HOUSE OF COMMONS

Home Affairs Committee

Oral evidence: Channel crossings, migration and asylum-seeking routes through the EU, HC 705

Wednesday 18 November 2020

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Watch the meeting

Members present: Yvette Cooper (Chair); Ms Diane Abbott; Laura Farris; Simon Fell; Andrew Gwynne; Adam Holloway; Dame Diana Johnson; Tim Loughton; Stuart C McDonald.

Questions 450 - 504

Witnesses

I: Michelle Knorr, Doughty Street Chambers; David Blundell QC, Landmark Chambers; and Ainhoa Campas Velasco, Southampton University.

II: Alp Mehmet, Migration Watch; Dr Peter Walsh, Migration Observatory; and Jill Rutter, British Future.

Written evidence from witnesses:

British Future written evidence

Examination of witnesses

Witnesses: Michelle Knorr, Doughty Street Chambers, David Blundell QC, Landmark Chambers, and Ainhoa Campas Velasco, Southampton University.

Chair: Welcome to this evidence session of the Home Affairs Select Committee inquiry into Channel crossings. We are very grateful to have our witnesses joining us this morning. We have in our first panel David Blundell QC, Ainhoa Campas Velasco from the University of Southampton and Michelle Knorr from Doughty Street Chambers. Thank you very much for joining us this morning.

We want to explore this morning some of the legal issues around the Channel crossings, migration and asylum.

Q450 **Tim Loughton:** Thank you to our witnesses. As you will have seen, we have had quite a lot of sessions now on this inquiry. The one session we have not had but would like to have is with representatives of the French Government, because we have been hearing evidence about what is allowed and what is not allowed about intercepting boats in the Channel. It would be very helpful to have your legal view on what is and what is not allowed.

It strikes me that under any manner of conventions, be it the 1951 UN Refugee Convention, the UN protocol against the smuggling of migrants or the UN Convention for the Safety of Life at Sea, there are grounds where a French border force or British border force could intercept migrant boats coming across the Channel lawfully and have those passengers returned to France. Could I ask for your views on what circumstances you think that those boats could lawfully be intercepted and then potentially returned to France, if that is where they started their journeys?

Chair: Before you respond, by all means do say if this should be answered by somebody else on the panel. Do not feel the need to answer every question.

Michelle Knorr: I was going to suggest that perhaps Ms Campas Velasco would be better placed to answer that question than I would.

Ainhoa Campas Velasco: Thank you and good morning. Absolutely, as you rightly said, the safety of life at sea, based on the SOLAS Convention, would be a ground for preventing vessels from departing the port when there is a risk to the lives of those on board. In particular, regulation 19(c) of the SOLAS Convention requires that coastal states do not allow the departure of a vessel until it can do so without danger to the ship or the persons on board. That article is not related to the unsafe practices associated with the smuggling of migrants, but obviously has a very heavy bearing on this particular issue. On the grounds of the safety of life at sea, France or any other coastal state should prevent the departure of unsafe vessels to avert risks and dangers to those on board.

Q451 **Tim Loughton:** That is preventing the departure, but on the grounds

that they are already in the sea—that is what we are very interested in—what are the powers in that case?

Ainhoa Campas Velasco: In terms of the safety of life at sea and safety regulations and laws by coastal states in their territorial waters, the same principle would apply. It also would have the protocol on smuggling, which foresees interventions at sea and taking necessary measures when a vessel is known to be engaged in smuggling activities. There would be a possibility for the state to approach that boat in order to target the smuggling activity while giving consideration to the safety of those on board that vessel and their human rights and refugee considerations, but there would be a possibility for the state to approach that boat and take necessary measures to prevent them from continuing their journey to other coasts—to other states.

Also, we would be looking at the fact that those migrants on board that vessel would be very likely in a state of distress. Therefore other measures should be taken into account, such as the rescue of those persons, retrieving them from that situation of distress and delivering them to a place of safety.

Q452 **Tim Loughton:** Could you elaborate a bit on "necessary action", as I think you described it, and then if anybody else wants to, they can come in on this as well? As I understand it—we took evidence from some Australian witnesses last week on how Australian Governments have dealt with refugee boats in the past—under the Convention for the Safety of Life at Sea, Article 19 discusses the meaning of innocent passage. Clearly a migrant boat full of people coming from France, which is not a country of danger, would therefore not have the right to land in the UK, so they would not be under innocent passage.

Secondly, any person who has organised that passage, if they are on board, then certainly they are committing a crime. Presumably those migrants, if they paid money to a people trafficker, have been accessories to that crime as well. On all sorts of grounds then, would you agree that that boat could be intercepted and all the occupants taken back, even if it was against their will, to the French coast? Similarly, if British Border Force was to pick up a boat of people, it would have strong grounds to be able to hand them over to French authorities in French territorial waters or, better still, the French would allow safe passage back to the French coast, if that is where they came from. Do you agree that that is a legal scenario?

Ainhoa Campas Velasco: I think there are very different points in this scenario, which need to be broken down in order to bring a bit of sense to my answer. You raised the issue again of safety of life at sea. That has to prevail in all stages of the journey across the sea.

You mentioned innocent passage. I think that was discussed in a previous session. This boat would lose that right of innocent passage because the primary target of that boat is to unload migrants, refugees and asylum

seekers on to the shores of another state, breaching immigration laws, thus there is no innocent passage.

Having said that—and I think this was also considered in the last session—obviously that incurs penalisation and the enforcement of the law by the coastal state, but there are some considerations that need to be taken into account. First, that would be a boat in distress, given the characteristics of that boat and how they are travelling on board that vessel. Therefore they would have immunity or a defence to seek a place of refuge in the port or territorial waters of that coastal state, and by all means that means going through the territorial sea. Also with them being in distress, an obligation of rescue arises on the coastal state that is responsible for that search and rescue region. In that case, that would be the UK.

Also the criminalisation would target only the activity and those facilitators who are benefiting from the procurement of crossing borders illegally, so it would not target at all the migrants who have been the object of that smuggling activity. We need to separate those very clearly, as the protocol against smuggling very clearly states. There is no criminalisation of the migrants just because they have paid the smugglers. They have been the object of the smuggling and they cannot be criminalised because of that.

Also with illegal entry in the UK, we would be looking at perhaps, for some of them—maybe not all of them—Article 31 of the Refugee Convention, which has been mentioned also in the past, which is an article that provides immunity for those entering illegally, provided they come directly from a country where they felt threatened on refugee law grounds and have a good cause to enter.

Q453 **Tim Loughton:** Which is clearly not the case here though, is it, because they are not coming from a place of danger if they are coming from France? That does not apply here, does it?

Ainhoa Campas Velasco: The way the article has been construed, very largely, is that it cannot be interpreted strictly and narrowly, otherwise it would apply to almost no one. "Directly" does not mean that it is a flight directly from the country of origin or a dangerous country. They could be transiting other countries on the way, and not sought or found protection on their way or not felt that they could reasonably get protection—I think the UK Immigration and Asylum Act also foresees that possibility—and they will need to show good cause for that to enter illegally.

Tim Loughton: Thank you. I think Ms Knorr wanted to come in and then perhaps Mr Blundell, if you have any comment to make on my assumptions there.

Michelle Knorr: On that point of coming directly, that has been litigated in the UK courts quite some time ago, and it is recognised that refugees do have some element of choice in where they choose to claim asylum. A

short-term stopover en route to an intended sanctuary does not forfeit the protection of Article 31, which is the clause saying that you should not penalise a refugee for irregular entry or illegal entry. It is quite a complex test legally to work out, if they did go through another country, whether that stay was long enough for them to lose that protection. It is not a straightforward issue. In fact, the Government's argument in this key case that I am thinking of was precisely that—that anyone who has come through countries such as France and other European countries would obviously not qualify for that protection. That is precisely what was rejected by the courts in that case.

Q454 **Tim Loughton:** You referred to short stopovers. What constitutes a short stopover?

Michelle Knorr: It depends. That is what I am saying. You would have to look at the facts of the individual case. It is also very important that this is a defence to a criminal charge, so it does not affect your entitlement to refugee protection or to seek refugee protection. You may be a refugee. You may, as a refugee, also end up being prosecuted for illegal entry if you do not have the protection of this clause, but it is complex. It is not a straightforward, bright-line rule, and it would depend on the individual asylum seeker and their reasons.

Q455 **Tim Loughton:** I understand. Can we have details of the case—perhaps afterwards you could just send those—so we can look at that case in more detail?

Michelle Knorr: Absolutely, yes.

Q456 **Tim Loughton:** Sorry to cut you off, but colleagues want to come in as well. Finally, Mr Blundell, is there anything you want to add or demur from in terms of what you have heard already?

David Blundell: No, I agree entirely with the points that were made about Article 31 of the convention, first of all by Ms Campas Velasco and then secondly by Ms Knorr.

The point I would emphasise is, as Ms Knorr has said, it is not a bright-line issue when you are looking at whether somebody had a reasonable opportunity to claim asylum in a state en route. It does have to be quite a fact-sensitive analysis.

Secondly, of course that is only the question of criminality. It does not affect the ability to claim asylum under the Refugee Convention. I agree entirely with the way the—

Q457 **Tim Loughton:** Can you just answer me a final question? Is there anything in international law that would prevent Border Force picking up migrants in a boat that has reached British territorial waters and returning them to the French coast, obviously with the acquiescence of the French authorities?

Secondly, in terms of obligations for a boat in distress, can a boat be

deemed to be in distress even if the people on board it are saying, "We are not in distress"? Is that entirely conditional on them effectively saying, "We are in distress. Please come and help us"?

Ainhoa Campas Velasco: I can answer that. Yes, they can be considered to be in distress even if they do not ask for assistance. Sometimes they would not ask for assistance just simply because they are not in the right search and rescue region for them, because they are aiming to reach another country. Sometimes they are even trying to avoid an assisting vessel because what they want to do is to be rescued somewhere else so they can be delivered to a place of safety in that country. The way has to be assessed. It has to be assessed from the outside, from the masters of the ship who have, on the outlook, seen a potential situation of distress, and from the coastguards and the maritime authorities.

Q458 **Tim Loughton:** If Border Force take a boat or the passengers back to the French coast, is there a problem with that under international law?

Ainhoa Campas Velasco: If the vessel has been rescued in, for instance, the UK search and rescue region, according to paragraph 3.1.9 of the SAR Convention, it is for the UK to have primary responsibility for the co-ordination and co-operation over the delivery of the survivors to a place of safety. For that, they will be taking into account the circumstances of the case, the guidelines on the treatment of persons rescued at sea and also any bilateral agreements or arrangements with other neighbouring countries.

In this case, what would happen normally is that the rescue co-ordination centre would be the one to have responsibility—

Chair: Sorry, just hold on a second. We will just pause for a second so that we can hear you with the echo. Try again.

Ainhoa Campas Velasco: Thank you. What would happen is the rescue co-ordination centre in charge of the rescue operation would liaise with other rescue co-ordination centres and have initiatives to determine which is the most appropriate place for disembarkation. Liaising with other rescue co-ordination centres could be within the search and rescue region or the search and rescue region of another country. If there is an agreement between rescue co-ordination centres and those involved in that rescue operation that the most appropriate place of disembarkation is a port in France, then that disembarkation would be allowed and would be in accordance with international law.

Tim Loughton: Thank you very much. That is very helpful.

Chair: Thank you. Andrew Gwynne.

Tim Loughton: Or not.

Q459 **Andrew Gwynne:** Sorry, Chair. You took me by surprise. I want to follow up on some of the questions that Mr Loughton has put and delve

deeper into the legal obligations and duties of states regarding refugees. When a refugee arrives in a safe country, what are the obligations that that country has in order to provide them with the safety and care that they need? What obligations does that country have to provide them with asylum?

Michelle Knorr: If someone claims asylum in a country, then they have to process their claim. Under, for example, the Dublin arrangement—but we do also have domestic arrangements—they may consider whether they have come through another country and they may consider whether to send them back to that country. Otherwise, if they are a signatory to the Refugee Convention and they are a country that processes asylum claims, then they would have to consider the claim substantively. There are a raft of measures. While you are considering someone's asylum claim, you have to provide them with safe accommodation and access to other things to meet their essential needs and so on.

Q460 **Andrew Gwynne:** We hear a lot about this definition of a "safe first country". How is that defined and what do you think are the benefits and shortcomings of that definition?

Michelle Knorr: In our immigration rules, if we look at the domestic rules, there are two separate concepts. There is the first country of asylum concept and Dublin, for example, does encompass that. That is where someone has either been recognised as a refugee in another country and then you might send them back to that country or they have already made an application in that country, so that country could continue deciding the application. That is for someone who maybe has left partway through the status determination process or—and this is probably what will be most of interest to the panel—where they could have made an application to that country but did not do so, where there were no exceptional circumstances preventing such an application being made, and finally where they will be readmitted to that country. Where those criteria are met, you have a first country of asylum.

I should make clear that it is not so much an obligation on the refugee to necessarily claim in the first safe country. As I have said, it is accepted under international law that refugees may have a destination in mind. They may want to get to a particular country because of family, because of culture or because of language. Maybe they have a medical degree and that degree is recognised in the UK but not in France. There could be a whole range of reasons. Maybe they studied here when they were young. There are a million different reasons why some refugees aim to get to one country and others aim to get to another. In our domestic law, we are able to send people back if those criteria are met.

The safe third country criteria under our domestic law are different. For safe third countries, you do not necessarily need to have passed through a country, but it is where there is a country that will offer you protection in respect of non-refoulement, but also where you have a sufficient connection to that country and where you will be admitted. The

connectivity issue is quite complex, but, for example, where someone ended up in the UK but the rest of their family was in Canada, we could say, "They have very strong connectivity to Canada because the rest of their family is there". If Canada agreed to admit them, then we could send them to Canada under those rules, even if they have not come through Canada. Legally those are the two streams, if you like, where you could send someone who claims asylum here to another country.

It is very important that both of those criteria have the requirement that they will be admitted. That obviously requires an agreement. That is why an agreement like Dublin is important. If you do not have an agreement, what the Home Office guidance says is that it has to be an ad hoc, case-by-case negotiation to admit someone to another country. In my practice, I do not think I have ever seen anyone admitted to a non-EU country. It is very unusual. It may happen, and you could ask for Home Office statistics. Having agreements in place is critical.

Q461 **Andrew Gwynne:** Thank you. We are well versed on the reasons why many migrants do not remain in the first safe country that they arrive in. We have heard it in some of the evidence sessions that this Committee has held. There has also been some evidence given to us that the authorities in that first safe country have not always been forthcoming in offering routes to asylum or advice on how to claim asylum. What are the legal obligations of a country to do that?

Michelle Knorr: I would say it is difficult. The main cases I have been working on are unaccompanied children. We have certainly said throughout the litigation we have done that children who are in, for example, camps in France must be provided with information. It is not necessarily an express part of the law, but always with human rights law you have to make it practical and effective. People may not know how they enter a process, what is on offer to them or that they can have their claim considered—also, very importantly, that they could seek family reunion through the Dublin regulation if they have family in the UK, rather than trying to go through unlawful routes. We would certainly say it must be part of that system to ensure that it is accessible and that people are provided with information.

That is particularly the case when they come up against the authorities. Again, what we have seen—and there are many, many reports about this—is that you do have French police, for example, who are on the ground and are regularly interacting with migrants, but quite often that is a violent interaction. We have had a lot of children who have been hospitalised from injuries and had quite serious violent interactions with the police, but were not informed about their rights. That is certainly a very serious issue. It makes an absolutely tremendous difference, particularly for children, but also for adults who are also often vulnerable. They need to be supported to understand their rights and the safe routes both into asylum and to family reunion that are available to them. It is absolutely critical.

If in fact your experience of a country is being beaten by the police, then you probably will not feel safe there, whereas on the other hand, if you are supported to get into safe accommodation and you are looked after, then it is much more likely. We have certainly seen children who have changed their minds about wanting to come to the UK when they were properly supported, for example, in France.

Q462 **Andrew Gwynne:** Lastly from me, and following on from Mr Loughton's questions on the Channel crossings themselves, with our exit from the European Union and the transition period ending in just a few weeks' time, how will the UK's obligations under international maritime law change? Without there necessarily being an agreement between the UK and the EU or even the UK and France, will there be any circumstances under which migrants in the Channel can legally be returned from British waters back to French waters or indeed to mainland France?

Ainhoa Campas Velasco: The maritime conventions on search and rescue and on the safety of life at sea are UN conventions and conventions under the auspices of the IMO. The fact that the UK is leaving the EU will have no bearing on that. The same obligations will prevail. I think that answers the first question.

For the second one, again it relies on these conventions and the fact that the UK cannot unilaterally decide to disembark rescued migrants from the search and rescue region of the UK to France. However, there are mechanisms of co-operation on which the SAR Convention relies heavily, and also the joint action plan by the UK and France regarding co-operation both at sea and also for disembarkation of survivors on land should be borne in mind. If there is an agreement between rescue co-ordination centres that the most appropriate place is a port in France and it is agreed on both sides, then they can be legally disembarked in France, but there has to be an agreement beforehand between France and the UK. That is for each specific rescue operation case, on a case-by-case basis. That is how it will be decided.

Q463 **Adam Holloway:** The behaviour of the French authorities: I am dismayed to hear that young asylum seekers and migrants are ending up in hospital because of the behaviour of French police. It certainly does not happen to British tourists buying duty-free in Calais. Is it possible that the French authorities are applying a different standard to vessels at sea? My understanding is that if you want to take a boat out with more than a five-horsepower engine or more than nine kilometres out from the coast in daylight, you need something called a carte mer or, at night, something called a permis mer côtier. Presumably since the smugglers do not crew these vessels, the French authorities should be sending people back to the coast as they would a normal person operating a boat without the correct certification.

Ainhoa Campas Velasco: The licence to operate that vessel is an example of a much bigger issue and a more important issue, which is that these boats breach fundamental principles of safety of life at sea

based on the SOLAS Convention. On those grounds, yes, French authorities should intervene to avert a serious breach of safety for those who are on board, and therefore a rescue operation should take place and these people should be retrieved from that boat and taken to a place of safety.

Q464 **Adam Holloway:** Why is that not happening? All the other conversation is noise if that is not happening. It sounds like the French are deliberately ignoring their own rules.

Ainhoa Campas Velasco: I cannot speak to that, I am afraid.

David Blundell: I do not have any thoughts on that particular issue there.

Q465 **Adam Holloway:** A further point, if I may. Earlier, we spoke about a "short stopover" in another country, which is entirely understandable if perhaps someone is leaving a war zone, a junction of several countries and they move through one into another. When people spend weeks travelling across Europe and sometimes many, many months in Calais, how can that possibly be described as a short stopover?

David Blundell: Perhaps I can come back with a bit of context with the Dublin arrangements as well. I would reiterate what Ms Knorr said before, which I agreed with, which is that it does depend on the facts. There may be a whole range of circumstances that are relevant in terms of establishing a defence for a criminal prosecution. That is a different issue from establishing whether or not a member state has responsibility for determining an asylum claim.

One of the important things to remember about the Dublin process is that the Dublin III Regulation works on the basis of what are known as the chapter 3 criteria, which are a series of criteria that are applied hierarchically in order to determine which member state is responsible for determining an asylum application. The idea of having passed through a safe third country is quite low on the list of criteria. The criteria begin at the highest with looking at the position of unaccompanied minors and the best interests of the child.

What you find in the first few criteria that are applied in chapter 3 is a focus on ensuring that the best interests are complied with and also ensuring family unity. If people have family members in other states, that will often mean that different states are responsible other than the first state through which they pass when they come into the territory of the EU. When looking at these issues, it is worth having in mind, given that behind this sits the idea of safe third country and safe entry, that in the current Dublin regulation system that is not that high on the list. It is the sixth of the criteria.

Adam Holloway: Thank you very much. Just to be clear about the earlier answer, the French authorities ought to be turning back these vessels by their own maritime laws.

Ainhoa Campas Velasco: Sorry, is that a question?

Chair: I think Adam was looking for confirmation of the statement he made as a correct statement. Adam, do you want to just quickly repeat that statement?

Q466 **Adam Holloway:** Yes. Can we just confirm that what we have heard in the last five minutes is that under French maritime regulations, given that these boats are not crewed by the people smugglers and do not have the correct qualification for operation, the French authorities are applying a completely different set of rules to these migrant boats as compared with what they would do with a French citizen operating a boat without the correct certification?

Ainhoa Campas Velasco: France being party to the SOLAS Convention, they have to abide by the SOLAS regulations on safety of life at sea. Obviously that has a bearing on preventing the departures of unsafe boats, and also taking the necessary measures at sea when they encounter boats in distress—boats in very dire situations, at serious risk of overturning and the people on board drowning. On the grounds of the SOLAS Convention, I can say that France has the right and also duties for the safety of life at sea.

At the same time, when these measures are taken at sea or at departure point, obviously safety is of paramount importance, as are the rights of those on board. In exercising control and jurisdiction over those people, they would have to comply with human rights law and refugee law considerations as well.

Adam Holloway: Thank you. Yet we do see daily French authorities effectively escorting boats that are unseaworthy and operating contrary to the French regulation into British waters.

Chair: I think that is probably an assertion rather than a question. Thanks, Adam.

Tim Loughton: Nobody is disagreeing with it though.

Adam Holloway: Let's have an answer to it. Let's not beat about the bush here.

Chair: It is probably not a question about the application of the law, so I am going to move on to Stuart McDonald. The evidence that we are getting here is immensely helpful for us and hugely interesting and also complicated as well, but we also unfortunately have quite a few questions we still want to get through. Can I ask both Members and also our witnesses to be as concise as possible, given the content of the topics, which I know is not easy, so that we can get through all of it?

Q467 **Stuart C McDonald:** I wanted to ask about the range of safe and legal routes that currently exist for refugees, asylum seekers and people seeking family reunion into the UK, and secondly, how that range of options will be impacted by Brexit and the end of the transition period.

Michelle Knorr: There is Dublin III and, as David has just said, that is a key route to safe family reunification. That will not be available after 31 December, bar some transitional provisions that let some cases complete where a request was made before, but no requests will be able to be made under Dublin. It is important that Dublin is completely different from the other types of routes, which are entry clearance routes. Dublin has a very specific process to it. It is not a process that requires a child or other family member to make an application. You have to interview the child or family member. You have to find out if they have family. There are investigative obligations, for example, to support an unaccompanied child to find their family, to help them evidence that they are related to that person and that that person, if they are a relative, can care for them.

We do that here by a local authority assessment. The child does not have to organise a local authority assessment. It is something that is done as part of a best interests assessment and as part of an assessment of the criteria. It is a system that, as a process, when operated properly, is very accessible to children. They also are given a representative to help them go through and interact with that process, and they have a right to a review and there is a reconsideration process.

It is important to understand that that is very different from the immigration rules. First, the criteria are completely different. They are complex criteria. The only criteria that are relatively straightforward are where you are a child or a spouse of a refugee and you were either born or married prior to the person fleeing to claim asylum. There is a relatively straightforward route under the rules. When I say straightforward, I mean the criteria are straightforward, not the process.

The other criteria are completely different. They have very high thresholds. The types of leave to remain that the family member must have are more restrictive and there are complex evidential requirements for maintenance and accommodation. That is of course because those rules are not about where someone should claim asylum. They give rise to a very strong right to remain in the UK. On those types of routes, a child, for example, would get indefinite leave to remain or five years of leave to remain. Those routes also have very expensive visas.

I apologise, because this is not as quick as perhaps you wanted, but it is quite complicated. In one of the first cases we did, which was just before Dublin family reunion provisions were operating, we brought a case on behalf of three unaccompanied children and a vulnerable adult to reunite with family in the UK. These were slam-dunk Dublin cases. Specifically they were Syrian children who had clear documents and clear evidence that they were related to their family members. The Home Office in that case produced evidence about the immigration rules, but it was accepted—and it is recorded in the judgment—that despite those being slam-dunk Dublin cases, they would not have qualified under the immigration rules.

It is also important to highlight that accessing entry clearance is very difficult. You have to, for example, get to a processing centre, and the Red Cross has recently—I think as recently as last week—produced a report about how difficult and dangerous that can be for people. Children on a Greek island, for example, could not do that because they could not get to the embassy. We see it frequently with people trying to access entry clearance that they cannot access the embassy or the visa processing centre that they would need. I can provide more information, perhaps in writing, because it is quite complex. There are serious barriers to being able to access entry clearance routes.

Q468 **Stuart C McDonald:** If you want to provide more in writing, that would be very helpful. Can I just follow up on something that you said earlier though? You spoke about the fact that Dublin is obviously coming to an end when the transition period ends as well, and you spoke about the UK having to try to either set up bilateral agreements or make approaches on a case-by-case basis, which I think you said you had not ever seen happen in terms of trying to remove a person to have their claim assessed elsewhere. How exactly do you see this process working at the start of next year? Will the UK, as part of a deal, be asked then to take part in accepting responsibility for asylum seekers going the other way as well, if it is trying to set up these bilateral arrangements?

Michelle Knorr: I cannot say for sure what would be part of it, but you would assume so. As far as I am aware—and I could check the Eurostat statistics on allowing people to come under family reunion routes—we probably send very few people out, just because we are at the end of the road. We more often would accept people in under family reunion routes. It may be that other states would be willing to participate in a one-way process. I am not sure that the Government would not want the option to also send people back, as they have under Dublin.

Q469 **Stuart C McDonald:** A few months back, the UK Government produced a proposed text to replace Dublin, but it has been criticised as being much more limited than what Dublin provides for. Is somebody able to say very briefly just what the difference is between that text and the existing Dublin rules?

Michelle Knorr: That text is very bare—it is an absolutely bare criteria. It expressly excludes the right to a remedy, which is of real concern. We have to remember that Dublin existed for a number of years when it simply was not used, until people started accessing the courts and forcing, if you like, it to be implemented. Therefore for at least the first couple of years that you had Dublin III, there was virtually no family reunification, which did not start until 2016 when court proceedings were taken. Indeed, it has been necessary to bring cases throughout this period to ensure its proper operation. That is a critical aspect that is missing.

Also, as I said, Dublin has a complex process of investigation, and it is quite specific on interviewing children and giving them a representative.

All of those procedural aspects of Dublin are missing from the Government's proposal, as are, I believe, the time limits, which are also critical because people will not stay in the Dublin process or any process unless it moves fast enough. That is absolutely critical. It is a real struggle to keep children in the process if you cannot give them some assurance of how long it will take.

Q470 **Laura Farris:** I say in the interests of disclosure that David taught me law in 2006 for a term at City University.

I have a question about Dublin III. I wanted to ask about the practical reasons why outgoing transfer requests from the United Kingdom are unsuccessful. I looked at some comparative data, the United Kingdom compared with other European countries, and it looked as if they were much less successful in making those requests than other countries. To give you one illustration, in 2018 they made 5,510 such requests, of which 209 were successful—which is less than 5%—whereas other European countries, even those that did not succeed in many, were getting 10% to 15%.

I will put all my questions together. If you could, just make a note and then perhaps in the interests of brevity answer them as you can. Why do you think this is? What are the limitations of Dublin III in transfer requests? Thirdly, if other countries are bound by the same human rights obligations under the Refugee Convention, how come the application of Dublin III seems to differ between member states?

David Blundell: In terms of the UK's own particular experience, I am not sure if there is a single reason why relatively few of the Dublin requests succeed. However, overall there is a range of reasons why Dublin requests can prove problematic to take to conclusion. The first one is something I already indicated earlier on. The safe first country route—which is often what the UK will be seeking to rely on—is relatively low on the list of criteria. There will be cases where the UK is saying to another EU member state, "Look, we have here an asylum seeker. They have passed through your territory, they stayed with you for a number of weeks. You should take them back". The response may well be, "We understand they have a family relative in the United Kingdom", or, "They were an unaccompanied minor and they have a relative there"—something like that. Therefore it may be that there is a higher criterion in the hierarchy within chapter 3 that is applying in a lot of those Dublin III requests. I think from the cases I have seen that is quite often the case.

The second reason, which I have seen in the cases I have been involved in, is more of a systemic one. There have been problems with reception conditions in some of the EU member states. It is not a terribly common problem, but when it exists it is a very big problem. For example, a number of years ago there were well-reported concerns about reception conditions in Greece, which put a complete stop to returns to Greece. There was a lot of litigation on the issue. There was a case that went to the European Court of Human Rights, MSS v. Belgium and Greece. There

was another case that went to the Luxembourg court, NS v. UK, which was a case from the UK. The problem there was that the reception conditions in Greece were so poor that people were at risk of Article 4 inhuman or degrading treatment under the Charter of Fundamental Rights. When that happens, you cannot return. It is a complete block for as long as those barriers exist. There were then problems also reported with Italy a little later. A case about that called EM (Eritrea) v. Home Secretary went up to the Supreme Court with similar sorts of issues.

Then more recently there was a different problem with a risk of onward or chain refoulement, as it is called, from Hungary. In other words, Hungary has been reported as not respecting its obligations not to return people to persecution under the Refugee Convention. That meant the UK could not safely return people to Hungary. You occasionally get these systemic problems with individual particular member states. They are not very common, but they can arise.

The third problem you sometimes get is what I would call a technical problem. The Dublin system is quite a technical system. There are a lot of rules around, for example, time limits. The way time limits work, certainly at certain stages of the Dublin process, is that the requesting state—for example, the United Kingdom—might be asking France to take back an individual on the basis they have been there before. The UK has only three months to make the request in question. If they do not make the request within three months of being landed with a claim for international protection then they are designated as having responsibility under the Dublin Convention. Likewise, the requested state—France in this scenario—only has two months to reply. If they do not answer within two months then they are designated as having responsibility.

There are further processes to try to resolve disputes, where you can re-ask somebody to look at a particular claim under the implementing regulation, but that is a slightly different process. There are cases where—perhaps because you only get a fingerprint very late in the process—the member state is unable to ask quickly enough and so you can get problems with time limits there.

The fourth and final problem that I have seen some evidence of—this is, certainly in my experience, a relatively rare problem—can be precisely with fingerprinting. There are some cases where people have damaged fingertips. Sometimes that is for entirely innocent reasons, and there is reporting on this, such as manual labour, burns or something like that. Equally there are some cases where people have damaged their fingerprints. That then makes it very difficult to use the Eurodac system, which of course is a sort of fast-track way of identifying where people have been and lodged a claim or crossed a border of another member state at an earlier stage. There was some litigation on the impact of those problems on the time limits.

I was involved in the Luxembourg court with a case called Mengesteab in Germany. There the court took a quite strict approach to the time limit and said that even if you get a late Eurodac hit, the time limits are strict and that is not a reason to extend the time limits as set out in the regulation. Again, those are the very practical issues that the Third Country Unit in the Home Office is facing.

Michelle Knorr: It is a matter of producing evidence as well to ensure that you do produce solid evidence. There is also a need for a swift way of appealing. People do have a right under Dublin to challenge decisions. However, it does not always operate as quickly as I think it should when people do exercise that right, which can prevent transfer. It does not have to prevent transfer. If you have a spurious appeal, effectively then you can still be transferred. If you happen to succeed in your appeal you could then be brought back, otherwise that would prevent your transfer. It is important that those processes are put in place to ensure there is a swift system.

Q471 **Laura Farris:** One follow-up question. Do you think that the United Kingdom has a more lenient asylum application system than other EU member states? Do you think there would be more fairness in the asylum application system if there was an agreed way of verifying age with asylum seekers who arrive without any form of documentation?

David Blundell: If I can answer the first bit of that, I do not think the United Kingdom does and it is something I was going to try to mention anyway. It is partly a result of the fact that Dublin cannot be seen in isolation. It is part of the Common European Asylum System that consists also, for example, of the Procedures Directive, Qualification Direction and the Reception Conditions Directive. Instruments like the Procedures Directive are quite strict in terms of the obligations they place on member states as to how asylum applications are dealt with. It is a harmonised playing field, if you like, in EU law terms in terms of the requirements for putting in place particular procedures.

I have to say that also coincides with my experience of litigation in the Luxembourg court. I have done a number of cases out there for the UK Government on Dublin III, among other things. You get to see a little bit of other member states' asylum processes and they are broadly in line with what the United Kingdom is doing, which is no surprise precisely because of the other instruments within the Common European Asylum System that require that.

Michelle Knorr: I certainly agree with what David has said. I would say that in terms of grant rates for different groups, you can see some variation across member states, which can be based on individual case law. I know, for example, that it can be easier if you are from certain parts of Afghanistan to get asylum in France than it is if you come to the UK. Once you are in the system and your claim is being evaluated it does depend on national policies and how the law is implemented in each member state in terms of who might qualify and who is likely to qualify

for protection. We do not tend to see—for the young people we are advising, they know about those differences and often if they do, that could affect their choice of what they do.

Q472 **Dame Diana Johnson:** I want to ask a specific question. The Dublin regulations we have been discussing come to an end at the end of this year, except for some transitional arrangements. I wondered if you could comment on the position of Norway. We had some evidence in previous sessions about Norway and how, even though they are outside the EU, they participate within the Dublin regulations. I wondered if there is any legal reason why the UK could not adopt the same approach, or are there political obstacles in the way? I wondered particularly about the remedies that Dublin offers—is that part of the political obstacle that might be seen by the Government?

David Blundell: I might be able to help to begin with on that. That is absolutely right. Norway is effectively signed up through an international agreement—an association agreement—to the commitment in the Dublin III Regulation. There are four non-EU states that are in that position: Norway, Iceland and Liechtenstein—which are of course the EEA states—and there is also Switzerland. Switzerland historically has a slightly special relationship with the EU in terms of free movement. There is an EU-Switzerland free movement agreement as well, which effectively applies EU free movement more specifically over the two areas of EU and Switzerland. Therefore it is possible. The EU has allowed other non-EU states to co-operate on Dublin matters so, in principle, it seems to me there is no legal reason why that could not be done in terms of the UK.

Politically it is quite a different question. I cannot answer to the political reasons why that might or might not be an attractive thing for the United Kingdom to do. What I would say from a legal perspective is that the situation is perhaps slightly complicated by the fact that the EU member states are currently negotiating the Dublin IV Regulation. I think the proposal for it from the Commission was first in 2016, so it has been out there as an issue—as a possibility—for a number of years now. As I understand it, the negotiation seems to have stalled. Certainly it is very difficult to find much evidence about what is going on with that regulation.

I mention it because it is a regulation that takes as its basis Dublin III, but changes it in some fairly significant ways. The changes operate in different sorts of ways. For example, there is a mechanism being introduced to protect member states that get disproportionate numbers of new asylum applications, perhaps because there is a crisis on the edge of the Union or just outside the Union and people are suddenly flowing in. There is a mechanism within the draft text to check where member states have more than 150%, I think it is, of the number of asylum applications as predicted by population size and GDP. Where that happens, then this protective mechanism kicks in whereby there is an automatic reallocation of applications across the Union.

That, I would imagine, would be quite controversial for the United Kingdom. There was obviously debate around that sort of allocation mechanism in the early aftermath of the Syrian civil war. Of course that had big implications for how Governments operated because of Germany opening up the borders, refugee trains coming across and there was a lot of litigation that flowed from that. I only mention that not for any political reason, but purely for a legal reason. There are new obligations being discussed at EU level and it might be that the EU would want anyone coming in, as it were, for the first time again to sign up to that new process and that might be less attractive. Therefore that is a complicating factor and I think that is an important factor that would need to be taken into account.

I should say there are other mechanisms within Dublin IV that might be quite attractive. For example, if an asylum seeker does not claim in the first state they enter, then potentially they can lose their right to reception conditions, such as rights to education for children, rights to healthcare—save emergency healthcare—and certain housing rights. Therefore it cuts both ways. There are mechanisms that I think will be unattractive to the UK and mechanisms that will be probably quite attractive. However, there are, I suspect, other political reasons that will make that a very difficult issue, but certainly in legal terms it is possible.

Q473 **Dame Diana Johnson:** Of course, we would have to sign up. If there are new agreements reached around Dublin IV, we would have to sign up to that. We would not be able to pick and choose.

David Blundell: No. Absolutely. That is the point I am getting at: we would not be in the position of being inside the Union and able to negotiate with that standing. I think it would be very much having to make that difficult decision.

Michelle Knorr: On that, it is right though that we have not signed up to more recent procedures or directives for asylum. At the moment, because we have a right to opt in, we have obviously chosen to be part of Dublin, even though we are in the EU. Because of our position that has been negotiated, everything is an opt-in in this area and we have not opted in to several aspects of asylum procedure and newer regulations.

Obviously we may be in a completely different position after leaving. We are not going to have that same opt-in and it would be a matter of negotiating from a different position. However, if we were to replicate the system we have now, I am not sure that we would necessarily have to sign up to Dublin IV if we were already signed up to Dublin III.

David Blundell: I agree. It is absolutely right that we have not signed up to the more recent instruments. The Common European Asylum Directives that we signed up to were the ones that were all from about 2003-04. They were then all recast in about 2013, and the only effectively new instrument we signed up to, as Ms Knorr says, was Dublin III. We did not sign up to the recast Procedures Directive, Qualification

Directive and Reception Conditions Directive because we had the opt-in on that situation.

Timing may be critical. If we have left and dropped out of Dublin and are then coming back, I think it would be easier for the EU to say, "It is Dublin IV now". Of course that would depend as well on Dublin IV having progressed, and it has not at the moment. That is not to disagree with anything that Ms Knorr said, but it is a very complicated situation at the moment.

Q474 **Simon Fell:** I would like to ask a couple of questions around both language and process, if you do not mind. The Government have criticised lawyers in the past and put statements out on Twitter talking about activist lawyers and making complaints about last-minute applications for halting deportation. I am interested in your views as to why these last-minute applications are being made and whether you think criticism like that is justified. To try to keep my question short, I will throw another one in now. Do you think that term "activist lawyers" is fair, and is it helpful or not to you?

Michelle Knorr: The term is obviously being used in a certain way that appears to be some sort of propaganda campaign. Certainly I would say it is dangerous and depressing. We have seen that the profession and legal regulatory[1] bodies have pushed back very strongly against the use of that term in the way it has been deployed by the Prime Minister and the Home Secretary. It is important to remember that we lawyers can only advise on the law as Parliament makes it. We do not get to bring a case and make up the law when we get to court. We obviously have to argue on the basis of the law.

To give an example, just last week there was a case that was reported—I have not seen the case report, but I saw the article about it in the newspapers—where on a challenge to removals from people who had come over in small boats, a judge ruled that it was strongly arguable that the Home Secretary had not been applying her own policy for identifying victims of trafficking. There were questions in the screening process that had been missed in these cases that were designed to identify victims of trafficking. On that basis a halt was placed, as I understand it, on the removal. That is not an "activist lawyer", they are simply asking for the policy that is in place to be applied, so I would very strongly suggest that it is very unhelpful.

In terms of delays in bringing cases—it may be that David can say more about this—I think the process, as I understand it, has changed a bit more recently, but certainly over the summer there was a process going on where people would arrive on small boats, but they were not told that they were in the Dublin process until very late in the day. They would have a screening interview and because they had come on the small boat

[1] Correction from witness: should be "representative" rather than regulatory; I said regulatory but meant representative (i.e. the Law Society and Bar Council).

a request would be made under Dublin to another member state. That person is supposed to be given information about the Dublin process, but apparently that was not routinely happening, certainly from the solicitors I have spoken to who regularly are doing this sort of work. That meant people were then released into the community.

One day they would go to report and at that point they would be told that their asylum claim was certified and they were going to be sent to another country and were often served with removal directions around the same time. Therefore they had very short notice of the fact that they were in this process and this was going to happen, and then at that point they are detained. If you are detained and have maybe five days or two weeks before your date of removal, in that time you have to get a lawyer, and often that lawyer has to take instructions, has to make legal aid applications and write a preaction letter so the Government have the opportunity to decide whether to defend a case or agree with your argument about why the decision is unlawful, and then they go to court.

It is a difficult process. If people are not told in enough time, challenges will necessarily be at the last minute. Obviously it is our job to advise our clients properly on the law and on their legal rights. We have to do that, and there are procedures put in place for urgent applications where that is necessary. I understand there have been improvements in the service of decisions, so there is slightly less time pressure, which obviously can then mean that hopefully the applications are less last-minute.

David Blundell: I cannot comment on the precise issue that Ms Knorr just referred to about lack of information this summer. I simply do not have any information on that. I have not been instructed on any cases around that issue.

What I will say generally on this—again, I am absolutely restricting this to a legal comment on how the law deals with this—although I can see how the issue has become focused on recent last-minute challenges, the law has always, in the context of asylum immigration, made very powerful and strict provision for the accommodation of last-minute late challenges because they are seen as an important way for asylum seekers and immigrants to vindicate potential rights that they have. There is a process under the immigration rules, for example, to deal with what are called fresh claims. That is paragraph 353 of the rules. That has caused an enormous amount of litigation over the years.

Going back to the early 1990s, you have statements of high principle from Sir Thomas Bingham, as he then was when he was Master of the Rolls, explaining that it was incredibly important in any fair immigration and asylum system to have a mechanism for dealing with, for example, changes in the case of people for perfectly valid reasons. It may be that country situations change; it may be that people's position changes. It has always been seen as important to have those kind of last-minute challenges accommodated.

Of course there may be individual cases where particular requirements have not been complied with. Again, the High Court, the provisional court and the Court of Appeal have in recent years given quite strong guidance about duties of candour on, for example, claimant lawyers as to what the position is with their clients. In my experience, those are generally very strongly complied with. Lawyers take those kinds of obligations extremely seriously and the instances of abuse are in my experience extremely rare. That is not saying they do not happen—they happen in any field of law—but they are very rare. It is just that obviously this is an area that is highly politicised and so it tends to draw attention more because of that.

Q475 **Simon Fell:** On that politicisation point—I do not want to draw you too much on it—does that make it more difficult for you to represent your clients? Does using scapegoating language like that introduce an unnecessary challenge in terms of your ability to do your job and represent them well?

David Blundell: Most of the cases I do are for the Government. Not exclusively—I act against the Government as well; I have a mixed practice—but I have done more cases for the Government over the years than I have against them.

That is quite a difficult question to answer. I think as a lawyer you come at a case completely neutrally and we have very strict professional obligations on what we can and cannot do. Ms Knorr referred to that just a moment ago. We can only plead a case that we have proper evidence and information to substantiate. That applies both ways: it applies to the Government just as much as it applies to claimants. When you are acting as a lawyer, even in a highly politicised field, it is what conditions your approach to a case. You have to be able to shut out the outside noise and get on and just make the arguments that you are legally there to make, so you do that to the very best of your ability. Beyond that I find that a quite difficult question to answer.

Q476 **Ms Diane Abbott:** In reference to the term "activist lawyers", our witnesses will be aware that some people thought that was not a helpful phrase. After all, this is just lawyers doing their job, like conveyancing solicitors. There was a case recently about a firm of solicitors who were attacked in their office. The feeling was that derogatory references to solicitors dealing with immigration and asylum cases had helped to excite that attack. Would either of you want to comment on that?

Michelle Knorr: That is why I said it is dangerous and it is not what I would ever expect. It is certainly the first time in my 12 years of working in this field I have ever experienced or seen anything like this. Many chambers that do this sort of work and law firms that I know of have had to increase their security and to take decisions to shut their office when a certain type of judgment is handed down, for example, that might be favourable to migrants. Therefore it does have real ramifications.

It does not, as David said, affect the way we do our jobs because we have to do our jobs to represent our clients fearlessly and act in their best interests while also acting very strictly within the confines of the law. We have to obviously get on and do it, and it cannot stop us from doing that. However, it is very unfortunate that we are forced into this political argument that I think has no place and is a real attack on the rule of law.

David Blundell: I do not think there is much I can add to that. I am aware of the case you mentioned, and I am aware of the solicitors' firm in question. I know there is currently a criminal prosecution ongoing in relation to that, so I would not want to say any more about that. It is obviously extremely unfortunate, which is putting it very mildly, that that has happened. I am not sure I can add very much to what Ms Knorr has just said.

Q477 **Chair:** Thank you. I will ask you quick final follow-up questions and please be as brief as possible in response. First, to clarify in response to Diane's question, have either of you, as immigration lawyers, seen an increase in abuse or threats to immigration lawyers over the last few months?

David Blundell: I am aware of other cases, I will say broadly, in the immigration field where there have been very serious threats to lawyers acting on the claimant's side in particular cases for particular reasons. I cannot go into the details of what they are, but I certainly am aware of other cases recently. I think, making a comparison over the rest of my career, there will obviously have been other cases in the past, but I think it has become a hotter issue again more recently—I will put it like that. From my experience it goes up and down, and at the moment there seems to be a bit more focus on this.

Michelle Knorr: I do not have anything to add to that.

Q478 **Chair:** Thank you. My second question is to Michelle Knorr. You kindly said you would provide some additional information in response to Stuart McDonald's question about the extent of family reunion rights post-Dublin. Could I ask you particularly if you are able to send us anything in terms of reflections on Baroness Williams's statement in the House of Lords on the immigration Bill in response to Lord Dubs's amendments? She talked about articles 319X and 297 of the immigration rules and whether those provide for family reunion rights for children in the same way as Dublin and, if not, what the differences are and what the concerns would be under the new framework. That would be very helpful.

I think you were saying earlier that with no Dublin agreement in place from 1 January, there would then be no framework for returns to safe countries other than on an ad hoc basis, and that those returns on an ad hoc basis happen very rarely. Did I understand that right from the earlier evidence?

Michelle Knorr: Yes. There is a requirement that the person will be admissible under the rules. It may be the case that there are agreements

I do not know about, because we tend to know about things that are happening regularly, such as Dublin, which obviously we all know about. There could be an agreement that I do not know about, for example with the US, because people rarely go between the two countries in that way. Therefore I do not want to be completely categorical about it, but certainly that is right in practice.

Q479 **Chair:** There is nothing currently in place that would provide for safe returns to France once somebody has arrived in the UK after 1 January, is that correct?

Michelle Knorr: Not unless France agree to admit them, no. I am not aware of any agreement beyond Dublin that they have agreed to do so.

Chair: Fine. I will ask Ms Velasco and Mr Blundell to come in if you have different responses to that.

David Blundell: I agree with that.

Q480 **Chair:** Looking forward to what the UK might be seeking to negotiate in future, either with the EU or on a bilateral basis with France, Ms Velasco, I think you said there was provision under the current law for people who have been identified in UK territorial waters to be returned safely to a French port if there was an agreement in place to do so. If people have arrived in the UK, is it possible under international law, if an agreement is reached bilaterally, to operate a collective returns policy, or are there provisions in international law that would prevent that?

Ainhoa Campas Velasco: Michelle Knorr, I think you should be answering this. You are the expert.

Michelle Knorr: It would not be prevented. Those rules I described in our immigration rules on safe third country and first country of asylum are there and they are lawful, in the sense that as long as the people would be admitted and meet the other criteria, then there is no barrier to negotiating those sorts of agreements. It is just to the extent that politically the other states would do so and where the priority would be.

Q481 **Chair:** Does there need to be an individual assessment for each person, for example, to look at trafficking risk or things like that?

Michelle Knorr: Yes.

Q482 **Chair:** Is it possible under international law to have a broader sort of blanket provision?

Michelle Knorr: No, there always has to be an individual assessment. Once you are here you should be processed as an asylum seeker and part of that assessment might be if there is somewhere else more suitable, for all of those reasons, for your claim to be processed. Obviously this also applies to asylum seekers. It is different if you do not claim asylum when you come, but these are asylum agreements.

Q483 **Chair:** Apologies for hurrying you. My final question is if the UK

Government are likely to be looking to negotiate new bilateral or multilateral arrangements and their intention is to try to prevent the dangerous boat crossings and they are looking at provisions around safe and legal routes and safe returns, what would be the key things you think they should be taking into account or that anybody should be taking into account in terms of the kinds of safe legal routes or the kinds of safe returns that the UK should be looking to establish? I appreciate that it unfortunately is a very open-ended question for my final question to you. I just ask if there are any brief things you would point us towards, rather than an extensive response.

Michelle Knorr: It is critical not just to focus on France. What we have seen is that since Greece has really improved the operation of family reunification provisions, a lot of children are now staying in Greece. You can see that from the statistics, with many more take-charge requests coming from Greece and not France.

If you want to prevent dangerous journeys and you want to open routes before people even travel to the EU, then there could be a route. Dublin happens to be an EU agreement. We had the Dubs agreement, which was a domestic agreement where we asked member states to feed eligible children into that agreement. We also set up an ad hoc process in 2016 to process a build-up of unaccompanied children who had family members here. It is possible to very quickly put in place a system that works to offer safe legal routes to children. If you want to stop dangerous crossings, those children should not have to make the crossings over to Europe because that is just as dangerous, if not more dangerous, a crossing than the one over the Channel.

David Blundell: One thing to add in terms of safe legal routes, the one issue that has not been mentioned this morning is resettlement. The UK has traditionally run four resettlement schemes: Gateway, Mandate, Vulnerable Persons Resettlement from Syria and also the Vulnerable Children's Resettlement Scheme. They work on the basis of co-operation with the UNHCR. The UNHCR identifies eligible refugees that it has already identified as refugees and then they are proposed to the United Kingdom. The UK can accept them, subject to usually making checks on things like security and setting up reception arrangements here.

Those four schemes were due to be replaced by a new UK Resettlement Scheme this year. I am not sure that has come into force yet. I think it has probably been delayed by Covid. That is relatively well-known and considered to be a safe and legal route. The disadvantage of course is that the numbers in the resettlement schemes tend to be very low. I think the proposal for the new scheme was 5,000 per year, and it also relies on co-operation with the UNHCR and people having been identified abroad. However, I think if you are looking at the range of safe legal routes it is important to have that one in mind as well.

Chair: Ms Velasco, any final thoughts on safe returns or safe legal routes?

Ainhoa Campas Velasco: I would only emphasise how important it is to further explore safe and legal routes, which would surely have an impact on the numbers of irregular crossings and people putting their lives in danger.

Chair: Thank you very much. I thank our panel. Thank you for your patience as well. We have extended the panel in order to cover the very important points you were making. We really appreciate your time and we will move on to our second panel now.

Examination of witnesses

Witnesses: Alp Mehmet, Migration Watch, Dr Peter Walsh, Migration Observatory, and Jill Rutter, British Future.

Chair: I thank our second panel for your patience with a delayed start to the second panel. We are very grateful to have you with us and for your time this morning. I welcome Jill Rutter from British Future, Alp Mehmet from Migration Watch and Dr Peter Walsh from the Migration Observatory. We are going to start with Diane Abbott.

Q484 **Ms Diane Abbott:** Thank you, Chair. I wanted to begin by trying to establish the overall figures. Relative to other routes to claim asylum, what proportion of those potential asylum seekers are coming over the Channel crossing? Do we have any figures?

Dr Walsh: Yes, we do have some figures. The most recent official number comes from Abi Tierney, the Director General of UK Visas and Immigration, in oral evidence to this Committee on 3 September. Those data are broken down by quarter. In the most recent quarter, quarter 2 2020, there were 2,012 detected Channel migrants. Those are Channel migrants who are either apprehended at water or are apprehended shortly after reaching the UK. For that same quarter, we can compare those numbers with the total number of people seeking asylum in the UK. We know also from evidence provided by Abi Tierney that a large proportion of Channel migrants do claim asylum—98%. We can compare the number of Channel migrants apprehended with the number of asylum seekers in the UK in any quarter over the past year and a half. For example, in the second quarter of 2020 we see that there were 5,789 people who sought asylum in the UK. In that quarter there were just over 2,000 Channel migrants and we know that in the past year and a half 98% of Channel migrants have gone on to claim asylum in the UK.

Q485 **Ms Diane Abbott:** Is it your understanding that the number of Channel migrants has gone up sharply?

Dr Walsh: Yes, it is. We have data going back to the first quarter of 2018, when there were just seven Channel migrants detected. There was a large increase in the last quarter of 2018, from 17 in the third quarter to 271. We have seen further increases this year, including a quite large jump from the first quarter in 2020 when there were around 450 Channel migrants detected and for the most recent quarter for which we have

Home Office data, the second quarter of 2020, where the number is over 2,000.

We also know that we can make an inference based on the two months after June—July and August—to deduce that there would have been a further increase to 2,500. Beyond that, we do not have official Home Office data but I know, for example, that Migration Watch have been able to make estimates based on an analysis of media reports. I think Alp can perhaps confirm that it suggests that in the most recent months—when the weather has perhaps not been so favourable and other factors may have influenced detections—they have now more recently gone down, although we do not have official Home Office data for those more recent months.

Q486 **Ms Diane Abbott:** Thank you for that. We have taken evidence as part of this inquiry and been told the reason the number of Channel migrants has gone up is because other routes have become more difficult. What is your view on why the number of Channel migrants has shot up?

Dr Walsh: The truth is there is relatively little data and analysis on this. There is some operational evidence, as you heard in previous sessions of this Committee, and a whole host of reasons have been cited by operational actors from broad migration trends to the impact of Covid, favourable weather and enforcement efforts at the juxtaposed controls. However, the truth is that those are hypothesised reasons, based on the testimony of operational people rather than scientific evidence. We do not have enough data or analysis to disentangle these factors and say what are the most important because we know so little about the motivations of the Channel migrants, where they have come from or what routes they are taking. There so many factors in play. Therefore it is a very difficult analytical task to say which of these factors are more or less important.

On the point about increased surveillance of the juxtaposed controls and stronger restrictions there, the Home Office did claim that a cause of the initial spike at the end of 2018 in Channel crossings was increased policing on the route. On that occasion the Independent Chief Inspector of Borders and Immigration said the evidence was very equivocal on that; it was not particularly convincing either way. That is because of the nature of the situation, there are multiple factors in play and it is very difficult to disentangle them.

Ms Diane Abbott: Does anybody else want to comment on the overall numbers?

Jill Rutter: I have a few additional comments. It is very difficult to understand the impact of Channel arrivals on overall numbers. I agree that there is some evidence that people who previously came as clandestine entrants through freight may be coming through the Channel route.

Asylum numbers overall have been fairly constant in recent years, although they increased in 2019, when there were over 45,000 applications, including dependants. In the first two quarters of this year asylum numbers are down compared with the first two quarters of last year, so there is a trend downwards at the moment. I think policymaking would be improved by better data on port of arrival, where people are lodging their cases, and also the outcomes of asylum applications and whether they are from people who have arrived across the Channel or have come through other routes.

Overall the recognition rate for asylum seekers is reasonably high, with 64% of people granted protection in 2019. For Iranians, who are a big number coming across the Channel, grants of protection were 74%, for Eritreans they were 90% and for Sudanese they were 89%. Therefore I think there is evidence that a large proportion of people crossing the Channel have genuine claims for protection, but better evidence is always welcome.

Alp Mehmet: A couple of things. I agree with what Pete said earlier and the figures he gave. We have been keeping our own tracking of what has been going on in the Channel at Migration Watch. The numbers have mushroomed this year. In 2019 it was under 2,000—something like 1,880. When the whole thing started in 2018, roughly in October, it was only 299 or 300, I think. So far this year we are something like 8,200, so over 10,000 in 2019-20. As to why that is happening, I would say it is because it works, frankly. People pay a lot of money to get into the UK. The fact is that the vast majority who set off, mainly from France, do succeed in getting into the UK and indeed in staying.

With regard to the impact on other clandestine routes, according to the Independent Chief Inspector's report released only a few days ago, in 2019 there was a 30% increase on the previous years in the numbers of lorry drops, as he described them. That was 15,000 in 2019. Therefore there is something happening, other than the fact that people are looking for asylum. They are also looking for a better way of life and the cross-Channel dinghy route works for them.

Q487 **Chair:** Mr Mehmet, do you agree that the number coming through other routes has fallen in 2020?

Alp Mehmet: In 2020, yes, but I would contend that there are pretty obvious reasons why.

Chair: Indeed. I am just trying to establish the facts first.

Alp Mehmet: Yes, I accept that.

Q488 **Chair:** You referred to the 2019 figures. The figures that we were given by Abi Tierney of the Home Office were that in the second quarter, the most recent figures, the drop in the number of people coming through other routes was four times greater than the increase in people coming through by boat. Would you agree with those figures?

Alp Mehmet: I accept that. All I am saying is that this year there are particular factors to take into account before saying this is a trend. I am not sure that it is.

Chair: Sure. Peter Walsh, do you want to come back in?

Dr Walsh: With regard to the comment by Abi Tierney, I think what she was talking about is the total number of people seeking asylum in the first two quarters of 2020, so by any route, and not specifically clandestine routes. We can compare the first quarter of 2020 with the second and we see that there is a decline of about 5,000 in the total number of people seeking asylum. There were over 10,000 in the first quarter and it dropped to under 6,000 in the second. That is what I think Abi Tierney was referring to. In those same quarters as well we see an increase of about 1,500 additional Channel migrants detected. I think that is the comparison that she was making, as I understand it.

Chair: In her letter to us, the figure she referred to was a drop of 6,300 people arriving through routes other than boats. It was a drop of around 5,000 in total, with about 6,300 in other routes and an increase of 1,500 approximately in people coming by boat. Why don't you write to us if you think that interpretation is inaccurate? I do not want to hold up the discussion by talking about the figures.

Q489 **Stuart C McDonald:** To pick up on what Jill Rutter said when speaking about asylum claims altogether, I think you said there was a fairly constant uptick in 2019 and then obviously a drop-off this year. Is that a fair summary of the trends in overall asylum applications?

Jill Rutter: I think that is a fair summary. Asylum applications have been fairly constant over the last 10 years. They increased in 2019, but they dropped off quite a lot this year compared with the comparable period last year.

Stuart C McDonald: Peter Walsh, does that seem fair enough to you?

Dr Walsh: Yes, that is fair.

Stuart C McDonald: Alp Mehmet, do you agree with that description of trends?

Alp Mehmet: I think it is too early to say what the trends are going to be.

Q490 **Stuart C McDonald:** How about as a summary of what has happened over the last five or six years?

Alp Mehmet: What has happened, yes, absolutely. Whether it is a trend of decline I would not put money on, frankly.

Q491 **Stuart C McDonald:** I accept that. What I want to pick you up on is a report that Migration Watch published this morning. The first sentence of the summary is, "The asylum system is being overwhelmed following a rapid rise in the number of claims". How can that possibly stand up in

light of that analysis you have just accepted?

Alp Mehmet: It is a fact. The Home Secretary is saying it is under huge pressure.

Q492 **Stuart C McDonald:** There is not a rapidly rising number of claims though, is there, according to your own evidence?

Alp Mehmet: Hold on a moment. In 2014-15 there was something like 60,000 or 65,000 cases. The latest number we have is 110,000 cases being considered, which is just those being considered.

Q493 **Stuart C McDonald:** Yes. That is not a rapidly rising number of claims, it is the total stock of claims that are outstanding. I am happy to agree with you, for example, that the Home Office is making a mess by allowing that backlog to grow. However, you accepted in your own evidence that the number of asylum claims was pretty steady and the analysis of our other two witnesses. Now you are trying to defend the first line of your report which says, "a rapid rise in the number of claims", which is completely different.

Alp Mehmet: It has been rapidly rising. It may have briefly stopped. I do not believe—

Stuart C McDonald: That is not what you said three minutes ago. You accepted it had been steady and was declining this year. Against two quarters of decline you can hardly say it is rapidly rising.

Alp Mehmet: It depends what periods you are comparing. If you are going over a period of the last 10 years, in fact it has been increasing, growing rapidly.

Dr Walsh: I can speak to the details on that, if you like. For the past five years the number of people who have sought asylum in the UK has been between 30,000 and 40,000. It is true that there have been increases on the annual numbers. In 2017 there was around 35,000, in 2018 an increase of 3,000 and another gradual increase again for 2019 to the mid-40,000s and, as we know, it has come down in the most recent period in 2020.

Q494 **Stuart C McDonald:** What would you say of the assertion, published today, that the system is being overwhelmed with a rapidly rising number of claims?

Dr Walsh: I would say that the claims have been rising, if we are to exclude 2020, for the last few years. I would not perhaps use the word "rapidly" but it is true they have been rising. With regard to the system being overwhelmed, that is not for me to say. I tend to confine my remarks just to the data.

Stuart C McDonald: Jill Rutter, do you want to come in?

Jill Rutter: I would agree with Migration Watch in some respects, in that the Home Office system is creaking and lengthy delays are very

unsatisfactory. There are about 36,000 people who have waited more than six months for a decision on their case.

Q495 **Stuart C McDonald:** I don't dispute that at all—that the Home Office system is creaking and that delays have been influential—but "rapidly rising" does not seem to tally with what you said.

Jill Rutter: There were more cases lodged last year, yes, and they are still in the system, but I think "rapidly rising" is not accurate.

Q496 **Stuart C McDonald:** Dr Walsh, in the European context, where does the United Kingdom sit in terms of the number of asylum applications that it receives in terms of overall numbers and per head of population?

Dr Walsh: In the year ending June 2020, in terms of the number of people seeking asylum, the first-placed country was Germany. There were 135,000 applicants roughly. The United Kingdom ranked fifth with around 40,000, behind Greece, Spain and France. We can also look at the number of positive initial decisions that are made on claims in that one-year period, the year ending June 2020. The United Kingdom also ranks fifth. It granted just under 15,000 asylum claims at initial decision. That does not take into account appeals. Germany also ranked first with about 64,000. I do not have the population adjusted figures to hand, but I can certainly commit to sending you that information in due course.

Stuart C McDonald: Thank you very much.

Q497 **Tim Loughton:** Let us just establish some ground bases here. I think we are all agreed that the Home Office is still not terribly efficient at dealing with asylum applications that are for people who have arrived in this country. I do not think anybody would disagree with that.

Secondly, it would appear that overall the net figures for people coming into the UK to claim asylum in this calendar year is down, but there has been substantial displacement from the more conventional back-of-lorry tunnel and ferry routes to the even more dangerous crossings in dinghy route. I think everybody on our witness panel would agree with that.

On that basis, I am interested in comments from all of you as to what trends you see therefore in those arrivals coming across the Channel route this year, the background nationality and reasons for those people coming in those routes. Presumably, without trying to load the question, they are people who tend to have more money to pay the people traffickers to facilitate their crossing. Mr Mehmet, do you want to go first?

Alp Mehmet: If I can revert to what Mr McDonald was asking about, I have just seen that there are now 42,700 cases awaiting an initial decision and that has more than tripled since 2015. That is just a fact of what has happened to the figures.

With regard to what is happening and is going to happen in the future, it seems certainly from the exponential increase this year with cross-Channel crossings that it will go on increasing. If it does, then we have

some very serious problems. We have problems anyway, frankly, because at the moment we are not coping. If we are not coping and people are managing to get in, then numbers will increase.

Q498 **Tim Loughton:** Mr Mehmet, with respect, that is not what I am asking. Whether or not those numbers are going to increase will be a feature of circumstances we can only speculate on at the moment. What I asked is historical, in terms of what research you have done to look at the trends and the nature of those people who have been making that very dangerous crossing in those migrant boats. Are we seeing different nationalities? Are we seeing different economic circumstances? What is your analysis of that? It seems clear we do lack data on this, both officially and unofficially.

Alp Mehmet: We do lack data. Part of that is because the Home Office says it does not produce a running record of what is going on and it does not always break it down into nationalities. Two years ago the vast majority of those coming over in dinghies were Iranian—something like 60%, if I remember rightly. Now it is much broader. There are those coming from elsewhere in the world. We know from the UNHCR that thousands are waiting to make the journey across the Mediterranean. A lot of them are Libyan and Tunisian. From the Balkans we still have a substantial number coming, including Albanians, for example. It was the case that something like 60% were Iranian. It now seems to have spread to other nationalities as well.

Q499 **Tim Loughton:** Dr Walsh, do you agree with that? Is the number of Iranians decreasing or is it, as I suspect, that the percentage is decreasing only because the numbers of other nationalities are increasing? Of course there is a particular problem with Iranians and it is very difficult, even if their claim has not been founded, to return them physically to Iran if that is their destination because the Iranian Government just will not accept returnees.

Dr Walsh: On nationality breakdown, you are quite correct. There have been some changes in the nationalities of Channel migrants. It was higher, as Mr Mehmet said, for Iranians, but if we look at the period we have data from the Home Office for, then from 2018 to June 2020, that figure is now at 51%. It has lowered because we are detecting Channel migrants of other nationalities. The second most common is Iraqi, and that is roughly 1,200. The next most common is Syria with about 6% and then Afghanistan and Yemen in the low single-digit percentages.

There is one problem with this data. As far as I am aware, the identification of nationality is based on self-reporting and it can often be quite difficult to verify that information. As time goes on, those facts become more solid. For the time being, I would expect the Home Office is still doing quite a bit of work to validate those numbers. I would say finally that nationality is about the only thing that is publicly available information that is provided by the Home Office about Channel migrants. There is a lot of operational data it collects that is not routinely published,

such as the age or sex of Channel migrants, the method by which asylum seekers broadly enter the UK, their reason for seeking asylum and why they chose the UK. All of this information is collated by the Home Office but not published regularly, so it is quite difficult for analysts to examine that information and build a picture.

Q500 **Tim Loughton:** Thank you, that is helpful. Jill Rutter, can I come to you? Before I do, perhaps I can back to you, Dr Walsh, and the comment on Syrians, where the numbers for Syrians coming across appears to have gone up. You have just mentioned that, yet for Syria we did have an explicit scheme, the Syrian Vulnerable Person Resettlement Programme, which was very successful. That scheme has been suspended or ended for the time being. Do you think there is a direct correlation between that scheme for Syrians ending and that increase we have seen in Syrians coming across the Channel, or is it more sophisticated than that?

Dr Walsh: I think that is plausible. We do not have the evidence or the data to establish that with a high degree of confidence, but it seems to me superficially plausible on the basis of what we do know. But the fairly low percentage of Syrian Channel migrants—6% over the last year and a half—could have been higher were our resettlement schemes—

Tim Loughton: Jill Rutter, is there anything you want to add to that?

Jill Rutter: I agree with Peter Walsh's comments that more national groups are arriving. The only other thing I wanted to say is that I think policy needs to be informed by a strong understanding of the drivers of immigration in people's countries of origin and in transit countries like Turkey, Lebanon, Greece and France. In that respect, I would refer the Committee to the work of Professor Paul Collier and Professor Alex Betts on where people cannot sustain themselves in countries like Turkey and Greece. Obviously onward migration is a decision they often take.

As well as the action of smugglers, some people have immediate family, friends or people they know in this country, and that can be a reason that people choose to cross the Channel. People speak English and English is a global language, so some people choose to come to the UK because of their familiarity with English. Also again referring to the work of Christopher Hatton, perceptions that the UK labour market is more open and it is easier to get a job is also a driver of this migration. It is important that policy is underpinned by a sound understanding of the drivers of migration.

Tim Loughton: That is a very interesting point. I have often challenged some of these perceptions about why people come to the UK rather than apply and stay in France or other safe EU countries. The English language always comes up as a top reason, yet that does not account for Iranians, where French is widely spoken in Iran and there is a large Iranian community in France. I think you are right. We do not have enough data and information to assess the real motivations behind some of the crossings that are happening, so it is a very mixed picture. I think we

would all agree the Home Office does need to collect more data or certainly publish more data so we can have a more detailed analysis of exactly what the drivers are behind people coming in the way they are.

Q501 **Adam Holloway:** Given that the majority of people who come and seek asylum end up staying here, does the panel have any estimate of what proportion of the population of some of these rather unpleasant countries would have an asylum claim approved were they to make it to the UK?

Alp Mehmet: Can we write to you on that one, please, Mr Holloway?

Chair: We will happily take written evidence, so we will happily take written follow-ups.

Dr Walsh: We have this data on the share of first-instance decisions that are successful broken down by nationality. I can perhaps give you some of the figures for nationalities that are quite common—the top five nationalities. For Afghanistan, taking into account appeals, 68% of asylum applications from Afghan nationals are successful. For Iran it is 73%, Iraq is around 50%, Syria is very high at 88% and Yemen is around 90%. We do see that the nationalities that are common among Channel migrants in general across the asylum system do have a higher than average chance of ultimately being successful, taking into account appeals. In the past few years, between 50% and 55% of applications are ultimately successful across the board.

Q502 **Adam Holloway:** What do members of the panel read from this?

Alp Mehmet: I would say look at what is going on in those countries. I would expect in those circumstances that there would be a justifiable claim for some form of protection, if not asylum, which is presumably what is happening.

Q503 **Adam Holloway:** Does that not make our policy rather discriminatory and basically favouring people who are wealthy enough to get to the UK and Europe?

Alp Mehmet: Yes, those who have money and have the strength and determination make it as far as the northern shores of France. That has been the case certainly for the past two years. Before that, going back to Sangatte and all that—to the camps—this has been going on for many years, but in the last couple of years certainly the countries we have mentioned are where you would expect then to be coming from.

Dr Walsh: Perhaps I could just jump in to say the Home Office produced some research into this in 2002 and it found the ability of migrants to be able to make these journeys that are often expensive—even before you are paying between £3,000 and £5,000 to a smuggler—was a strong predictor of those who were able to claim asylum in the UK in general, not thinking about small boat arrivals. It is no feat to imagine that would apply to those arriving by small boat too. That is a determining factor.

Chair: Jill Rutter, do you want to come in there?

Jill Rutter: That has been the case throughout history. It has always been easier to flee if you have resources, but I think there is a broader issue in that our foreign policy, our trade policy and our aid and development policy have to address some of the drivers of forced migration in people's countries of origin, including climate change induced instability and also instability induced by youth unemployment. The youth unemployment rate is extremely high in Iraq at the moment, for example. That induces further political instability. It is outside the remit of this Committee, but I think as a country we need to be better at addressing some of the drivers of forced migration.

Q504 **Adam Holloway:** Just a final question, if I may. We spend a great deal of money looking after people who successfully get asylum when they have entered by these clandestine methods. Would we not be better with the David Cameron model of spending enormous amounts of money in the home regions to look after Syrian refugees, say, given that a dollar goes a lot further in Turkey, Jordan or Lebanon than perhaps it does in Bexley?

Alp Mehmet: I would certainly go along with that if we are talking about stopping the Channel crossings, which is where I come from, frankly. Of course we must do our duty with regard to those who are in need of protection, but the fact is we are looking at a particular route and I think it behoves us to think carefully about how to stop people coming across the Channel in the way they are. If, as Tony Smith suggested when giving evidence to the Committee not long ago, we were to offer opportunities to those wanting to come over here, perhaps in the camps in places like Turkey, that would certainly be one way of discouraging people from jumping into a boat and coming over here.

The other thing we have to do in tandem with that is return those who set sail to the United Kingdom from the other side of the Channel. Until we do that and until we show it is not going to be possible to get asylum doing it that way, then I am afraid people will continue to come because it works.

Chair: Can I ask Jill Rutter and Peter Walsh to come in very quickly and finally?

Jill Rutter: You can be very skilled in a camp in Jordan and Turkey and have the kind of skills the UK needs, but you cannot apply for a work visa through a camp. My last comment is that migrants are just like the rest of us. They want to work and feed their families. People not being able to find work in Turkey and Jordan is a significant driver of onward migration into Europe.

Dr Walsh: I do not have anything to add on that particular point.

Chair: Can I thank our witnesses? Unfortunately I am going to ask you to send anything further in writing because we have already overrun. I was also going to ask you if you could forward us in written evidence. I know

that particularly British Future and Migration Watch have done research into public attitudes as well, much of which is published. If there is anything further in addition to the points you have already published, then do send us that in written evidence as well, as we have not had time to cover it today. My apologies for cutting you short. We have overrun and I am very grateful to you all for your patience for allowing us to do so, but unfortunately we have to conclude the evidence session here.