's international obligations. Furthermore, it does not acknowledge that many of those who make dangerous clandestine journeys to the UK feel they have no other option, if they wish to claim asylum in the UK. This is often the case given that it is not possible to claim asylum from outside of the UK, unless they are in a country for which the UK has created a resettlement route. It does not acknowledge that the UK may be where their family members are and there is no legal basis upon which to apply from outside the UK to join them. It does not acknowledge other connections to the UK, such as speaking the English language. Nor does it recognise that asylum seekers are not required by law to claim asylum in

any particular country and that they have an element of choice. It is CLC's view that the UK is using its geographic location in seeking to deny protection to those who are entitled to it and avoid sharing responsibility with other European countries who are struggling to cope with the numbers of people claiming asylum in those countries.

The 'safe and legal route' proposal does not acknowledge that there is a statutory defence to certain otherwise criminal offences with regards to illegal entry and use of false documents. It also fails to acknowledge the reality; that there are almost no safe and legal routes available

Partnerships with community organisations must not result in a shift in responsibility from government to provide for the needs of refugees.

There is no detail given as to how the Home Secretary would help those who are still in their country of origin and we consider that in our experience that this would be unworkable in practice.

Question 5 makes a troubling and dangerous suggestion in relation to the prioritisation of refugees. We consider that the terms of the Refugee Convention should continue to be the basis upon which asylum claims are determined, with a strengthening of focus on the Home Secretary's obligations under s 55 of the Borders, Citizenship and Immigration Act 2009, with regards to the 'best interests' of children. There should also be a renewed focus on particularly vulnerable refugees, including children and victims of trafficking.

Consideration of a refugee's ability to integrate should have no bearing whatsoever on the determination of an asylum claim and would be contrary to international refugee law.

We reiterate our previous comments in relation to the creation of a two-tiered system of refugee status. Any measures to improve integration for those who are granted refugee status under these proposed reforms are likely to be overshadowed and undermined by treatment if those claims are considered 'inadmissible'. Not only will they suffer due to increased delays, but the system is likely to lead to increased racial tensions and hate crimes. Given the success rate of asylum claims at present and given the lack of return agreements with third countries, it is likely that many refugees will be entitled to the proposed 'temporary status' with no recourse to public funds. It

is not clear whether the integration packages will be open to that category of refugee. In any event, the temporary status in and of itself is likely to present numerous barriers to integration.

> **Question 8:** Safe and legal routes including Family reunion for unaccompanied asylum seeking children. Factors which the govt proposes considering.

CLC Response: CLC was unable to answer this question in the parameters of the consultation options. The substantive points are outlined in responses to other questions.

> **Question 9:** Protection claimants from an EU member state and family reunification.

CLC Response: CLC was unable to answer this question in the parameters of the consultation options. The substantive points are outlined in responses to other questions.

> **Question 10:** Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for unaccompanied asylum-seeking children in the EU wanting to reunite with family members in the UK? Please write in your answer and provide as much detail as you can.

CLC Response: It is not clear what the future proposals are. Annex A refers to existing family reunion routes, under the current immigration rules. See comments in response to the final question in this section, below.

> **Question 11:** Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes for unaccompanied asylum-seeking children in the rest of the world (outside the EU) wanting to reunite with family members in the UK? Please write in your answer and provide as much detail as you can.

CLC Response: It is not clear what the future proposals are. Annex A refers to existing family reunion routes, under the current immigration rules.

> **Question 12:** Are there any other observations or views you would like to share relating to the UK Government's future policy on safe and legal routes to the

UK for protection claimants in the EU? Please write in your answer and provide as much detail as you can. When you answer please indicate if your views relate to protection claimants who are unaccompanied asylum seeking children, adults and/or families (adults and accompanied children) in the EU.

CLC Response: It is not clear what the future proposals are. Annex A refers to existing family reunion routes, under the current immigration rules. See comments in response to the final question in this section, below.

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

CLC Response: It is not clear what the future proposals are. Annex A refers to existing family reunion routes, under the current immigration rules. See comments in response to the final question in this section, below.

Question 14: Are there any further observations or views you would like to share about safe and legal routes to the UK for family reunion or other purposes for protection claimants and/or refugees and/or their families that you have not expressed? Please write in your answer and provide as much detail as you can. When you answer please indicate if your views relate to protection claimants and/or refugees and/or their families in the EU and/or the rest of the world.

CLC Response: It is not clear what the proposals are with regards to unaccompanied asylum-seeking children who enter the UK and claim asylum going forward. It appears that they may be subject to the same inadmissibility rules which are being proposed in respect of all asylum seekers who do not enter by the proposed 'safe and legal routes' and it is on that basis that these submissions are formed. Even if UASCs are not subjected to the inadmissibility rules, in line with the current inadmissibility policy, it appears that they would only be entitled, under the proposed legislation, to temporary status. CLC is satisfied that this would completely circumvent the duties of the Home Secretary under section 55 of the Borders, Citizenship and Immigration Act 2009.

In addition to the diminution of rights which would result from the proposals within the New Plan for Immigration, as raised throughout this submission by CLC, the UK does not currently provide a legal route for the parents or other family members of separated and unaccompanied asylum-seeking children.

The following is an extract from submissions made by CLC in January 2021 to the UN Committee on the Rights of the Child in relation to family reunion:

> *Context:*
>
> - *UK immigration law permits recognised refugees to sponsor their family members for the purposes of family reunion. The categories of family members, include spouses and minor children. It does not permit parents and minor siblings. The restrictive rules have a particularly sharp impact on S/URC.*
> - *The Committee has previously recommended that the UK "Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children" . Despite this, the UK continues to have no provisions for allowing S/URC to sponsor family members to join them in the UK.*
> - *CRC General Comment No 6 is designed to "draw attention to the particularly vulnerable situation of unaccompanied and separated children" . The Comment refers to "the right of the child to preserve his or her family relations (art. 8)".*
>
> *Evidence:*
>
> - *Between 2010 and 2018, 10,336 separated and unaccompanied children were granted asylum or some other form of protection in the UK.*
> - *The UK has adopted family reunion guidance outside of the narrow Immigration Rules. However, the government "anticipates that few applications from parents and siblings of a child with refugee status would fall within the scope of the policy". Some argue that it is a deliberate policy decision. The President of the UK's highest immigration court has previously referred to it as the operation of "a*

blanket prohibition" against refugee children being reunited with their families.

- *Between 2017-2019, there was an unsuccessful attempt to introduce legislation that would allow refugee children to sponsor parents and siblings, through a private Members Bill. Members of the House of Lords, in support of the Bill, spoke of refugee children in the UK "without a single family member there to support them". A similar attempt to introduce legislation is currently underway. This is unlikely to succeed. An almost identical provision in the EU Withdrawal Agreement was overwhelmingly voted down in January of this year.*

Question:

Given that the UK recognises the need for a refugee adult to enjoy family reunion with their spouse and dependent children, why do they not recognise that there is an equal (or greater) need for a child to enjoy family reunion with their parents and minor siblings?

NI NGO Stakeholder Response to the UNCRC Committee

The UK is 'out of step' with other European countries. This is an avenue through which the UK could actually provide a 'safe and legal' route for family members. S/UASC in the UK currently have no prospect of being reunited with family members in the UK. It flies in the face of commitments in relation to family reunification and the best interests of the child. It is also likely to encourage those who are not eligible for resettlement programmes, simply by virtue of where they are from, to resort to people smugglers and traffickers. What is, essentially, a guarantee that a separated or unaccompanied child will remain separated from their family, if they remain in the UK, considerably diminishes the ability of a child or young person to fully integrate and contribute to society and is a fundamental breach of their rights under UNCRC.

This, in addition to the proposals within this plan to create a two-tiered system of protection status, is likely to increase the risks to children of being trafficked and exploited.

There is no detail as to whether UASCs will be sent to removal centres once they turn 18 but our fears are that the proposals may make this prospect a grim reality.

CLC does not agree with the suggestion, in Annex A, that the UK government was successful in “completing its commitment” with regards to the Dubs Amendment.

Furthermore, these proposals will undermine the work of the devolved institutions and bodies in Northern Ireland in NI, particularly in relation to S/UASCs.

Finally, CLC considers that the suggestion that this consultation satisfies the statutory duty under Section 3(b) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, to publicly consult on legal routes for family reunion for unaccompanied asylum-seeking children, either satisfactorily or at all, is extremely concerning. It belittles any commitments to ensuring that UASCs are protected and makes a mockery of the extremely serious nature of such a consultation. CLC considers that a legal challenge on this issue would be likely to be successful.

Response to ‘Chapter 3: Ending Anomalies and Delivering Fairness in British Nationality Law’

> **Question 15:** Effectiveness in contributing to the objective of correcting historic anomalies in current British Nationality law.

CLC Response: Felt the first two proposals to be fairly effective but did not now for the third and fourth proposals.

> **Question 16:** Government changes to the registration route for stateless children.

CLC Response: Strongly disagree

> **Question 17:** Naturalisation

CLC Response: Don’t know.

> **Question 18:** Please use the space below to give further feedback on the proposals in chapter 3.

CLC Response: CLC welcomes the commitment to end anomalies in British nationality law. Changes are required to reflect judicial decisions, finding that the current laws are in breach of the ECHR and in breach of the best interests of children.

CLC does not feel that the changes go far enough. We would like to see Section 50(9A) of the British Nationality Act 1981 amended, so that citizenship is conferred automatically for those affected; rather than by way of registration.

Citizenship for children who are stateless

CLC has serious concerns about proposed plans to water down the protections that are available to stateless children. The British Nationality Act 1981 holds that any child who is born in the UK and does not hold the nationality of another country, is entitled to register as a British citizen if they live in the UK until the age of 5.

The Immigration Plan submits that this route is being abused. It cites increasing numbers of applications in recent years, as indicative of alleged abuse. There is no evidence to suggest that there is any abuse. It is still a very modest number of applications that are made under this route. The Policy Statement refers to there now being over 1000 applications per year (this represents less than 1% of the yearly total of citizenship applications) [1]. CLC considers that the increase in numbers applying for citizenship under this route is as a result of increasing knowledge about the right; following the *MK* case. It also reflects the difficulties that many parents can have in registering a child's nationality, when the child is born outside the territory of that country.

CLC are concerned by language terms like "abuse" and "genuinely stateless" being applied in any discourse about the rights of children. CLC urges the UK government to act in compliance with the UK's international obligations as a signatory to the 1954 UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness and to protect the rights of stateless children.

Children are never to blame for their nationality/immigration status. If a child is born in the UK and by the age of 5 does not have the protection of the nationality of any other country; then it is clearly in the best interests of the child, *as per* Article 3 CRC,

[1] https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2020/how-many-people-continue-their-stay-in-the-uk-or-apply-to-stay-permanently#:~:text=There%20were%20148%2C780%20applications%20for,compared%20with%2012%25%20in%202016.

that the UK would grant that protection; irrespective of how the situation has arisen, or who else may benefit.

CLC remains concerned that access to citizenship, continues to be tied to an ability to pay prohibitively expensive Home Office fees. We support the calls made by PRCBC, Amnesty and others to abolish fees for all applications for the registration of children as British citizens.

Response to 'Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System'

Question 19: Proposals re: Breaking Criminal Networks

CLC Response: See answer to 25 below.

Question 20: Proposals to 'protect the asylum system from abuse'

CLC Response: See answer to 25 below.

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

CLC Response: Before this and many of the questions in this section can reasonably be addressed, further detail on this aspect of the proposals is required. CLC notes with concern the proposed raising of the standard of proof with regards to the genuine fear of persecution. The reasons for the lower standard of proof, currently in operation, acknowledges the widely accepted difficulties many refugees experience in proving their identity (due to lack of documents, for example). Furthermore, 'fleeing' and persecution by their nature indicate urgency, such that it is usually not possible to gather any documentation (where it exists) before fleeing a country, without increasing the risk of harm.

It is CLC's view that it would be extremely difficult to define persecution in statute, given the vast array of circumstances which may result in persecution. It is likely to be counter-productive and generate vast amounts of litigation. We are satisfied that the common law, as it currently stands, appropriately and adequately considers and

provides clarity and guidance as to what amounts to persecution. Rather than legislating in respect of the definition, and purporting to do so 'in line with the Refugee Convention", CLC considers that this purported aim is more likely to be achieved through the incorporation of the Convention into domestic law.

Question 23: Prioritisation of statements re consideration of asylum claims.

CLC Response: See answer to 25 below.

Question 24: Age Assessments and creation of National Age Assessment Board.

CLC Response: See answer to 25 below.

Question 25: Please use the space below to give further feedback on the proposals in chapter 4.

CLC Response: CLC again asks that no inferences be drawn from the way in which it has answered the 'closed' questions in this section. During the course of submitting responses online, we found that we were unable to proceed without submitting an answer in circumstances where we did not wish to do so given our objections to the premise of those questions. We also note that one 'open question' relation to the proposals in relation to Age Assessments and the creation of a National Age Assessment Board appears to be missing from the online 'portal'. Please take the following as our submissions in respect of this section of the Immigration Plan, both in relation to Age Assessments and, thereafter, in relation to the other proposals.

Age assessments are a matter for the Northern Ireland Assembly, falling within the remit of the Department of Health. In this respect we consider that the Plan conflicts with the devolution settlement for Northern Ireland. In practice, age assessments are currently based on a holistic assessment by 'Merton' trained social workers with multi-agency input. There is no evidence to suggest that this approach is not working well in relation to identifying and safeguarding children in Northern Ireland. CLC fully endorses the submissions made by the Refugee and Migrant Children's Consortium (RMCC), of which CLC has recently become a member. In particular, we wish to emphasise that the risks which stem from a child being placed in adult detention and being subjected to adult asylum processes and procedures far outweigh the risks

which might present as a result of a young adult being placed in the care of social services, where there is considerable supervision in place.

Furthermore, we do not support in any way any proposals to introduce medical age assessment which are strongly contested and susceptible to a high margin of error. Notwithstanding that these practices are adopted in other European countries, as referenced in the plan, the use of medical assessments is not supported by the UN High Commissioner for Refugees. As noted in RMCC's submissions, "Medical bodies [in the UK] are unequivocal in their rejection of the use of scientific methods to assess age".

We are concerned about the way in which information regarding age assessments has been presented in the "In practice" section of the plan at Chapter 4. CLC notes that the statistics in relation to the number of cases in which applicants were determined to be adults, following age assessment, are based on initial assessments and take no account of cases which were appealed, judicially reviewed or in which the decision did not otherwise stand.

It is widely recognised that physical appearance and demeanour alone are insufficient bases upon which to make an initial assessment of age. The margin of error in relation to assessments of age, recently acknowledge by the Supreme Court, in the Secretary of State's appeal of the decision in BF (Eritrea), indicates that it is entirely inappropriate to suggest that a lowering of the test by which applicants should be treated as adults, based on their physical appearance and demeanour, from 'suggests they are over 25 years of age' to 'significantly over 18 years of age'.

The Plan makes no reference to funding provided to the Trusts in Northern Ireland in respect of UASCs. There is no reference to devolved issues, including the implications of the Age Assessment proposals for funding and obligations for the Health and Social Care Board in Northern Ireland.

Very little detail has been provided in relation to the proposed National Age Assessment Board. It is not clear how it would be established, configured, how it would sit within the relevant processes and where within Home Office. We have significant concerns in relation to the independence and oversight of such a Board.

There is no acknowledgment that the primary duty of social services is child protection, whilst the primary duty of the Home Office, with regards to asylum applications, is border control and immigration enforcement. We consider that creating an obligation on Local Authorities, or Health and Social Care Trusts, as the case may be, to carry out age assessments conflates and confuses the different reasons for carrying out age assessments, depending on which organisation considers it necessary. It is an extremely worrying development that the Home Office proposes that its own staff with no social work training or background will make initial assessments of age. A vast body of case law, in respect of age assessments has developed, and continues to be developed, through the common law. It has developed over many years as a result of a number of cases in which judges have considered the many complex, legal aspects of such a process, the outcomes of which have profound and potentially life-long implications for children and young people. For that reason, we do not consider that it would be either possible or desirable to proscribe this process through a statutory instrument or instruments.

Age Assessments engage the following substantive rights (this list is not exhaustive):

- Best interests (Article 3 CRC, Article 24 CFR)
- Non-discrimination (Article 2 CRC, Article 21 CFR, Article 14 ECHR (in conjunction with Art 8))
- Right to identity (Articles 1, 7 and 8 CRC, Article 8 ECHR)
- Right to express their views freely and right to be heard (Articles 12 and 14 CRC, Articles 24 and 41 CFR)
- Respect, dignity and right to integrity (Articles 3 and 37 CRC, Articles 1, 3 and 5 CFR)
- Right to an effective remedy (Articles 12 and 47 CFR)

CLC considers that the proposals set out in relation to age assessments, risks breaching some or all of the substantive rights of children and young people.

In respect of the remainder of the proposals in this section, our submissions are as follows:

To conflate criminality with the process of claiming asylum is a fundamental breach of the principles set down in the Refugee Convention. We are concerned by the many

unfair and misleading representations within Chapter 4 of the Immigration Plan. For example, “genuinely vulnerable people” don’t always “play by the rules”, such as it is phrased and presented by the government in its plan. Playing “by the rules” is often not an option for those who are desperately in need and where the rules are inherently unfair and fail to offer them the protection they are entitled to.

Vulnerability and desperation will lead people to attempt to enter the UK by any means, whether they are considered by the UK government to be illegal or not. Refugees are unlikely to know what actions are considered by the UK government to be illegal when fleeing persecution and attempting to enter the UK. In any event, the action of paying smugglers to enter the UK without leave to enter or documentation has no bearing on whether or not they are a refugee, under the Refugee Convention.

Vulnerable people and ‘genuine’ refugees are not all ‘poor’ or unable to pay those criminals. This does not make them an ‘economic migrant’, nor does it mean that they are not a refugee.

The money or means to pay for such journeys may be the result of having worked or having been exploited on their journey to the UK. This, again, has no bearing on whether or not they are a refugee, as defined by the Refugee Convention, whether declared/recognised by the UK or not.

CLC disputes and takes issue with the suggestion that removals being at their lowest level since 2004 is “partly due to repeated legal protection claims (often without merit and made at the last minute)”. This does not provide context to legal claims or a full picture of the removals process and the difficulties the government has with effecting removals due to the potential illegality of same in many instances e.g. where a protection or human rights-based claim has not been submitted (due to lack of access to funding for legal advice) but where such an issue is obvious to the Home Office from the asylum application.

We take issue with the prolific use of the term ‘safe and legal’ routes and the way in which the entire plan is presented. To suggest that only those who arrive by ‘safe and legal’ routes are entitled to the protection of the UK suggests that those who make dangerous journeys could not, as a result, be refugees and are less deserving of the protection of the law; it is the perpetuation of the notion that there are ‘good’ refugees and ‘bad’ refugees. Furthermore, it does not acknowledge that many of those who

make dangerous clandestine journeys to the UK feel they have no other option, if they wish to claim asylum in the UK. This is often the case given that it is not possible to claim asylum from outside of the UK, unless they are in a country for which the UK has created a resettlement route. It does not acknowledge that the UK may be where their family members are and there is no legal basis upon which to apply from outside the UK to join them. It does not acknowledge other connections to the UK, such as speaking the English language. Nor does it recognise that asylum seekers are not required by law to claim asylum in any particular country and that they have an element of choice. It is CLC's view that the UK is using its geographic location in seeking to deny protection to those who are entitled to it and avoid sharing responsibility with other European countries who are struggling to cope with the numbers of people claiming asylum in those countries.

The 'safe and legal route' proposal does not acknowledge that there is a statutory defence to certain otherwise criminal offences with regards to illegal entry and use of false documents. It also fails to acknowledge the reality; that there are almost no safe and legal routes available.

In relation to proposed inadmissibility rules, if they broadly reflect what is contained within the current inadmissibility policy, they are, in our view, entirely unworkable and ripe for legal challenge. This is likely to result in a notable increase in legal aid spend.

It is notable that the UK has not yet secured any agreements with third countries with regards to the return of refugees. Accordingly, all the policy does, and the proposed legislation is likely to do, is add at least 6 months to the delays experienced by those who are seeking asylum who do not arrive through a 'safe and legal route'. This is likely to result in an increase spend on asylum support services. It will also have a significantly adverse effect on the mental health of those who are seeking asylum, which in turn will impact on the ability to integrate with and contribute to society, if leave to remain is granted.

To create a "rebuttable presumption that we can return individuals to all EEA member states and other designated safe countries" belies the fact that no agreements with those states or countries have been reached to date and there are suggestions that many European countries will not enter into such agreements with the UK.

The suggestion that the UK will extend the asylum estate is deeply concerning. The proposal with regards to offshore processing is even more concerning. This comes at a time when the Irish government has committed to ending 'Direct Provision', such is the outcry about the conditions and rights violations which stem from what is effectively an extension of immigration detention. We note the scathing nature of the recent report in relation to the Napier Barracks, by Her Majesty's Inspectorate of Prisons. CLC trusts that the findings detailed in the report do not require repeating in this submission, other than to say, in very basic terms, that the building was deemed unfit for habitation. This is one symptom of the privatisation of certain aspects of immigration system. The treatment of those in immigration detention centres are the subject of previous investigations and reports. Despite the findings of HMIP report, the government is hereby proposing to extend the provision of such sites in future, described by some as the 'warehousing' of asylum seekers. To further suggest or leave open the potential for off-shore processing is quite astonishing. Notwithstanding the many human rights issues this raises, too many to detail in this submission, it begs the question as to the funding and logistics of such a system, with regards to transferring refugees to such sites as well as managing and running such facilities outside of the UK.

In relation to question 20, there is so little detail regarding the proposals that it makes it almost impossible to respond. For example, the proposed definition of "constitute a danger to the community in the UK" has not been provided. It is not clear if these proposals would be applicable to those to whom temporary protection status, it is proposed, will be granted.

In general terms, CLC considers that any interference with refugee or temporary protection status on the basis of criminal convictions which result in custodial sentences of one year to be draconian and unfair. There is no indication of what the proposed "clearer and higher standard for testing whether an individual has a well-founded fear of persecution" will be.

With regards to age assessments, see the submissions at the beginning of this answer. Again, to include this proposal within a question about criminality is dangerous and deeply concerning.

In relation to the ranking of the 4 statements, in the preceding section, for which there is little to no detail, is a vast over-simplification of what the process of assessing asylum claims entails. CLC considers that 'asylum processing centres' is a pseudonym for 'immigration detention'. We repeat comments made elsewhere about the dangers and procedural unfairness of creating a two-tier system of asylum seekers. We also repeat our concerns about the nature of proposed processing centres. We find the phrase "are covered", in statement number 4 as it appears in the question, to be entirely obscure, and reflective of the rushed and ill-thought through nature of the plan in general.

Response to 'Chapter 5: Streamlining Asylum Claims and Appeals'

Question 26: Effectiveness of reforms around appeals.

CLC Response: Not at all effective for the first. Not at all effective for the second. Don't know for the third.

Question 27: Effectiveness of reforms around appeals.

CLC Response: Very effective for first proposal. Not at all effective for all the others.

Question 28: Principles as laid out in the plan.

CLC Response: CLC did not feel able to answer this question in a manner that accurately reflected views of the organisations, as the closed question did not allow for exceptionality.

Questions 29 and 30: 'One stop process'

CLC Response: CLC is concerned by a number of proposals and statements made in Chapter 5.

Cherry picking simplistic and partial facts about what are atypical and individual cases; as is done in Chapter 5, to try to advance reasons for curtailing the rights of a very large group of people, is never justified. This is particularly so when that group consists of victims of persecution; victims of torture; victims of trafficking; children (including unaccompanied children); sick people and other groups and individuals who are vulnerable and at risk.

Rights of Appeal

CLC is particularly concerned by any undermining of the automatic right of appeal for those refused asylum. There are a number of inaccurate statements and important omissions relating to asylum appeals in Chapter 5 that seek to undermine this important right and erode its important role. It is not correct to say that nearly all of those who are refused asylum, subsequently lodge an appeal. 70% of those refused asylum subsequently appeal. Of those who do appeal, almost half of those appeals are successful[2]. Curtailing a right of appeal risks the lives of thousands of refugees, who may later be returned to countries where they would be at risk of persecution, harm and even death. This would be contrary to the UK's commitments under the 1951 Refugee Act, the ECHR, the Human Rights Act, the Convention on the Rights of the Child and s55 of the Borders Citizenship & Immigration Act 2009. Given the high rate of successful appeals, it would be a much better proposal if the Home Office committed to getting their decisions right, rather than curtailing the rights of the victims of their erroneous decision making.

Judicial Review

CLC is also concerned by any attempt to undermine the ability to access judicial review, as a remedy, in an immigration context. The text sets out what it portrays as the "failure rate" of immigration judicial reviews; citing figures for those that are "dismissed or refused". This figure is entirely erroneous. Lawyers who take immigration Judicial Reviews are familiar with the fact that when decisions are challenged, the Home Office very often grants the relief sought in advance of JR hearings. This renders the Judicial Review academic and it is thereafter dismissed. Judicial Reviews that are dismissed often achieve everything that they set out to achieve in terms of compelling the Home Office to take lawful decisions. Many judicial reviews involving children are taken as a result of the Home Office failing to follow its own child specific policies; failing to fulfil its Section 55 duties (relating to safeguarding children and acting in their best interests); and failing to act in accordance with the ECHR. Instead of seeking to remove judicial oversight of decision making, the Home Office should commit to lawful decision making. Access to judicial review plays a

[2] https://migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/

valuable role, in trying to ensure that the legal protections and rights of refugees, asylum seekers and immigrants are upheld especially UASC.

One-stop process

The proposals refer to the introduction of a one-stop process to prevent new claims and late claims being advanced. There already is a process in place by virtue of s120 of the NIAA 2002, in relation to asylum and human rights claims. What this proposal seems to be about, is ensuring that victims of trafficking are subject to the same requirements. It also seeks to introduce ways to dispose of persecution, human rights and trafficking claims, without any substantive or meaningful consideration of them (for example, through the reintroduction of the previously massively discredited and held to be unlawful, fast-track appeals process[3]).

CLC is very concerned about the impact these proposed changes will have on children. We are concerned by a proposal that any child would be required to reveal the totality of their abuse and harm, or risk being excluded from protection. This would clearly be in breach of the UNCRC and in particular Article 3 CRC and in breach of the Statutory Duty of the Home Office to safeguard children and ensure that their best interests are a primary consideration *as per* S55 of the BCIA 2009.

CLC is particularly concerned that trafficked children are being pulled into the sphere of immigration decision making. At a time when record numbers of children are being recognised as victims of trafficking, we are deeply disturbed at any proposals that would erode their rights and risk them being further harmed and exploited.

CLC represents the majority of unaccompanied asylum-seeking children in NI. Many of these young people are extremely traumatised and have very complex mental health issues. Our experience is that it can take time to build trust before these young people are able to open up about their experiences (particularly experiences relating to trafficking, sexual abuse, gender-based violence etc).

Any system dealing with asylum seeking children; abused children; children who are victims of trafficking, that has a cut-off date for entitlement to safeguarding and

[3] https://www.theguardian.com/uk-news/2015/jun/12/fast-track-asylum-system-ruled-unlawful#:~:text=A%20fast%2Dtrack%20immigration%20appeals,appeal%20was%20%E2%80%9Cstructurally%20unfair%E2%80%9D.

protection, would rightfully be regarded as inherently inhumane. Such a system would be contrary to the UK's international and national obligations relating to children, refugees and victim of trafficking.

Children who are victims of persecution and victims of trafficking deserve a child rights based, human rights-based, victim focussed approach to protect them.

Panel of Experts

CLC is opposed to the idea of the government creating a "panel of experts". We do not see how this could be "independent" in any way, given the issues and parties involved in the "disputes" that are requiring of expert evidence.

Good faith requirement

The legal profession is heavily regulated. There are strict codes and disciplinary measures in place that govern solicitors' and barristers' conduct. They are "officers of the court" when they appear in court on behalf of clients. This appears to be a thinly veiled attack on the integrity of immigration lawyers and a continuation of other inappropriate comments that were made by the SSHD. These have already been dealt with by the various professional bodies and it is disappointing and concerning to see them effectively repeated in a new guise.

Response to 'Chapter 6: Supporting Victims of Modern Slavery'

Questions 31 and 32: Modern Slavery

CLC Response: CLC has not answered the vast majority of question 31 given that we do not agree with the premise for many of the statements.

CLC wishes to echo the entire submissions by Anti-Trafficking Monitoring Group (ATMG), of which CLC has recently become a member, in relation to Chapter 6 of the Immigration Plan. In particular we wish to highlight the ongoing theme of conflation of different legal processes; in this instance the asylum application process and the trafficking referral process. It has long been a matter of concern for CLC that the trafficking determination process is the responsibility of the Home Office, in circumstances where the Single Competent Authority shares information with the Asylum Team and vice versa. In our experience, the trafficking referral process is

complicated, confusing and does little to protect victims. Instead, it often retraumatises individuals, who are engaged in a painfully slow process which involves extensive, repeated questioning, and often with the result that they are disbelieved.

As you will note, ATMG has raised the issue of the implications for the devolved administrations. CLC notes with concern the lack of reference to the NI-specific trafficking legislation and the statutory role of the Independent Guardian Service (IGS). We consider that a strengthening and embedding of the role of Independent Guardians is required. Furthermore, we recommend that NI be brought into line with E&W in relation to those who are designated as first responders, to include the current providers of IGS.

We also echo the comments of ATMG with regards to the role of paramilitary organisations, which is of particular relevance to children and young people in NI. CLC is of the view that the land border now has with the EU, as a result of Brexit, has increased the risk of trafficking and retrafficking in and through NI.

Victims and potential victims of trafficking require access to specialist mental health services. Waiting lists for such services are notoriously long in NI. Furthermore, it is great concern and regret to CLC that there are no torture or trafficking experts in Northern Ireland. This is an issue that CLC will continue to highlight. Importantly, for the purposes of this consultation, it creates a disparity between VOTs in different parts of the UK.

The role and importance of legal advice needs to be enhanced not diminished. CLC would welcome more details about the one example of so-called “abuse” of the modern slavery protections outlined in the Immigration Plan. In particular, it would be important to know what legal advice the individual in question had access to prior to his initial conviction and removal from the UK. Legal entitlements and protections for VOTs are provided for under ECAT, and specialist legal advice and representation is required in this regard. CLC has already raised the issue of the lack of legal expertise in this complex area of law specifically in Northern Ireland.

In relation to the threshold for issuing a positive Reasonable Grounds Decision, we refer you to ATMG’s submissions in this regard, in terms of the Explanatory Report to ECAT, the EU Directive and the UN Commentary on this issue.

In CLC's experience, child victims and potential victims of trafficking are highly traumatised and vulnerable, particularly following their arrival and or referral to social services. It is appropriate that the Reasonable Grounds threshold remain at the level currently in place, given the urgency of the need for intervention and support. Furthermore, VOTs may still be under the influence and control of their traffickers, thereby supporting the need to retain the lower threshold, to ensure that child victims and potential victims of trafficking are protected. This element of control and influence, as well as fear experienced by many victims, is also relevant to so-called 'credibility' concerns outlined in the Immigration Plan. It is one of the main reasons why a 'one-stop' process, as proposed in the plan is not appropriate. It often takes months and may take years for VOTs, particularly child victims, to trust those in positions of responsibility and provide the information which is relevant to their trafficking referral.

Finally, we note the added conflation in this section, once again, of victims, and those who require the protection of the law, with criminals and those that the law seeks to punish.

Response to 'Chapter 7: Disrupting Criminal Networks Behind People Smuggling

Questions 33 – 37

CLC Response: We welcome the acknowledgement at the beginning of Chapter 7, that those seeking to gain entry to the UK are vulnerable to exploitation and that they are suffering "human misery".

The false narrative of illegality and criminality

Given the acknowledgement at the outset, it is unwelcome that this acknowledgement is then followed by an indication that the government is seeking to further criminalise and penalise desperate people, trying to enter the UK. We reject the narrative of illegality and criminality throughout this chapter, in so far as it pertains to those attempting to enter. To state that it is "unacceptable" that those entering are not "appropriately penalised for breaking the law", flies in the face of Article 31 of the Refugee Convention, that specifically prohibits the penalising of refugees in any manner for irregular entry.

"Safe countries"

It is simply not correct to refer to “manifestly safe European countries”, in relation to asylum seeking children. A recent report claims that over 18,000 unaccompanied asylum seeking children disappeared from state care across Europe between 2018 and 2020[4]. Many children’s organisations believe this figure to be underestimated. Any child who is encountered coming to the UK or having arrived in the UK, should be protected by the UK. Safe and legal routes should be available for all asylum seeking children wishing to join family members in the UK.

Safe legal routes

CLC considers that the proper way to deal with people smuggling and clandestine entry, is to ensure that there are safe, legal routes available for those seeking asylum. This is particularly necessary for children, who are at extreme risk of exploitation and abuse from smugglers and others. Children entering are fleeing war, poverty, torture, persecution, exploitation and other forms of harm. They are vulnerable victims. They are taking these hazardous journeys through desperation. They are not criminals. They are in need of and deserving of our assistance, our protection and our respect.

Response to ‘Chapter 8: Enforcing Removals including Foreign National Offenders

Questions 38 – 41: Enforcement

CLC Response: CLC is gravely concerned by the proposals contained in Chapter 8. Removing financial support from vulnerable people, to try to force them to leave the UK, risks plunging thousands into poverty and destitution. This includes families where there are children. We are also concerned at proposals to lock up people, in order to compel them to comply with immigration decisions. These proposals run contrary to the Home Office’s Section 55 duties; in relation to safeguarding children and ensuring that their best interests are upheld.

Withdrawal of financial support for “failed” asylum seekers

[4] https://www.infomigrants.net/en/post/31613/more-than-18-000-migrant-and-refugee-children-missing-in-europe

We note the recent decision by the English High Court, holding the NRPF Scheme contained in Appendix FM to be in breach of Section 55[5]. No part of a civilised system would ever involve a system of enforcement through the starvation and destitution of children. Any system that relies on this method of compelling obedience, could rightfully be regarded as inherently inhumane. This proposal also risks further findings that the government is acting in breach of the UNCRC and Article 3 ECHR in relation to the homelessness and destitution of asylum seekers[6]. The implementation of such a draconian policy would also increase levels of modern slavery in the UK; as the individuals affected would be left exceptionally vulnerable to exploitation and abuse.

Health & Social Care Trusts in NI have a duty to provide assistance to "children in need" under Article 18 of The Children (Northern Ireland) Order 1995 (This is the same as s17 of the Children Act 1989). We are concerned that withdrawal of asylum support will place undue pressure on children's services at a regional level. This financial support should be coming centrally, from the Westminster government.

Detention for non-compliance

CLC is also concerned by the idea that "non-compliance with proper immigration processes" could be used as a reason for refusing bail. It is inconceivable that the Home Office would ever be likely to concede that they are asking people to comply with improper immigration processes (despite copious evidence that this is often the case). The right to liberty is one of the fundamental rights set down in Article 5 of the ECHR. It should not be a tool in the arsenal of a government; used to compel individuals to comply with immigration procedures. No mention is made of whether children and/or the parents of children will be subject to these barriers to bail. CLC is opposed to the immigration detention of all children in all circumstances.

Any other feedback

This consultation process has been extremely convoluted, confusing and difficult to navigate. CLC has made submissions in relation to the style of questioning, where

[5] https://www.bailii.org/ew/cases/EWHC/Admin/2021/1085.html
[6] http://www.landmarkchambers.co.uk/wp-content/uploads/2020/12/With-NCN-DMA-v-SSHD-AA-v-SSHD-Judgment-1412-2020.pdf

appropriate, but there are a vast number of issues that we would have raised in greater detail in relation to the Plan and the consultation process, had sufficient time been provided. The lack of detail in relation to the proposals, the limited amount of time provided for responses to be submitted, the difficulty of navigating the consultation, while simultaneously accessing all the relevant literature accompanying it, leads us to the conclusion that this process was designed in such a way that it actively discouraged meaningful engagement and critique. CLC is dismayed and disheartened that legislation, based on the proposals contained within the plan, is intended to be introduced in Parliament in the coming weeks. It begs the question as to whether much, if any of the submitted responses were intended to be taken into account. CLC takes its duties and responsibilities towards our extremely vulnerable group of clients very seriously. We will continue to advocate and speak out on behalf of children and young people to the best of our ability.

Conclusion

Notwithstanding the above disheartening issues, CLC has been heartened by our meetings and discussions with colleagues from across a broad spectrum of civil society over the last number of weeks. It is clear that there is an earnest desire to see the rights of refugees protected. It is clear that across civil society, there is almost universal opposition to the majority of proposals set out in the Plan. We urge the government to engage meaningfully with the submissions that are received and to take them on board before any new legislation is introduced.