



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Legislative scrutiny of the Nationality and Borders Bill](#), HC 588

Wednesday 8 September, 2021

[Watch the meeting](#)

Members present: Harriet Harman (Chair); Lord Brabazon of Tara; Joanna Cherry MP; Lord Dubs; Florence Eshalomi MP; Lord Henley; Baroness Massey of Darwen; Dean Russell MP; David Simmonds MP; Lord Singh of Wimbledon.

Questions 6 - 14

Witnesses

II: Raza Husain QC, Barrister, Matrix Chambers; Enver Solomon, Chief Executive, Refugee Council; Madeleine Sumption, Director, Migration Observatory.

Examination of witnesses

Raza Husain QC, Enver Solomon and Madeleine Sumption.

Q6 **Chair:** Thank you to our next panel. We have Raza Husain, who is a QC and a barrister at Matrix Chambers, and who is with us remotely. We have Enver Solomon, chief executive of the Refugee Council. We have Madeleine Sumption, director of Migration Observatory. You will have heard the evidence from our previous panel, so we would like to carry forward the questioning.

The Home Secretary has said that the principle behind this Bill is that access to the UK's asylum system should be based on need, not the ability to pay people smugglers. How much choice do refugees have about how to come to the UK? Do some refugees have any choice other than to enter the UK without going through the proper process? Perhaps we could start with you, Enver.

Enver Solomon: Thanks very much, Chair, and thanks to the committee for inviting me today. The reality from our perspective, and it was borne out in some of the evidence we heard just previously, is that for most refugees there are very limited regular routes to reach the UK. Entering so-called irregularly—ie individually themselves—often at the hands of people smugglers, as we have heard, is really the only option. It is also important to remember in the context of this that the majority of the world's refugees do not try to reach Europe or, indeed, the UK. Instead, they remain in neighbouring countries or they make an asylum claim in other European countries. France and Germany have far more asylum claims than we do in the UK.

The point I am making is that the number of regular routes is really limited. We have a resettlement programme. The Syrian programme took 2,000; we have a new resettlement programme for Afghans that I am sure we will talk about in a minute. We heard in the testimony from those who have been through the system the limitations of the family reunion rights, which is another safe route that provides the option for regular passage to the UK.

It is also important to remember, in this context about need, that more than half of those who come here irregularly are granted refugee protection. If you look at the most recent data to June last year, 54% of initial decisions made in the year up to June were granted refugee protection, so refugee status or humanitarian protection, which demonstrates that there is a need in the majority of cases. Then that number rises to close to two-thirds when you look at the numbers on appeal as well.

I would argue that the limitation of regular routes means that people do not have any other option. Taking that option is a legitimate option under the convention and an option that this country has always recognised. Prime Ministers from Winston Churchill onwards have recognised the right

to come to this country, to seek protection and, critically, to have a fair hearing on British soil. That principle is one that we should absolutely uphold today and remember that this nation was a key player in the development of the refugee convention and a proud signatory of it.

Chair: From the Refugee Council, with the cap on the Afghan citizens resettlement scheme being 5,000 a year, are you expecting there to be an increase in the number of Afghans seeking to come to the UK not through the regular routes over the coming months and years, as a result of the Taliban takeover?

Enver Solomon: It is likely, if we look at what we are hearing already from the UNHCR about the numbers that have been displaced and that are on the move. From the official data, those coming from Afghanistan have been in the top five countries in recent years. Previously, before western involvement in Afghanistan, during that period when the Taliban was in control, people sought sanctuary in the UK from Afghanistan, taking perilous journeys. The reality is that people will continue to do that and will try to reach our country, often because of connections—community connections, family connections. Because of our involvement in Afghanistan, they will want to come to the UK, and it is imperative that when they get here they are given a fair hearing.

We are very worried that, under the proposals in the Bill, our door will be slammed in their face, they could be criminalised and they will have a much harder task to put forward a claim and to be given protection in the UK. If they get protection, their rights will be limited, their period of protection will be much reduced and the predicament they find themselves in will be far more insecure, having the knock-on effect on their mental health and well-being.

Q7 **Chair:** This is an unfair question to ask you in the Refugee Council, but, with the cap being on 5,000, have you made any estimate of the numbers that might try and come here for asylum, over and above the 5,000 in the forthcoming years? Have you made any guesstimate at all?

Enver Solomon: We have not made a guesstimate. You could look at previous data, the breakdown of nationality data from the Home Office, and the numbers from Afghanistan that seek asylum. It would be difficult to make a guesstimate. The question it poses is this: is 20,000 sufficient? That is the figure the Government say they want to bring in under the new Afghan citizens' resettlement scheme, with 5,000 in the first year and no clarity about whether the scheme will stretch to five years or beyond. In our view, 5,000 is too limited. We would like to see up to 10,000.

There is also an argument for front-loading in year 1 and year 2. It is important to remember that the longer people are left in refugee camps, the more it damages their health and well-being, their prospects and their capacity to take forward and rebuild their lives. We know this from our experience at the Refugee Council stretching back decades, right through to Vietnam, and we have been involved in resettlement for many

decades. We would argue for a look at front-loading. We recognise the challenges that resettlement poses to local authorities, but a well-funded scheme can be made to work and we think it is important to be more ambitious.

To be very clear about the timeframe, at the moment we do not know whether it will be five years or longer than that. We need to set a clear cap on when we would want to see all the numbers coming in, in the same way that we did with the Syrian scheme, where there was a clear five-year timeframe.

Raza Husain: I agree with everything that Enver has said. I agree that the principle that informs the Bill should be based upon need, but not on resettlement or legal routes that do not exist, or if they do exist may be inadequate or unsafe. The reality, as we have heard—and it was humbling to hear the testimony of your first panel—is that refugees have very little choice as to how to get here. This was recognised by, as he then was, Mr Justice Simon Brown, now Lord Brown of Eaton-under-Heywood, over 20 years ago when he said, “The combined effect of visa requirements and carriers’ liability has made it well-nigh impossible for refugees to travel to countries of refuge without false documents”.

As regards Afghanistan, that simply illustrates the problems with the Bill. It is not that now is a bad time to introduce this Bill; there is never a good time for it. If I can be permitted, I want to simply explain seven reasons why this Bill is so legally problematic and legally inconsistent with the refugee convention. Indeed, it represents the biggest legal assault that there has ever been on the refugee convention in this country. If I may, I will use your question, Madam Chair, as a platform to explain and outline my seven reasons.

First, non-penalisation of refugees, non-penalisation criminally and administratively of those who arrive irregularly, is at the very core of the refugee convention. It is central to its scheme. The drafters learned the lessons from history, where thousands of Jewish people and other victims of Nazi Germany were trapped and could not escape for lack of legal documentation.

Secondly, as Enver stated, and as Mr Simmonds stated at Second Reading, we know that, of those who arrive by routes outside resettlement, three-quarters are granted asylum. It is 50% administratively, and 50% on appeal, so three-quarters are granted. The attack in the Bill on irregular arrival is empirically unfounded, as well as legally wrong. Our asylum system, rather than resettlement, laudable as that is, is how we protect most refugees.

Thirdly, the protection of illegal entry and arrival is central to the convention, because the convention replaced previous regimes, previous conventions, which permitted states to take refugees on a preauthorised basis only. This is sometimes missed in discussion. The conventions of 1933 and 1938 permitted states to take refugees from Russia, Armenia and Germany on a preauthorised basis. This convention replaced that

preauthorised model with a needs-based model. That is its basic rationale. The Bill reverses that basic rationale. It privileges the preauthorised and it penalises the needy. Mr Simmonds referred at Second Reading to updating our approach. This Bill backdates our approach. It is redolent of the 1930s model.

Fourthly, the Bill attacks the idea in the refugee convention that refugees are entitled to some element of choice as to where they claim asylum. The draft has recognised this. Academics and the UNHCR have confirmed it. Our courts have held that this is the position. There is no requirement to claim asylum in the first safe country that you reach. That would be nonsensical. If you think about the circumstances in the 1950s with no commercial air travel, it would have meant that any refugee arriving in the UK would have crossed land borders, and we did not think then that such a refugee should be seen as a criminal sentenced to a maximum four years' imprisonment, with his claim regarded as inadmissible and the refugee being sent back to France.

If the Government's thinking is right, that of course would be the result. We would not be receiving any refugees other than those preauthorised, nor would any state that was geographically next to a refugee-producing country. Imagine today, members of the committee, if an Afghani interpreter who worked for us arrived in the UK via France. The Home Office position, recently confirmed, is that the full might of this Bill would apply to them. They would be criminalised; their case would be inadmissible; they would be housed accordingly. If granted refugee status, they would not be able to be joined by their family. They would get lesser leave. It is unclear whether they would ever qualify for settlement.

The points I just made lead to a fifth, very important point. They resonate on the international plane. Responsibility for receiving refugees was always intended to be shared across nations. The preamble recognises this. The UNHCR recently stated that requiring individuals to claim asylum in the first safe country they reach "would undermine the global humanitarian and co-operative principles on which refugee protection is founded". The principle was affirmed by the UN General Assembly and the UK as recently as 2018 in the global compact.

The idea that the refugee can exercise some choice as to where they claim asylum is not an anachronistic idea; it is a contemporary idea. Refugees are supposed to be people with agency. Sometimes they do not have it, as we have just heard, but they are conceived of as persons with agency rather than pieces of cargo that can be dumped anywhere along their route to safety.

The sixth reason that I say that the Bill is so problematic legally is the legal routes question. We have already addressed that. There are no safe, legal routes.

Seventhly, what about resettlement? Again, as Ms Cherry and Mr Simmonds have noted, this is a laudable aim but cannot replace our

asylum system. Even with the scale of resettlement of Syrians, resettlement caters for a very small minority of people in need. Consider the practicalities. In Afghanistan, what happens if you are number 5,001? What happens if you are number 4,000 but there is a delay in processing your claim or you cannot get the documents because the Taliban has taken over your village? Are you supposed to wait and explain this to the Taliban?

As the UN Secretary-General stated in a very famous memorandum in 1950—this is the UN Secretary-General himself—“A refugee, whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge”. Therefore, the analogy with queue jumping is quite false. There is either no queue, no adequate queue or no safe queue. None of this, I repeat, is to denigrate the laudable efforts to resettle, just to say that resettlement is not a legal answer. It is complementary to the refugee convention, not a substitute for it.

Those are really my seven reasons why the principle at the heart of this Bill represents the single biggest attack on the refugee convention in legal terms that there has ever been.

Q8 **Dean Russell MP:** This is just a quick comment, I suppose, on your seven points. Is it not the case, from what we heard through the testimony, that one of the things it does not take into account is the incredibly cruel yet sophisticated increase in gangs who are taking advantage of vulnerable people to ship them around the world, to the UK and other places? There is no question about us needing to support the asylum system, and today’s session is not about the rights and wrongs of immigration, but those seven points do not cover the need to tackle the gangs and the serious organised crime that is taking advantage of these poor people, which is increasing the volume and routes. We need to be tackling that. That is where this Bill is focused.

Raza Husain: To respond to that, the biggest reason why you have these gangs and smugglers is the absence of safe, legal routes. This is the point that Ms Cherry made at the Second Reading. You do not tackle the problem of gangs by criminalising the victims of those gangs, which is precisely what Clause 37 does. It makes it a criminal offence punishable by a maximum of four years for any refugee who arrives in the UK. Not someone who enters, who crosses immigration control, but anybody who arrives in this jurisdiction is criminalised.

I am sorry to have glossed over that. The reason I did is that it is wrapped up with the absence of safe, legal routes. The absence of safe, legal routes, which it is in the gift of contracting states to the refugee convention to create, creates the conditions in which smugglers are able to operate. That is a really fundamental reality, which should not be ignored.

Dean Russell MP: Forgive me, because I know I am jumping in ahead of

colleagues, but surely there has been discussion about those routes for many years and, of course, routes have existed. My concern is that we do not tackle and put off these awful gangs, these serious, organised gangs that are using technology to organise themselves around the world to be able to traffic people. We heard earlier the very sad testimonies of people not even knowing where their destination is. If we do not do something to tackle that, we will increase the number of people who are put in danger in travelling to the UK and other places. I would just be interested in your view on the Bill with regards the need to tackle those organised gangs.

Raza Husain: I should make it clear that my expertise is in law rather than policy. You are not interested in hearing from me about policy and there is no reason you should be. Legally, the Bill just does not do that. It criminalises and targets the victims of these people, who are able to operate as they do because of the absence of safe and legal routes. Practically every organisation involved with refugees has said that over very many years.

Enver Solomon: If you look at the situation that is going on, the gangs thrive because there is an endless supply of people they can exploit and seek to control. Logically, if you are thinking about this, you need to try to do two things. First, you need to address the flow of people, and that is an issue of war, persecution and terror around the globe. That is an issue of global Britain's role with other states across the world to address the factors in why people are fleeing persecution, which was part of our involvement in Afghanistan and our international development efforts. Secondly, you have to look at how you create alternative routes, as our colleague was saying. At the moment, those alternative routes are really quite limited.

The reality is that, as an individual nation, we cannot tackle what is a global racket. We have to work collaboratively with other nations and to recognise that there will be people who fall prey to that horrendous international criminal racket. The principle we have always upheld is that, when they get to this country, they must have a fair hearing and we must give them protection, if they need protection and they meet the need for protection as set out in the convention.

Dean Russell MP: No doubt we agree on many points. However, my concern is that, if we do not tackle some of these issues, which is what this Bill is trying to do, as you say, there will always been an endless flow of people wanting, quite rightly, to move away from areas where they are persecuted and awful situations they are in.

I agree that there is a global solution needed here as well, but, if we do not have the ability to stop those gangs or to even put them off thinking, "We can take people there", the risk is that they will continue to do it, they will do it more, the numbers will go up and more people will therefore be in detention and in situations that we do not want anyone to be in. For me, I suppose the concern here is that, by doing nothing, not putting a Bill in place and not tackling this, we are making it worse for

everybody and just funnelling more money into serious organised crime, which will continue to grow that market.

Enver Solomon: Our concern is that the Bill will not address the criminal rackets. They will continue to operate because the Bill is simply focusing on an assumption that it is all about pull factors and the more that you create a deterrent, the less likely people are to come here, where there is no evidence to stand that up. Indeed, research done by the Home Office over a decade ago found that you can toughen up our asylum system as much as you want, but people will still seek sanctuary, protection and safety in the UK.

The Bill does nothing about the push factors, the reasons why people have to flee persecution and terror to come here. The principle holds that we should do what we have always done, which is give people a fair hearing on UK soil. I am not convinced, in anything I have seen in this Bill, that it will do anything to put people smugglers out of business or to stop people being exploited by people smugglers.

Madeleine Sumption: I will come in on a couple of those things. In this discussion about choice, we need to be clear about what the actual policy goal is, because on the one hand some of the discussion is about incentivising people not to choose irregular routes and to take legal route. There, for the reasons that have been discussed, it is very difficult to imagine a policy that makes irregular routes less attractive, pushing people towards legal routes, simply because the legal routes do not really exist or are not accessible for most people.

The resettlement scheme obviously is a safe and legal route, but you have to understand that resettlement is effectively a lottery. Refugees have very little agency in the process of whether they are selected. It is only a tiny percentage of refugees who are resettled, less than 1% in a given year. It is not really possible for people to get in that queue and therefore substitute from the illegal to the legal routes. That leaves us then with the question of whether they will substitute to another country. This is an empirical question. If you make the situation for people who arrive through irregular routes less attractive, will fewer of them come to the UK instead of going somewhere else?

There has been a fair amount of research based on qualitative interviews with large numbers of asylum seekers and refugees, which have suggested that, as you heard from the people you spoke to earlier, it is a very common experience for people to have quite limited understanding of what actually awaits them on the other end. The information they have often comes through family networks and various non-official sources of information that are not necessarily accurate. In some cases, their perception of which countries they will be able to seek asylum in or be safe in is based on very broad perceptions about the country and definitely not the specifics of the asylum regime. From a policy perspective, this means that manipulating the policy and what happens to people after they arrive is not a very powerful tool for affecting which country people go to.

On the numbers, we should expect there to be an increase in Afghan refugees. The UK has always seen increasing numbers in response to crises around the world. It will not necessarily be particularly big. Asylum-related flows are the most difficult to forecast in the immigration system, but if we look back at the Syrian crisis in 2015, even at a time when the EU was receiving hundreds of thousands of applications from Syrians, the peak in the UK was under 3,000 applications. It will go up, but it is still very difficult for people to get to the UK and there will not necessarily be absolutely huge numbers. That said, the UK needs to plan for a range of scenarios, given that these numbers are always really difficult to predict.

Q9 **Baroness Massey of Darwen:** Hello, everybody. Thank you for coming. I have two and a half questions, but actually a lot has been covered already in what others have asked, so I will not go over all that. I will try to synchronise the issues. If you want to add to anything else to what you have said already, please do so, but do not feel you have to give a really full answer if you have answered already.

The Government encourage people in need of protection to come to the UK via organised "safe and legal" routes, which you have talked about already, such as refugee resettlement schemes, rather than making irregular journeys to the UK and then claiming asylum. I would like to know how adequate you think these legal routes are. That has come up already a bit.

I would also like to ask about the resettlement scheme for Afghan refugees. It is similar to the one that has been in place for Syrians since 2014, prioritising the survivors of torture, people with serious medical conditions and women. Is this the right approach?

This has been quoted already, but the Home Secretary has said that the current system benefits economic migrants and is "manifestly unfair to those desperately waiting to be resettled in the UK". In 2020, of those arriving by boat, as we have said, 74% were aged 18 to 39; 87% were male. Are people entering the country this way jumping ahead of more vulnerable refugees on resettlement schemes?

Enver Solomon: It is important to recognise that the age and gender of refugees is not in itself an indicator of vulnerability. Although we might imagine that people seeking asylum by travelling to the UK are the fittest and healthiest, simply by the fact of what they are doing, this is not borne out by the characteristics of the asylum-seeking population. Some people, because of what we might consider to be indicators of vulnerability, cannot wait in the region. They do not feel safe there.

I am thinking of survivors of sexual violence, people who have been subject to modern slavery, LGBTI claimants and single parents. Currently, for those male refugees recognised as such in the UK, it is important to acknowledge that they will then be able to bring close family members to join them under refugee family reunion rules, which is a safe

route. They will be able to bring their spouse or their child if they are under the age of 18.

Finally on this point, more generally, younger men who are recognised as refugees are clearly also in need of international protection, as has been determined by the asylum system. We should not find fault in the fact that they are trying to find safety because they have been fleeing persecution. As I said earlier, the latest data shows that 54% on initial decision-making are granted protection and that increases to more than 60% once appeal is taken into account. When looking at that point you are making about the proportion being young males, it is important to take all those points into account.

On the resettlement point, it is a really important issue for the committee to recognise that, while the focus is on the Afghan programme, we already have a global resettlement scheme that was committed to take 3,000 people from places of conflict this year. Indeed, my organisation has been resettling and is resettling, in recent weeks and this week, people who have come from the Middle East, from Iraq and Syria. It is important that, in addition to the Afghan scheme, we maintain that commitment going forward and we do not just have a single scheme focusing on Afghans.

My final point is about family reunion and the need to recognise that that is a safe route, but at the moment it is restrictive. For example, if you have a child who is between the ages of 18 and 25, you cannot bring them here. We know—indeed, members of the committee might have teenage and young adult children—the need to support those into their 20s. It seems particularly unfair to be unable to do that. We also know, with the rules as they are currently set out, that if you come here as a child by yourself you are unable to be reunited with your family, which seems particularly cruel and unjust, and is not the same in many other western countries.

There is the opportunity to expand safe routes through reviewing the family reunion laws, but this Bill potentially goes in the opposite direction. It is not clear yet, but the Government have said that for those who are granted the new temporary protection of 30 months the Bill has a provision to restrict family reunion rights further for them. We do not know the detail yet because it has not been brought forward, but it is seeking potentially to reduce safe routes through that family reunion option, rather than seeking to expand them. Expanding them would reduce the numbers that have to take the irregular routes and the dangerous journeys we have been talking about.

Q10 Lord Brabazon of Tara: I am a Conservative Member of the House of Lords. Does granting a lesser status for protection and support for refugees who entered the UK outside legally recognised routes create problems with compatibility with refugee law and human rights law? Would you like to start on that, please, Madeleine?

Madeleine Sumption: I will leave the legal piece of that to the lawyers, but there is a big empirical question about how many people this affects. It is quite difficult, based on the proposals in the Bill, to understand that, because they are quite general and you could imagine them being applied in a very broad way that would affect a large number of people, and potentially raise more issues about whether it is compatible with the refugee convention. You could imagine application that is much more narrowly focused, more rigorously consistent with the refugee convention, that does not affect that many people at all. It is hard to know at this stage which of those scenarios we are in.

The Home Office has experience of assessing people for inadmissibility under the current system that has been in place since January. There is actually a little bit of data on that, which is quite interesting. In the first half of the year, the Government served around 4,500 notices of intent to asylum applicants, essentially saying that they believed there was some evidence they might be inadmissible and they were going to assess them for this.

That compares to around 14,500 asylum applications that were made during the first half of the year, so we are looking at around 30% of asylum applicants during that period, although the numbers may go up if there were people served notices of intent over the summer. We can say that this is potentially a sizeable number of cases in which the Home Office suspected that a person might be inadmissible because of a connection to another country, but it is still a minority, at least based on the data we have so far.

In terms of how many of those people were actually assessed as being inadmissible, of the 4,500, the number at least in the first six months of the year, which is what we have data for so far, was seven, so not a large number. There were no people returned on that basis during that period. The way that the system works will change and, to be deemed inadmissible under the current system, a country has to agree to take the person back, so we would expect those numbers to increase.

If we are looking at the impacts of these policies to grant lesser status, at least based on the figures we have so far, unless there is a radical change in the co-operation with our countries, it seems that the main impact is likely to be not that large numbers of people will be returned as a result of being inadmissible, but that those people who were in the country will remain here and be given the lesser status.

I will just add one thing on the broader impacts of that, which need a little consideration from a policy perspective. There is basically a challenge facing the Government, because they have two competing objectives that are in tension with each other. On the one hand, they want to deter people from using irregular routes, but if a refugee is recognised, remains in the country permanently and is not removed, which the data we have so far suggest that they are not going to be, the Government also have an interest in helping those people who will

become probably a permanent part of the population to integrate and successfully establish themselves here, learning English and so forth.

The tension in the Bill is that some of the mechanisms used to try to deter people from using certain routes of entry are also ones that research suggests would undermine integration later on, for example access to public funds, which many refugees rely on because they tend to have higher unemployment rates, particularly initially, and the ability to reunite with family members, which is also considered a key piece of integration. One of the policy challenges is how to reconcile those two impacts that giving refugees a lesser status might end up having.

Q11 Florence Eshalomi MP: Good afternoon, everyone, and apologies for lateness. It is a really interesting session. Thank you to our guests. Enver and Raza, you highlighted that this legislation will criminalise the wrong people. We have seen the provisions on criminalising people who are trying to help those refugees. Are the powers contained in the Bill likely to affect charitable organisations such as the RNLI? Will you see them being criminalised for effectively carrying out their legal duties?

Enver Solomon: From our perspective, that is a concern and the implications are potentially grave. In removing “for gain” from the current offence, the Government are showing that they are content to criminalise people who simply respond to the distress of someone in trouble at sea. The notion that in such a situation a person may have to consider the criminal implications of their actions in choosing whether to save the life of someone in distress seems to us rather preposterous and wholly inappropriate.

After this proposal, the *New Plan for Immigration*, was suggested, we looked at the consultation responses and the public response seemed to be overwhelmingly against it. You will have seen yourself the public response when the RNLI explained why it is doing what it does in the channel to save people’s lives, and the outpouring of support for its work. I doubt this move would attract overwhelming public support and it is certainly, as I say, wholly inappropriate and a retrograde step.

Q12 Joanna Cherry MP: Moving on from that, I want to ask about the impact of this Bill on modern slavery provisions. Some concern was raised about this at Second Reading, as you will know. Clearly, we are concerned primarily with human rights aspects here, and a great deal of work has been done north and south of the border to try to support the victims of modern slavery. There is concern about measures in Part 4 of this Bill, which have been brought in partly in response to the perceived risk of people misusing the national referral mechanism system to delay immigration action. How well founded are these fears about Part 4? Perhaps we could start with Madeleine.

Madeleine Sumption: I am going to leave the modern slavery questions to the lawyers, if that is all right.

Joanna Cherry MP: Enver, perhaps you could speak about it.

Enver Solomon: We will see if our esteemed legal colleague wants to comment as well. The presumption that late disclosure should affect credibility is a particularly problematic one. It is widely understood in the Government's own statutory guidance in relation to modern slavery that the trauma and the impact of having gone through that process of being enslaved can result in delayed disclosure. It is highly traumatic. This principle needs to be retained in any policy about recognising the victims of modern slavery, and understanding the impact on them and how they then will disclose and bring forward information.

It also takes time to establish and gather evidence about someone's experience of being subject to modern slavery. Individuals themselves are not always aware that they have been exploited and what has been going on. It is really important to recognise that that whole process is not a single event, but it is a process in gathering information and in speaking to the victims and understanding their predicaments and circumstances.

There has been considerable progress made in recent years, and you referred to it yourself, in relation to recognising modern slavery in a commitment by Government to assist and support victims by improving the understanding of those who come into contact with people who have been exploited. We are concerned that the Bill could undermine this progress that has been made, and it is critical that it does not. I heard the modern slavery commissioner, Sara Thornton, talk about her concerns about this in relation to the Bill. I would urge the committee to look at and recognise those. When our commissioner in this area of modern slavery talks about the potential impact of the Bill on victims of modern slavery, it raises serious concerns.

Joanna Cherry MP: You have addressed there Clause 47, which is basically saying that, if you provided information after the deadline without good reason, it would damage your credibility. What about the proposed changes to the categorisation of modern slavery? How will they operate in relation to the protection of those, especially children, who are being caught in modern slavery-type conditions as part of county lines?

Enver Solomon: That is right. We know that county lines activity is an issue that affects children in the UK, including children who come into the UK through the asylum and refugee system. We work at the Refugee Council with children who come here alone, unaccompanied, and we see cases of those children being exploited and those children who have been subject to modern slavery. It is imperative that there is a greater understanding of the exploitation of these young people and of modern slavery more broadly, how it impacts on victims of trafficking and how it interrelates with people who come through the asylum and immigration system.

Often in practice you find that state agencies work in silos, so there is no shared understanding of modern slavery that reaches across child protection, adult safeguarding, experts, those who are working in the asylum and immigration system, and then those who are working in

enforcement, whether police or Border Force. It is critical that there is a wide understanding and a broad recognition of the impact on victims, and that the definition and guidance that exist reflect that going forward.

Q13 Joanna Cherry MP: Raza, perhaps I could direct my next question to you on the concerns about Part 4 of the Act in relation to the interplay with modern slavery. Do you think that Part 4, in the way it is currently drafted, addresses recent judgments against the UK in relation to the Article 4 prohibition of slavery?

Raza Husain: The short answer is no, it does not, because part of the duty under Article 4 is to properly identify victims, and Clause 47 creates a very significant problem with proper identification, for all the reasons that Enver just outlined, which are echoed in a letter written yesterday by Dame Sara Thornton, the independent anti-slavery commissioner. That is a letter of yesterday's date to the Home Secretary, where she raises all these points, including the point about trauma.

The issue of trauma obviously applies across the board to refugee claimants and trafficking victims, but with trafficking victims there is the added element that trafficking is very often not just the evil over there; it is the evil in our midst. It is very unusual for a treaty to condescend to this level of detail, but the Council of Europe trafficking convention is absolutely shot through with a recognition that the trafficking victim will take time to be able to reveal their story, to help in the prosecution and to get support, and will be in fear of the trafficker. That is really important to acknowledge. It was something acknowledged by a Court of Appeal decision in a case called MN. Clause 47 in particular cuts across the duty properly to identify trafficking victims.

Madam Chair, Ms Cherry, I do not know whether I can very quickly deal with some of the earlier questions. I do not know whether there is time.

Chair: I would like Joanna to wind up her question, if she would, because Dean has a further question as well.

Joanna Cherry MP: I will just wind up my question quickly with a supplementary, which is this. I think you are saying, Raza, that Part 4 as presently drafted, if it passes into law, potentially breaches the United Kingdom's obligations under Article 4 of the ECHR. Earlier you gave us seven instances, which included provisions of the Bill, as currently drafted, potentially sitting very ill with our international duties and treaty obligations under the refugee convention. What could the consequences and international repercussions be for the United Kingdom if we pass this Bill into law and if it does indeed contravene our obligations under, first, the refugee convention and, secondly, Article 4 and possibly other aspects of the ECHR?

Raza Husain: The consequences are very significant. I should have made a further point about Part 4 and modern slavery, concerning Clause 51, which sets a very low threshold for defining public order grounds, which preclude an individual who is a trafficking victim from support. If

you have a 12-month sentence—this, remember, is what you could get on summary conviction; the maximum sentence is four years—for arriving to claim asylum, under Clause 37, it is absolutely unprecedented in our history that that has been criminalised. If you do that, that then rebounds not just in refugee law, but in trafficking law.

On the broader issue, those seven reasons I gave were reasons to say why the very rationale of this Bill is inconsistent with refugee convention. It is absolutely right, as the UNHCR has said, that it will damage our legal standing across the world. Our jurisdiction is rightly held up as a very developed and proper refugee law jurisdiction. This will damage it. It will undermine our legal standing.

I already mentioned how the measures in this Bill have repercussions internationally. One of the things to remember is that the Bill seems to view with equanimity an irregular border crossing elsewhere. If you got to France in an irregular way, you are supposed to go back, but what is to stop France saying the same thing? What is to stop Pakistan saying the same thing when it comes to Afghan refugees desperately trying to cross the border into Pakistan? What is to stop Iran saying the same thing and so forth? I will leave that there. If there is time, I just want to say something very quickly about equal treatment.

Q14 Dean Russell MP: Mr Solomon, one of the most visual aspects of the challenges related to this Bill, and more widely around asylum, refugees, illegal immigration and all those things, is the sight of the small boats coming across the channel. I hear from constituents who are concerned on every side about it: concerns for those who are on the boats, who are perhaps being smuggled through modern slavery, as well as people who are very angry that they are seeing people arrive on the beaches. There are many different sides to it.

With regard to that particular aspect, what do you see being the solution? How do you see that within this Bill? My fear is that, if we do not tackle that, it will become a bigger issue. Even if it is just philosophically or within the media, it is an issue and I would love to hear your thoughts on how we should be stemming the flow of that, which would also stem the flow of the serious organised crime using that as a route.

Enver Solomon: I fully recognise what you are saying and acknowledge that it is a big political issue for you, your colleagues and Members of Parliament. Constituents raise it with them, in the way that health and crime, knife crime being an example, have been big political issues. There are a few things we need to remember about this. The Government can make it more of a political issue. When the Home Secretary stands up and says, "I'm going to make the route unviable", that turns it into a totemic issue.

The reality is that it is not possible to make that route unviable, because this is a complex policy issue. The fact that people are seeking to come to this country to find safety cannot simply be addressed by giving millions of pounds to the French and trying to resolve it bilaterally. It is a

challenging issue for the whole of Europe. Indeed, it is much more challenging for countries that are closer to the flow of people coming from poorer nations, such as Greece and Italy. As I say, other European countries have far more asylum applications than we do.

First, there needs to be a proportionate political response, not to overlay it as a big political issue and not to overpromise and underdeliver, which damages public trust in the whole issue of policy-making. When you damage public trust in policy-making, it does not facilitate resolving what is a legitimate policy challenge.

Secondly, we need to recognise that many of those who come across the channel will be found to have a legitimate need for humanitarian protection. To simply label them in one fell swoop as economic migrants or illegal migrants does not bear the reality of the decision-making that then happens to those people once they make an asylum claim. The reality of addressing it needs a more sophisticated policy response. We need to be looking at issues with humanitarian visas. We need to be looking at the border issue with safe routes that we have talked about.

As we heard in the very powerful testimony from Peter earlier, he fled persecution in Iran. He came across the channel because he had no other option. We have always upheld the principle in this country that, however someone arrives on our shores, we will give them a fair hearing and the opportunity to apply for protection and safety in this country. If they need that protection, we will grant it to them, and if we do not we will seek to enable them to be returned from where they came.

That principle has been proudly upheld by Prime Ministers across all political parties for many decades. It is a principle we should continue to recognise because, as we have heard, individuals do not have agency around choice. They need to flee, they need to come here and they need to find safety.

The public want three things. They want a fair system. They want an efficient and effective system. When you have backlogs of over 70,000 and many thousand waiting for more than a year for a decision, that is not an effective system. They also want a system that they can have confidence in, that makes good-quality decisions and that deals with people effectively and fairly. That is how we win the public's trust in addressing what is, I recognise, a highly public issue that attracts attention for many parliamentarians in their mailbags.

Dean Russell MP: Thank you for that testimony. On that, though, with the testimony earlier, the gentleman had gone through Switzerland, I believe, Spain, France and the UK. The choice was taken away by those criminal gangs by saying he will not get his papers until he comes to the UK. He said in his testimony specifically that he had a great fear of deep water and, therefore, coming across the channel was a real fear for him.

I just wonder what we are doing that is different from Switzerland, Spain and France that means the criminal gangs are not saying, "Actually, we

will give you your papers here". Surely it must be more effort for them to go through those countries and then put them on a small boat to get to the UK. I am just fascinated to know. What are we doing that they are not doing? Is it just that the gangs are finding it easier in the UK? I would just be keen to get your thoughts on that.

Enver Solomon: The gangs will give people all kinds of misinformation and so forth. In fact, where people are trafficked through these gangs, many more of them end up in other European nations, such as Greece, Germany and, indeed, France. I would go back to the point that Raza made earlier, which we have always upheld as a nation, that the notion behind the convention is that responsibility to address this issue would be shared by nations. We have a role to play with other nations in addressing this issue, in the way that we have a role to play addressing major policy challenges, such as climate change.

The movement of people as a consequence of war, oppression, terror and persecution is a challenge that faces all Governments in Europe. We have a duty to address that collectively, to play a role and to take a responsible part in addressing that. That is how we should approach it. We are not going to resolve this issue by seeking a simple, bilateral solution with France, or by resorting to an enforcement approach and simply focusing on toughening up and deterrent. That will fly in the face of the principle we have upheld.

I would remind the committee that, indeed, among the Members of this House, there are many individuals who are here because their forefathers, members of their family, were given protection in this country. Indeed, we have Lord Dubs as a member of this committee today. I myself am here today as a consequence of protection that was provided to my family members, going back through my family.

This is the nation we are and people go on to make an incredible contribution to this country. People who have come here and been given refugee protection have been at the forefront of the fight to keep us safe in dealing with the Covid pandemic. We have prominent businesspeople who have come here as refugees. It is important to recognise that they go on to make an incredible contribution to this country and are, indeed, very proud to call themselves British citizens.

Chair: We have those who make a good contribution to this country represented on our clerks' team here, as well as among the members. Could I ask you, Raza, to respond to Dean's point in very brief terms?

Raza Husain: Very briefly, the number of refugees reaching the UK per head of population places us 17th in Europe.

Chair: We have to bear in mind that we are trying not to be the Home Affairs Select Committee here. We are trying to focus on the human rights of the people who have fled, their experience of the journey and their human rights when they actually get here. There is a very big argument about migration overall, but that will be well led by the Home

Affairs Select Committee.

Can I conclude this session, since we have used up our time, by sincerely thanking our expert witnesses here? It has been an extremely illuminating session. Thank you for listening to the earlier session and giving your comments in that context. You have helped us understand the complicated interplay of the actual practicalities between legal and illegal routes, regular and irregular routes, and what does and does not affect criminal gangs, what does and does not affect those who are fleeing, and the interaction. Those are all very important points to bear in mind when we are reporting to Parliament on the human rights implications of this Bill.

Thank you to all the committee members for your questions, to our technical team and to our clerks. Thank you very much for the work that you three do, as well as the help you have given our clerks' team in advance of this hearing and for coming to this hearing yourselves. Thank you. That concludes the business for today.