



Select Committee on the European Union

Security and Justice Sub-Committee

Corrected oral evidence: Brexit: future UK-EU co-operation on asylum and international protection

Tuesday 29 September 2020

10 am

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Members present: Lord Ricketts (The Chair); Lord Anderson of Ipswich; Lord Anderson of Swansea; Lord Arbuthnot of Edrom; Lord Dholakia; Baroness Finn; Baroness Goudie; Baroness Hamwee; Lord Kirkhope of Harrogate; Lord Lexden; Lord Polak; Baroness Primarolo; Lord Rowlands.

Evidence Session No. 2

Virtual Proceeding

Questions 25 - 42

Witnesses

I: Chris Philp MP, Parliamentary Under Secretary of State, Home Office and Ministry of Justice; Edward Latham, Deputy Director, Fair Borders Project Team, Home Office; Dr Miv Elimelech, Deputy Director of Asylum and Family Policy, Home Office.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Chris Philp MP, Edward Latham and Dr Miv Elimelech.

Q25 The Chair: Good morning and welcome to this public session of the European Union Committee Security and Justice Sub-Committee, with Mr Chris Philp, Parliamentary Under-Secretary of State in the Home Office, looking at the issue of co-operation with the EU after Brexit on asylum and immigration issues. Minister, could you perhaps introduce the officials who are with you on the call?

Chris Philp MP: Good morning. I am joined by two Home Office officials. Edward Latham is with the Home Office legal advisers and can assist us on any matters of legal technicality that arise. I am also delighted to be joined by Miv Elimelech, an expert on policy in this area.

Q26 The Chair: Thank you very much indeed. This area of the negotiations with the EU does not get an awful lot of public attention, except when we come to small boat migrant crossings in the channel, but it is clearly of real concern to people. Last week, we had a three-hour debate in the Lords on unaccompanied asylum-seeking children, where there was concern across the House about this issue. It is very good to have you, Minister, and thank you for your time.

This is obviously a public session and it is being broadcast. We will make sure that you see a transcript for any corrections before we publish it. I will pass the floor to individual members of the Committee to put questions to you.

Could I start by asking you about perhaps the most topical issue: the question of asylum seekers crossing the channel in increasing numbers in small boats? We know that you were on a mission to Paris last month to try to agree with the French a comprehensive approach to the problem. Could you give us an update?

Chris Philp MP: It is a very serious problem, as you said. This issue started coming to public attention in December 2018 and rumbled on throughout 2019, although with relatively low numbers—typically 100 or 200 a month. August 2019 was the worst month; from memory, 350 people crossed. We saw a radical change in behaviour starting in April 2020, when the number stepped up to about 550. It went up to approximately 750 in May and again in June; from memory, I think the exact numbers were 741 in May and 720 in June. It then escalated further in July, exceeding 1,000. It approached 1,500 in August.

The numbers have escalated dramatically, and there are a couple of reasons for that. One is that the weather in April, May and particularly June was unusually benign. The sea was very calm. Combined with that, the other two routes that are often used for clandestine or illegal entry into the country became much more difficult due to coronavirus. The first route was people arriving by aeroplane without proper documentation, so inadequately documented passengers. As you can imagine, this went almost to zero in April and has remained low ever since, because the number of international flights, certainly for April, May and June, was extremely low, almost zero, and to this day remains quite low.

The second route that had been used was coming in on the back of a lorry. Although freight traffic continued to come across, to supply food and so on, the passenger traffic that would ordinarily cross the channel reduced to almost zero in April and May and continues to be very low. The opportunities to use that as a cover for jumping on the back of a lorry diminished considerably, so we saw this switch to small boats.

It is a very significant problem numerically. Clearly, it is dangerous. Indeed, the clandestine entry of a lorry can also be dangerous, as we saw with the tragic incident in Purfleet last autumn when 39 Vietnamese people died in the back of a sealed refrigerated container. These clandestine methods are dangerous. In our view, they are also unnecessary, because France is a safe country and if people want to claim protection there they can.

You asked specifically about discussions with the French. Those discussions are ongoing. They have not reached a definitive conclusion, but elements of co-operation have been agreed already. For example, on 12 July, so before my visit, the Home Secretary and I visited Calais and met with Gérald Darmanin, the newly appointed Interior Minister of the French Republic. At that meeting, we agreed with him the establishment of a joint intelligence cell, whereby officers from the UK, including officers from the National Crime Agency, would work with French colleagues to try to disrupt the criminal gangs that often organise and facilitate these crossings. The JIC has been established and work has started on that.

Earlier in the year, we agreed to fund some gendarme reservists, currently 45 in number, who are deployed on and near the beaches, with the purpose of preventing embarkations. That work is going on. Overall, the French are successful in preventing approximately 50% of attempted embarkations, which, last time I checked, a few weeks ago, amounted to about 3,000 crossing attempts up to that point in 2020. They stop quite a few people attempting the journey, but a very large number still get across.

Discussions are ongoing to reach a fuller agreement with our French colleagues. We hope, on our side, to reach a fuller bilateral agreement on this specific topic as soon as we can. We are actively discussing that with them at all levels, at official level and by ministerial exchanges.

The Chair: We would welcome information about that formal agreement when it is made. Indeed, I hope it would come to Parliament for scrutiny when the agreement is completed, because it is clearly very important. In my time as ambassador in Paris, until 2016, I went through a number of these crises on migrants. I always found that operationally the French were very keen to co-operate and saw a national interest in preventing these crossings. There have been suggestions, even in the House of Lords, that the French authorities are somehow complicit in this small boat migrant traffic. I have said that I do not believe that at all. I think they are genuinely trying to do their best to stop it. I would welcome your thoughts on that.

Chris Philp MP: I pay particular tribute to your successor in the Paris embassy, Ed Llewellyn, who is doing fantastic work on behalf of the UK Government in this area and others. It has been a huge pleasure working closely with Ambassador Llewellyn on this topic. The French, certainly their land forces, are working as best they can to help prevent the embarkations, and we are working closely with them in a spirit of constructive co-operation on that. I would not want to suggest that they are not doing everything they can, but there is scope to do more. We are actively proposing to our French colleagues ways in which we can work more closely together, do more step-up activity and so on. Those proposals are with our French colleagues at the moment.

When it comes to activity on the sea, the French Government take the view that they do not want to conduct interceptions of these vessels in French waters unless the vessels get into distress. If a migrant vessel embarks, refuses assistance and continues on its passage towards the median line dividing the UK and French territorial seas, the position of the French Government is to not intercept it using force. They let it continue. The only circumstance in which they pick people up and take them back to France is if the boat starts sinking and of necessity they have to pick up the people on the boat. That is their posture at sea.

I am not sure if this is in order. Given that you were the ambassador in 2014 and 2015, we had a similar issue with the Channel Tunnel at Coquelles. I wonder if there were any particular lessons that you feel we should be picking up from that. It is not quite the same situation but rather analogous.

The Chair: I would be delighted to discuss that with you, perhaps after the meeting. We certainly went through an awful lot. I always found that the French saw, as I say, an interest in co-operating and keeping the border as tightly sealed as possible, because otherwise the magnetic effect of drawing more migrants to the region would be very strong. If you are willing, perhaps we could have a further discussion about that. I would be delighted to share the experiences I had of a slightly different situation.

That situation imperilled economic links between Britain and France more directly than the small boat crossings, because there were interruptions in the ferries, the Eurotunnel services and so on. It was a slightly different kind of crisis, although I quite accept that small boat migration is very dangerous for everybody involved. I would willingly take up the offer of discussing that further with you offline.

Chris Philp MP: I am very grateful. Your experience will be relevant and useful. The point you made about the incentives the French Government may have is important. It serves the French national interest to work with us on this, as they are, and to do everything they can to stop the route, because it acts as a magnet that draws people to northern France, wishing to make this crossing. If we can make the route unviable and stop it completely, that reason for migrants to travel across Europe, often through many safe countries, to the north of France will cease to exist.

I met briefly with the Mayor of Calais back in July. The people of Calais are certainly not at all happy that their town and region is turning into a transit camp. If we can cut the route and stop these crossings entirely, the migrants will have no reason to come to the north of France, and to the Pas-de-Calais in particular, in the first place. That will serve the interest of that region and France more widely. There is an alignment of incentives there.

The Chair: I absolutely agree.

Q27 Lord Anderson of Swansea: Good morning, Minister. I am delighted that our Chair is giving evidence as well. I have a question on the Government's draft text on the transfer of unaccompanied asylum-seeking children. We understand that the EU negotiators have confirmed that the negotiating mandate of the Commission, which was agreed and signed off by the Council in February this year, does not empower them to negotiate the Government's draft agreement on the transfer of unaccompanied asylum-seeking children. Is that also the Government's understanding of the EU's position?

Chris Philp MP: The European Commission's negotiating mandate is rather fluid. They return to this question on a frequent basis. I am not personally involved in the day-to-day negotiations; other people across Europe are handling that. I do not participate in or have any visibility on the ebb and flow of the negotiations, minute by minute or day to day. I do know that the European Union's negotiating mandate can be revisited periodically, as and when Michel Barnier wishes to do so. It is not set in stone or frozen in aspic. It can be changed dynamically.

The Government do not provide a week-to-week or month-to-month running commentary on the current state of negotiations. There are a lot of open questions. Indeed, the entire negotiation is still an open question at this relatively late stage in the proceedings. We tabled the draft agreement in May this year and it remains on the table. The negotiation is ongoing, and we will continue to promote and push it.

Lord Anderson of Swansea: It may remain on the table, but it is clear that no dynamic change is likely in the EU's negotiating position, because that would depend on the concurrence of the 47 members on the Council. The question stands that there is no reference to any such agreement, either in the negotiating position or in the political declaration. The question must be posed: why did the Government put forward a negotiating position when they must have known that the EU could not negotiate on that basis?

Chris Philp MP: Parliament was very anxious to have the United Kingdom seek agreement in this area. Indeed, in one of the Bills we passed it was an absolute requirement given to the Government by Parliament. The Government have discharged and followed the wishes of Parliament, clearly expressed, that we seek to negotiate an agreement in this area. We are following Parliament's desires. You are right to say that it was not referenced in the political declaration. As I mentioned a moment ago, the European Commission's negotiating mandate is a dynamic matter, which it can, and periodically does, revisit.

In regard to their future intentions, how they may view this in the few months remaining for the negotiation would be a matter of speculation. I cannot answer on behalf of the European Commission. The negotiation is a live one. Who knows how it will unfold? Lord Ricketts will know a lot more about this than I do, with his long experience at the Foreign and Commonwealth Office, the Paris embassy and, indeed, as National Security Adviser, but my impression is that these negotiations with the Commission tend to get resolved rather at the last minute. We saw that last year as we approached the 31 October deadline. The negotiation may well unfold in a similar manner. That is all speculation and it is a matter for the European Commission to decide what to include or exclude. We will have to see where the path in front of us leads.

In terms of why we sought the agreement, not only did Parliament make clear its desire that we do so, and we have been faithful to that, but it would generally serve the interests of unaccompanied asylum-seeking children to have an arrangement of this nature if it can be agreed. There is that consideration as well. No matter the potential difficulties, we still felt that we should pursue it, because Parliament wished it and it seems like a sensible and good thing to do.

Lord Anderson of Swansea: Apart from satisfying Parliament, in terms of negotiation it is an empty gesture, is it not?

Chris Philp MP: I respectfully disagree. I do not think it is an empty gesture, because the European Union negotiating mandate can be updated and changed from time to time. In a negotiation, if you do not ask for something, you will not get it. Having heard Parliament's views on this topic very clearly, it would have been an act of terrible omission, perhaps even negligence, and certainly bad faith, if the Government had not tabled the agreement and then attempted to seek agreement. It is an important thing to have done. That does not guarantee success, but we have at least attempted it, and are attempting it still.

Q28 **Baroness Hamwee:** Good morning, Minister. The phrase "still on the table" does not suggest the dynamism that you are saying could be injected into a negotiation on the draft. We have commented that the draft itself is very discretionary. There is not a lot of time left to persuade the EU. Are you talking to member states about pressure that they might put on the EU to change the mandate? Without each of the member states, it will not happen.

Chris Philp MP: We have been actively seeking to secure agreement for this draft or something similar to it. It has not simply been tabled and forgotten. There has been a process of engagement on that. You ask about discussions with other member states. I do not want to get into the details of private conversations. As you probably know, the European Commission, the European family of nations and Michel Barnier have been quite firm in saying that we negotiate with the Commission. There is a feeling in the continent that, where a member state talks to us bilaterally, it is somehow not quite abiding by the rules of the club, and that they all present a united front via Michel Barnier.

We and member states have been expressly discouraged from having those conversations. That said, informal and other conversations happen the whole time. Without wanting to go into too many details, I know that, where opportunities present themselves to gently encourage member states on this matter, they are tactfully, diplomatically and properly taken, but taken none the less.

Baroness Hamwee: I do not want you to say more than you should at this point, because the greater interest is in concluding an agreement. We are very close to the end of the transition period. From what you are saying, should I take it that the Government will continue negotiations after the end of this year, both with the EU and with individual member states?

Chris Philp MP: That is probably rather above my pay grade. The Government's position at the moment is to try to seek agreement, not just in the area of family reunion that we are discussing at the moment, but more generally. It is our fervent hope, expectation and wish that such an agreement covering all these areas, UASCs included, is reached in good time before 31 December.

As you have quite rightly said, time is ticking. It is now 29 September, so we are only three months and two days away from 31 December. As I said, these negotiations with the Commission and the European Union often come to fruition or an agreement very late in the process. We must hope that that happens in this case as well, as it did almost exactly this time last year, with the then deadline of 31 October approaching. From memory, it was only two or three weeks before that deadline that the amendments to the withdrawal agreement were agreed to by both parties.

If an agreement is not reached, whether we will seek further agreements is a bridge we will cross when we come to it, but it is a bridge that we hope not to have to cross.

Baroness Hamwee: You have talked about discussions with the French. The crossings from France are far more than from other countries, but are there discussions going on with Belgium and the Netherlands about anything that will make the position safer?

Chris Philp MP: Yes, there are discussions going on with those countries, particularly on a law enforcement and protection basis. Those are happening. It is fair to say that our engagement with the Government of France is a great deal more intense, because the numbers, as you rightly say, are so much larger. There is dialogue going on with countries on the borders of France, being Belgium, the Netherlands and Germany, particularly at the law enforcement level.

Q29 **Baroness Finn:** Good morning, Minister. I turn to the preparation of the agreement and what advice and consultation the Government relied upon. This Committee has heard from many experts in the field and they have various views. I would like to know who was part of the official consultation and who was part of the wider consultation. How has the advice that you received been reflected in the draft

agreement?

Chris Philp MP: I will answer that question as best I can, but I will ask either Ed or Miv to come in if I say anything that is not accurate or does not fully reflect the facts as they happened. As I understand it, the draft was drafted by the Government, by the Home Office in consultation with others. It was done internally. It was not run past any third-party organisations outside government, for a couple of reasons. It was the starting point in a negotiation and the Government did not want to expose their negotiating position unduly prior to commencing that negotiation.

It was circulated widely around government. You will be familiar with the write-around process. A number of bits of government would have been consulted on the draft, not just the Home Office, but immigration and asylum policy, Home Office legal advisers, the Cabinet Office and Taskforce Europe. Other government departments would have input. It was a process that happened inside government rather than outside. That said, the Home Office and others engage the whole time with external stakeholders who have views, opinions and experience. We are quite aware of their views and Parliament's views on these kinds of topics, because this matter has been debated extensively and, indeed, legislated upon on more than one occasion.

In drafting the proposal, it was done with Parliament's opinions in mind, as they have been expressed in both speeches and legislation, and the opinions of other external stakeholders outside government and Parliament. We listened to and are aware of their views, and took them into account.

Before I conclude my answer, Ed and Miv, can I just check that I have answered that question accurately?

Dr Miv Elimelech: To follow up on what the Minister was saying, we also looked at the evidence that was available on family reunion and returns to develop the draft legal text. It was therefore evidence-based, but it was done internally with a range of different factors taken into consideration, to make the determination of what needed to go into the text.

Baroness Finn: My concern is that it was an internal exercise only. Do you reference the external stakeholders who have been consulted? They have some quite strong views, as you can imagine. Have these been taken on board, in terms of the evidence, to respond to them directly, or not really?

Chris Philp MP: In drafting the agreement in the first instance, we had regard to the evidence, as Miv said a moment ago, but also knowing what various stakeholders and parliamentarians thought about this topic. Indeed, the fact that we tabled this at all was in part prompted by parliamentary commentary on this matter and, indeed, legislation. We certainly took their views into account.

In terms of updating the document subsequently, the wider negotiation is ongoing. We have seen various comments that people have made since and are mindful of

those. We can bear those in mind if the document gets into the position where it is updated. We have heard those comments.

Q30 Lord Lexden: Following on from Simone Finn's questions, could you summarise for us the key aims of the draft agreement and its most important provisions?

Chris Philp MP: The draft agreement tabled in May seeks to provide a mechanism by which unaccompanied asylum-seeking children circulating in Europe can be reunited with close family members who are lawfully present in the UK. It puts that on a clear footing. That is the essence of the agreement. Listening to debates in Parliament, it is clear that Parliament thinks that those are valuable, worthwhile objectives.

Lord Lexden: No doubt our colleague Alf Dubs has made comments to you. Have they been helpful? I would expect them to be.

Chris Philp MP: We always listen very carefully to everything that Lord Dubs says on this topic, as many people do. Again, we are mindful of those and, if opportunities arise to improve the drafting, we will consider those as they come up.

Q31 Lord Arbuthnot of Edrom: Minister, I would like to ask a couple of questions about what is in the best interests of unaccompanied children. The Dublin regulation says that unaccompanied children seeking international protection should be transferred and reunited with their families only if it is in their best interests. What are the key considerations when such best-interests decisions are made?

Chris Philp MP: It is worth mentioning, of course, that article 3 of our draft agreement makes precisely the same provision. It says, "The best interests of the child shall be a primary consideration with respect to all procedures provided for in or under this agreement". The best-interests concept is in article 3 of our draft, as well as in the Dublin regulation. The best-interests concept has been developed legally over time, so I will perhaps ask Miv to expand upon this in a moment. It concerns the welfare and the safety of the child concerned, having regard to their particular circumstances, which, of course, vary on a case-by-case basis.

Dr Miv Elimelech: To confirm what the Minister has just said, it is an individual assessment. Within the Dublin regulation, there is a period where we get social workers to do that assessment. As a policy official in the Home Office, I am certainly not best placed to judge whether a child should be transferred over to a family member. That is not my role, so we use experts. It is critical that we signpost that social workers, under the supervision of DfE, make those determinations, and that is the case with the Dublin regulation. In any future agreement with the EU and member states, we would want to replicate that model.

Chris Philp MP: If, for example, they are going to stay with a slightly more distant relation, such as an uncle, we need to make sure that there are no safeguarding issues.

Lord Arbuthnot of Edrom: Perhaps I should have declared an interest, in that my

wife is the chief magistrate of England and Wales and deals with extradition, among other things.

The Dublin regulation sets out, as I understand it, what factors should be taken into consideration when making these best-interests decisions, but the draft agreement that the Government have put forward does not set out those factors. Is there a reason for this?

Dr Miv Elimelech: If I could be clear, this is not replicating the Dublin regulation; this is having a new agreement with the EU and with member states. What sit underneath that agreement are implementing protocols, which could change, state by state. You use that to set out quite precisely what the best-interests assessments would be for those countries, so that might differ. For us, it would always be using social workers, but it might change from country to country. We have not been so prescriptive in the legal text, because implementing protocols sit underneath it.

Lord Arbuthnot of Edrom: You expect a different set of agreements, country by country, rather than an overall agreement.

Dr Miv Elimelech: Yes.

Chris Philp MP: How we would consider the best interests would be the same in all cases. As Miv said, it would involve a social worker's assessment, for example, to deal with any safeguarding issues. If the transfer was going in the other direction, or if another member state was making its assessment of how the child's best interests would be considered, France might have a different way of assessing that to Germany, which would be reflected in different implementing protocols. Ours would always be the same and, as Miv said, it would involve a social worker's independent assessment. France, Germany, Italy or Spain may each have a slightly different way of considering the question.

The Chair: As I understand it, the UK will not have the option of negotiating individual agreements in these areas with individual EU countries, because this is an area of exercised community competence. Therefore, EU countries individually are not competent to negotiate bilateral agreements with the UK if we fail to get this EU-UK agreement, which I fear must be the case now. I am afraid that I do not share your optimism that, in these last weeks of a negotiation scrambling major issues over the line, Michel Barnier will go back to member states and ask for a change in his negotiating mandate. I just do not see that. I do not see that we will have either an EU agreement or agreements with individual EU countries, because they are not competent to negotiate them with us.

Chris Philp MP: Having implementing protocols sitting underneath a UK-EU agreement is definitely permissible and reasonable, although I note your scepticism about the possibility of an EU-UK agreement. I am not sure that it is an area of exclusive EU competence. It is something that we have asked to negotiate on an EU-wide basis because Parliament requested us to, we think it is the right thing to do, and it is just easier to do it in one go with the whole European Union and then set

up implementing protocols thereafter. My understanding is that it is not necessarily an exclusive European Union competence, and that, should a European Union-level agreement not be achieved, there is a possibility of having bilateral discussions of various kinds.

Q32 Lord Anderson of Ipswich: I have two questions about the international benchmarking of best-interests decisions. In evidence to this Committee, Professor Ravi Kohli told us that we lacked in this country a systematic process for determining best-interests decisions and suggested that these decisions could usefully be made in accordance with the latest UNHCR best-interests guidelines. Do you agree? Could those guidelines be a useful basis for an agreement or protocol between the UK and the EU or its states, either now or in the future?

Chris Philp MP: We always keep our guidelines and processes under review, because we want to make sure that they are as effective, as comprehensive and as suitable as possible. I am not aware of any plans to adopt the UNHCR guidelines. You made reference to Professor Kohli's evidence to your Committee, but other than that I am not particularly aware of any criticisms of the way we have handled these determinations of children's best interests. When people are unhappy about the system or complain about it, they are not shy in saying so and I normally hear about it.

That said, we are always happy to try to learn and improve, so I would be happy to take a look at those UNHCR guidelines and see if we can learn anything from them. There is no present plan to adopt them wholesale.

Lord Anderson of Ipswich: Let me try you out, then, on another witness to our Committee. Professor Elspeth Guild strongly recommended to this Committee that the UK should sign the protocol to the UN Convention on the Rights of the Child that establishes a communications procedure through which children can complain directly to the UN committee if they have not found a solution at national level. She thought this would be useful to ensure that interpretation of best interests in the UK does not drift away from international standards. Is there anything in that? Do the Government intend to sign and ratify that protocol?

Chris Philp MP: Again, that is not something I had heard about until you just mentioned it, so you have managed to strike two novel points in two goes there. I am not aware of any plans to do that. I believe it goes rather more widely than just the matter that we are discussing.

In terms of rights of redress, we are very lucky in this country to have a very effective court system, of which Lady Arbuthnot is an important part, which ensures that the Government and other bodies adhere to their domestic and international obligations. There are very ready means of redress via the domestic court system where people feel that they are not being properly treated by the system. I have to say that those means of redress are used with quite considerable frequency.

Lord Anderson of Ipswich: I am sure we could all agree on the importance of

adhering to domestic and international legal obligations. Thank you very much, Minister.

The Chair: It was, indeed, Professor Guild who gave evidence to us that the issue of community competence would be a major obstacle in negotiating bilateral agreements on child asylum seekers with individual EU countries, so there is clearly a conflict between legal experts on that, which I am certainly not competent to arbitrate.

Q33 **Lord Rowlands:** Minister, the Dublin regulation also defines the specific obligations of the country responsible for processing a child's application for international protection. However, the Government's draft agreement contains no such obligations. What is the rationale for omitting these?

Chris Philp MP: There are a couple of points. First, as Miv said a few moments ago, implementing protocols, which would sit underneath an agreement, might well be a place where details of the kind that you are describing would best sit, so there is a place to put them, should we be able to agree this agreement with the European Union.

Secondly, we are not seeking to precisely replicate Dublin. The fact that the agreement does not have everything that Dublin had in it should not, in itself, be surprising, but it needs to be properly implemented, hence the protocols.

Thirdly, there are quite a few obligations in domestic law, but also under the European Convention on Human Rights, that determine how these sorts of matters should be properly handled. I hope, that gives you some assurance on the point that you have raised.

Lord Rowlands: No, not quite, because we were party to the Dublin regulation and it was quite clear, from what I understand, that these obligations were important and were put into law as opposed to protocols. I cannot quite understand why, having been party to the original arrangements in the regulation, we are now saying that we do not need to do this or we are not party to it.

Chris Philp MP: I think you are asking about the enforceability of the protocols. Were we to enter into an agreement with the European Union in the way that it is drafted, that would have implementing protocols, which would cover the issues you raised. We would then amend our policy guidance to reflect the content of the agreement and the content of the implementing protocols. Should the Government then not stick to that, which I am sure would not happen, and if they breached the obligations laid out in the implementing protocols and reflected in policy guidance, it would then be open to anyone to judicially review the Government and say, "You have these rules and you have not stuck to them". There would be redress in that way.

Lord Rowlands: Do you or your department have any problems or difficulties with the specific obligations that were inserted into the Dublin regulation?

Chris Philp MP: I do not think so. I am not aware that we have ever been found immediately in breach of those, but I have not reviewed every case. No one has ever come to me and suggested that there has been any systemic problem with us abiding by those Dublin obligations.

Q34 **Baroness Goudie:** Good morning, Minister and colleagues. The Dublin regulation provides rights for unaccompanied children applying for international protection, including the right to appeal decisions about their applications. It is notable that the Government's draft agreement specifically precludes the conferral of legal rights. What is the reason for this omission?

Chris Philp MP: As I elaborated on a moment ago, were we to enter into this agreement, as I hope we will, and the associated implementing protocols, we would then transpose that into policy guidance. If the Government then did not abide by their obligations, you are asking essentially what the means of redress is. How could somebody make sure that their rights were being delivered or that the Government's obligations were being properly discharged? The answer to that question is judicial review, in that were the Government to fail to abide by their own policy guidance, which would flow from the agreement and the implementing protocols associated with it, it would be judicially reviewable.

Baroness Goudie: The Government are not mad about judicial review just now. You are saying that, under this part of the regulation, if somebody wanted to appeal they would have to appeal under judicial review now.

Chris Philp MP: Yes, that is right. Many actions by the Government are judicially reviewable, and this would be one of them.

Baroness Goudie: I am quite an expert in judicial review, so that is helpful. Thank you.

Q35 **Lord Dholakia:** Minister, can I come back to the Dublin regulation? Our witnesses have explained that the United Kingdom's Home Office family reunification rules are much stricter than those operating under the Dublin regulation. Do you share that view? Does the Government plan to restrict family reunification rights after the UK leaves the Dublin regulation?

Chris Philp MP: As I said, it is our hope and, if possible and if the European Union agrees, our intention to enter into the agreement that we have tabled, or one very much like it. I suppose you are asking: what if that is not possible? You are right to say that in the absence of any agreement of the kind that we have been discussing these last few minutes, we would be reliant upon existing refugee reunion provisions as well as various bits of the Immigration Rules, in particular Part 8, Part 11 and Appendix FM. Those are, of course, different to Dublin. Dublin is a European Union construct and our Immigration Rules are different.

Before talking a little about the detail of our Immigration Rules, it is worth pausing to recognise that we have been referring a great deal to the Dublin regulation of the European Union. Members will have seen news last week that the European Union

is contemplating some quite radical and far-reaching changes to the operation of the Dublin regulation. The Dublin regulation looks like it is about to change quite dramatically on the European side. It adds further weight to the thought that we should not simply be seeking to replicate them precisely, when the European Union appears to be about to move away from them.

In relation to our current refugee reunion rules and family rules, I will do my best to give a short summary, but Miv or Ed will then perhaps correct me in the likely event that I get something wrong. As I understand it, in relation to refugee reunion, an adult with refugee status or who has been granted humanitarian protection can, for no charge, bring over to the UK their pre-flight partner—their partner or spouse who was with them before they fled—or any children under the age of 18. Moreover, refugees can bring over more extended family members, such as nieces and nephews, under the age of 18, or siblings, if there are compelling circumstances that make that the right thing to do. That is the refugee reunion bit of it, and Miv is nodding, which I take some reassurance from.

For people who are not refugees but who are British citizens or are settled in some other way, there are family reunion routes under appendix FM of the Immigration Rules, where you can bring over a partner, a fiancé, a child under 18 or an adult dependent relative such as a grandparent. That is subject to some further requirements. If it is a partner, for example, there are requirements for minimum income and English language. Those requirements do not apply to the refugee channel under Part 11 and Part 8. That is how the current UK domestic rules work, and those are the rules that currently apply to people who are outside the European Union, which is 90% of the world's population.

Lord Dholakia: What would be the position after the transition period has expired? Have you consulted local authority social services departments? You talked about producing policy guidelines. Would that factor be taken into account in proper consultation before the guidelines are produced?

Chris Philp MP: In the absence of any further agreement, anyone on the territory of the European Union wanting to come to the UK by reason of family reunion would be subject to the existing rules that I just mentioned, which currently apply to people in the rest of the world. In the absence of any further agreement, that is what would happen. There will then be no distinction between people who are present on the territory of the European Union versus people outside the European Union. At the moment, people on the territory of the European Union get different treatment by virtue of the Dublin regulation. If that falls away and there is no further agreement, they will be treated just the same as people in India, Africa, America or anywhere else.

Lord Dholakia: What about social services departments and consultation with them before producing the policy guidelines?

Chris Philp MP: The policy guidelines in relation to the family rules and the refugee reunion rules exist already, because they are existing rules that have been in force

for some time in relation to people who are outside the European Union. Those will just be applied to everybody in the absence of any further agreement.

Q36 Lord Polak: I am glad you just made the statement that the EU is looking at changes to the Dublin agreement. Sometimes people assume that the existing rules are perfect, and they are not always.

I want to take you back to what we have been talking about but just turn it the other way round. It was pointed out to us that the UK is the only country in Europe that does not recognise the right of refugee children or children who have received humanitarian protection to sponsor their families to join them here. Is that true and, if so, can you explain the rationale behind why we seem to be out of step with our partners?

Chris Philp MP: Yes, I am reliably informed by Miv that that is true. You asked why it is true. The view which the United Kingdom Government have taken and continue to take is that, were you to allow unaccompanied children to come over and then sponsor their parents or other family members to come over as well, it would create an inappropriate incentive for people smugglers and others to send children ahead, in the hope that they would then bring their family after them.

Anything that creates a potentially perverse incentive of that kind would not be desirable. There is some evidence of unaccompanied children being sent ahead for example into Greece, which has almost as many unaccompanied asylum-seeking children as we do, for that purpose. We feel that it is right that the parent, or in some cases an aunt, uncle or grandparent, should be the anchor, if I can put it that way, rather than vice versa. I accept that other European countries have taken a different view, but that is the view that we have taken.

Lord Polak: Surely, some of those children have come here out of necessity. That is what one presumes. Often, the social services that Lord Dholakia was talking about just now suggest that kids are best with their own parents. You cannot just have one rule that fits everybody. There must be children in this country who have come over here and who need their parents. It seems to me that the one rule does not fit everybody.

Chris Philp MP: In relation to the unaccompanied asylum-seeking children in Europe, which is the topic of the Dublin regulation and the principal topic of today's debate, any child who has come here and who might currently be subject to the Dublin regulation has, by definition, come here from a European country. By definition, European countries are safe, so the person concerned—this applies to adults as well as children—could, had they chosen, have claimed asylum in that previous safe European country through which they have travelled.

For example, at the moment, a very large number of unaccompanied asylum-seeking children are arriving by small boat. Partly as a consequence of that, in 2019 more unaccompanied asylum-seeking children claimed asylum in the United Kingdom than any other European country, including Greece, Italy, Spain, France and Germany. We had more than any other country.

They are children who, in the boat example, have come from France, where they could have claimed asylum. If they have a parent in the UK already, we are saying that that is completely legitimate and we would look to reunify, but the remedy is to claim asylum in the first country you arrive in, rather than travel through several countries until you find the one you like the look of. If there is a relative here already, such as a parent, we accept that that is a good reason, and our existing family rules, as well as the Dublin regulation, make provision for that.

There are, in our Immigration Rules, various exceptional channels or routes, because there are always very exceptional circumstances that are impossible to foresee in legislation. The outside-the-rules route could, in limited cases of truly exceptional circumstances, be utilised. I would say to people circulating in Europe that, unless they have a family member in the UK, they should claim asylum where they are. If the people crossing the channel really want protection, and if that is their principal objective, they can claim it in France. People who arrive in the UK by one means or another can claim asylum here, and do so in a very large numbers. We are proud to offer them protection.

Q37 **Baroness Primarolo:** Good morning, Minister. I could not agree more that what is necessary is to provide safe routes, particularly for unaccompanied asylum-seeking children. That is what Dublin III does. As you pointed out, although a lot are crossing the channel at the current time, you are taking action to stop that because of its danger. In answer to Baroness Finn, you had regard to the evidence, which is that unaccompanied children are in desperate, dangerous and totally unacceptable circumstances across the camps in Europe.

According to the Home Office statistics, the UK took 164 unaccompanied asylum-seeking children when they were transferred to the UK under Dublin III, the safe route, in 2019. Is there a limit on the number of unaccompanied migrant children this Government are prepared to accept? That figure seems a bit low, given the tens of thousands we know of. If so, what is that limit?

Chris Philp MP: There are a number of questions there. In relation to Dublin transfers, as I understand it there is no limit. If we are legally obligated under Dublin to accept children, we will accept them, subject, of course, to the best-interests test. Similarly, under our own family immigration rules and refugee reunion rules, which are the domestic rules upon which we will fall back in the absence of any further agreement, there is no numerical limitation. People either qualify or they do not.

I would say two things in response to your point about camps around Europe. You referenced the number 164, but they were UASCs transferred under Dublin. In 2019, something like 3,700 UASCs arrived in the UK, which is a higher number than any other European country. We are currently looking after in excess of 5,000, which I believe is also a higher number than any other European country, including Greece. When people say that the UK should do more to shoulder its burden—“burden” is the wrong word; I beg your pardon—or do more to take its fair share of

responsibility for unaccompanied asylum-seeking children in Europe, in fact we do already. We do more than any other European country when it comes to UASCs.

In relation to the conditions in camps, which you just referred to, I agree that they are not what one would wish them to be. First, we should be lobbying other European Governments to make sure that they discharge their obligations in the way that we do. We look after unaccompanied asylum-seeking children extremely well and extremely carefully. We spend getting on for £300 million a year doing so, which is a very considerable sum of money. You are a former Treasury Minister, so you will appreciate that. In addition to that, we are in some cases helping other European Governments. I know that the Foreign, Commonwealth and Development Office is looking to assist Greece in relation to some of the camps on its territory.

Critically, we have more unaccompanied asylum-seeking children than any other European country. If I can speak honestly, our system, which is a good one and looks after children very diligently, is on the verge of collapse. When these children arrive at Dover as UASCs, having come across on a small boat, our ability to find places for them is stretched pretty much to the limit, because we have more than any other country in Europe. As Minister, I sometimes end up making phone calls myself asking local authorities other than Kent to look after them. We are in a very difficult position looking after the UASCs we have already, and every time a boat arrives it gets more difficult.

Baroness Primarolo: We are all agreed that the pressure particularly to cross the channel in boats is a response to desperation in not having safe, clear routes for these unaccompanied children to enter the country, so it must be in all our interests to ensure that that safe route is developed. I take your answer to be that for children coming through safe routes, whether they are negotiated, we have no limit on the number we are prepared to take.

How far, going forward, are the Government prepared to work with our European partners to make sure that we support the reunification of migrant children with their families and that we use a definition of “family” that recognises that a child alone in these circumstances, with a family member here in the UK to take care of them, is something that we will respond to? Can you map out for us how you will make the shift from discouraging channel crossings in perilous circumstances to opening up safe routes?

Chris Philp MP: The point about the existence of safe and legal routes is a very important one. There are two answers to that question. The first, in relation to children in Europe, really rests on our existing refugee reunion rules, which I went through in answer to a question earlier from Lord Dholakia. They make provision for a parent in the UK who has refugee status or has been granted humanitarian protection to bring to the United Kingdom their child under 18 or their pre-flight partner and, indeed, where there are compelling circumstances, wider family members such as an aunt or an uncle. In relation to people in Europe or, indeed, anywhere, that will exist under our own refugee reunion rules under Part 11 and

Part 8, even if we have no further agreement with the European Union or any individual European Union member state.

There is a wider point about safe and legal routes. As Committee members will know, particularly starting in 2015, although before that too, we had a range of resettlement programmes: the Vulnerable Persons Resettlement Programme, the Vulnerable Children's Resettlement Programme and various others. During that five-year period, from 2015 to March this year, when we had to suspend it due to coronavirus, 25,000 people were resettled from conflict zones outside Europe, mainly around Syria but elsewhere too, directly to the UK.

I would say two things about that. First, that was a larger resettlement programme than any other European country over that five-year period. In every year, we did more than any other European country, taking refugees directly from conflict areas. Secondly, that resettlement programme effectively prioritised people from outside Europe in conflict zones as opposed to people in Europe. Given that we have fixed resources, there is a policy choice to make. Clearly, people who have family in the UK have the family rules to be reunited. Where people do not have family links, does the UK prioritise people who are in Europe already or who are outside Europe, for example in a refugee camp in Syria? Effectively, by pursuing the resettlement scheme, which we intend to restart in some form, we were prioritising people in dangerous places, which was the right thing to do.

Lord Dubs says that we should take people directly from the European Union, but people who are already in the European Union, for example in Italy, are already in a safe country. Whatever you may say about Italy, which is a fine country, people who are in Syria or some other warzone are in a much worse position than people who are already in the European Union, in Italy or elsewhere. Therefore, it is right to use the resettlement programme to prioritise those people rather than people who are already inside the European Union.

Baroness Primarolo: We would all agree that we should be talking about the humanitarian response that we can provide as a country and playing our part internationally. The best way to stop traffickers and to stop children falling prey to these horrendous circumstances is to ensure safe routes. The question of the children in camps, unaccompanied, by themselves, without relatives, is a specific problem that we face. I appreciate and agree with the points about responding to crises for individuals and families elsewhere, but these children do not have families. Because the Government have not provided an answer, and although you have been very helpful this morning nor have you, the direct question is still this. Going forward, what safe routes will this Government provide specifically for the unaccompanied children in the camps across the Europe? To play our part in this humanitarian crisis, what will we be doing when we are not in Dublin III?

Chris Philp MP: To answer the very direct question, the family reunion routes will remain open under our domestic rules. If there is an unaccompanied asylum-seeking child in Italy or Greece who has a qualifying family member in the United

Kingdom, after Dublin, assuming they qualify under our refugee reunion rules, they will be able to join their parent, for example, in the United Kingdom. That is the first safe and legal route. There is also the resettlement scheme, which applies to people outside Europe, but you asked specifically about Europe.

To answer your question about playing our part, the fact that we are already looking after more unaccompanied asylum-seeking children than any other European country demonstrates very clearly that we are not only already playing our part but playing it to breaking point. Literally when another unaccompanied asylum-seeking child arrives, we genuinely struggle to find a place for them, because the numbers are now so huge, whether that is someone who comes across on a small boat or someone who comes across from one of the camps elsewhere in Europe under the Dublin agreement or its successor.

If, hypothetically, in the future, we no longer had more unaccompanied asylum-seeking children than any other European country—let us say that in a couple of years' time the numbers were a lot lower for some reason—that is a question we would have to address, but those are not the current circumstances. Right now, we have more UASCs than anyone else and we are struggling to accommodate even those.

Baroness Primarolo: What you are saying, going back to my question about limits, is that we do have a limit. It is a capacity limit, and in your view as a Government we are already at that limit, so a limit is applied to humanitarian crises.

Chris Philp MP: The earlier question about limits, which I answered, was in relation to Dublin transfers and family reunion. I said that, in relation to Dublin transfers and the family reunion that may follow, there was no limitation. In relation to the resettlement programme, there was a numerical limitation. To be very clear, when I said “no limit”, it was about Dublin, family reunion and refugee family reunion.

Baroness Primarolo: Thank you very much, Minister. Lord Chairman, I should back out now because I know other colleagues have questions that they want to ask. This is not a private conversation, much as I would like it to be.

Q38 The Chair: Thank you very much, Baroness Primarolo. Minister, I would just make one observation on your exchanges with Baroness Primarolo. I understand the logic of the resettlement programme, bringing people from the camps near the crisis zones, but if you are a European country, receiving some hundreds of thousands of migrants across the Mediterranean a year, to have the UK say we are taking 25,000 from the resettlement camps but we are not prepared to take any share of the burden on countries will feel like less than total solidarity with the problems Europe is facing. That was an observation.

To expand the discussion a little, we also have a draft returns agreement on the table with the EU. As I understand it, at the moment Dublin is the only legal basis for the UK to ask EU countries to take back those who have been found to be illegal asylum seekers here. We are leaving the Dublin process. I have heard no suggestion

that we will get a returns agreement with the EU, since it looks to the EU, I am afraid, rather like a one-sided agreement that will mostly serve UK interests. How will the UK be able to return failed asylum seekers to EU countries when we are no longer in Dublin?

Chris Philp MP: I will respond to your first point before coming on to the returns agreement. In relation to the UK playing its fair part in accommodating refugees, of the 27 EU member states, or 28 if you count the UK, last year we were No. 4 in the number of asylum claims received. There were 35,000 claims for 46,000 people. Being No. 4 out of 28 is not too shabby.

In addition, we do a lot of work, more than any other European country, upstream, helping in conflict zones, not just in the resettlement programme, which is the biggest of any European country, but in overseas aid. Last year, we spent about £14 billion on overseas aid. We are the only G8 economy to meet our 0.7% of GNI overseas aid target. We were the biggest donor of aid to refugee camps in and around Syria of any European country. I think I am right in saying that, globally, we were second only to the United States. We are helping more people in conflict zones than any other European country by way of resettlement and by way of overseas aid. Our European friends and neighbours may wish to reflect on that.

You are quite right that we have tabled a returns agreement, which is similar in construct to the UASC agreement that we have been discussing, but is separate and unconnected. The status of that within the negotiation is essentially the same as the UASC one, as we outlined earlier. If we do not reach agreement on that, in order to have a returns pathway we will have to either seek bilateral agreements or act on a case-by-case basis, making applications in each individual case as it arises. We had a bilateral agreement with France that predated the Dublin system, in the 1990s, as you may recall from your time at the Foreign Office, so there is precedent for having such bilateral agreements. Your analysis is broadly correct.

The Chair: I will ask Lord Kirkhope to take the floor. Lord Kirkhope represented the Committee in a European discussion earlier.

Q39 Lord Kirkhope of Harrogate: I apologise that I missed some of the earlier questions and answers. It is not a question of supporting the Minister, but I want to come in to clarify. As one of those involved in drafting the Dublin regulation in Brussels, I must say that they are and always have been very imperfect. There is considerable pressure now, as we all know, to have them changed. This is partly because of narrow national interests, but inevitably in these circumstances national interests with regard to resource and the rest are always very important.

As Home Office Minister who organised the UN programme of resettlement from Bosnia, for instance, I would also like to support the Minister in saying that this country has always been extremely generous, if that is the right word, and certainly very aware of its duties to take refugees, and unaccompanied children in particular. The Minister might like to confirm this—he may have referred to it already—but our duties under Section 55 of the Borders, Citizenship and Immigration Act 2009 set

down the way in which we would deal with unaccompanied children. It has always been very clear that we take our duties in that respect extremely seriously. It is also correct that, in terms of the numbers of people we have taken, particularly in the category of unaccompanied children, we have always been towards the top. I think the Minister already said that.

Minister, could you comment on the future arrangements? Dublin will exist in some form in the EU, but it may not be in the same form as now and it may not be as compelling any more. Is there a wider sense in which we will end up with a lot of bilateral agreements, not just for the convenience of the British Government but for the convenience of dealing with complex issues such as this?

Chris Philp MP: Thank you, Lord Kirkhope. It is a particular pleasure and privilege to discuss this with you, given your very long involvement both as a Minister and in the European Parliament.

On your first point about the way we treat and accommodate unaccompanied asylum-seeking children, we can be proud of the efforts we make. We are very scrupulous in taking very good care of them and making sure that they are fully and properly looked after. Safeguarding issues are taken very seriously. They get a care leaver package, extending to the age of 25, which I would imagine is quite unusual in Europe. That is, as you say, underpinned by statute in the 2009 Act. Ed, is that right?

Edward Latham: Yes.

Chris Philp MP: We believe that you are right. We have a very proud track record, but it is also quite expensive. As I said earlier, we spend nearly £300 million a year delivering on that commitment.

In relation to how things may unfold, you are quite right to say that the tectonic plates around Dublin appear to be shifting on the continent of Europe. Member states are not satisfied that Dublin deals with the challenges that they collectively face, and clearly they are looking to change it in quite a fundamental and profound way. We saw the proposals last week promoted by the Commission President, Ursula von der Leyen, and we will see how those materialise in due course.

Your final question was on whether we might see more bilateral arrangements between different parties. That is a possibility, depending on how these new proposals crystallise; I suppose it will be Dublin IV. We will have to look and see very carefully. For our part in the United Kingdom, we will have to see how the negotiation goes over the coming three months.

These negotiations often appear to be gridlocked until somewhere near the last moment, when suddenly a quantum leap is achieved at the 11th hour. Before you arrived, Lord Ricketts expressed scepticism about that happening, but I was expressing cautious hope, particularly bearing in mind that it happened a year ago. If it does not, and we do not get the agreement, we will then have to take stock and

evaluate what bilateral options might be available to us, in the way that you were describing.

The Chair: Going back to our earlier discussion about the UK-French agreement on small boat crossings, it seems to me that, if we cannot get an EU-wide agreement, bilateral agreements will have to be about not just returns but wider packages of co-operation with individual countries, for example with France in the area of supporting security in northern France. Our ask about returns can therefore be part of a wider and more comprehensive agreement. It is an obvious point.

Q40 **Baroness Hamwee:** I entirely understand the need to follow safeguarding procedures when children arrive here and to investigate where they may be going. However, since leave can be given outside the rules, and you have referred to compelling circumstances, what instructions are given to those who conduct the safeguarding interviews? What is the role of social workers?

At the same time, can I ask this, as there should be a very clear read-across? The UNHCR refers refugees to us—I do not know if that is the right term—having interviewed them in the camps in the Middle East. They presumably have criteria and so on. I wonder if you could expand on who makes what assessment. If it is just best interests and it is case by case, it is only the child whose position should be looked at.

Chris Philp MP: I will answer your second question about the resettlement programme. Then I will ask either Miv or Ed to answer your first question about how the compelling circumstances are assessed in the question of refugee reunion, where the sponsor is an uncle, an aunt or a sibling as opposed to a parent. If it is a parent, it is pretty much automatic.

Under the Vulnerable Persons Resettlement Scheme and the Vulnerable Children's Resettlement Scheme, in the end about half the people resettled were children. The recommendation was made by the UNHCR according to seven criteria, which were specified, effectively, by the UK Government, including if they had a health need or if there was no alternative place that they could be looked after. Different countries that operate different resettlement programmes, such as Canada, have different criteria that they give the UNHCR or, indeed, third parties in selecting the refugees. I think I am right in saying that some countries have a language or cultural connection test in order to increase the chance of refugee integration when the refugee arrives in the host country. We will give some thought to that.

Once the UNHCR has recommended somebody, we then do a check to make sure that there is no national security or other issue. You can imagine the kind of checks that are done. That is the broad landscape for selection in the resettlement programme. On your first question, for a refugee in the Union, the compelling circumstance test does not apply if the parent is the sponsor. It applies only if it is an uncle, an aunt or a grandparent who is sponsoring. I will ask Miv to expand a little on how the compelling circumstance is assessed.

Dr Miv Elimelech: It is just a case-by-case decision. It has to be in the child's best interests. It is a decision taken by social workers and a power exercised by the Secretary of State. It varies case by case and there is clear guidance for social workers to make those decisions. Where it is judged to be in an individual's best interests, we will consider that and make a recommendation, but ultimately the decision is for the Home Secretary to make on a discretionary basis, on the recommendation from social workers.

Baroness Hamwee: This is what I am getting at, and it is probably a question for the Minister. For any child who has come from, say, the camps in northern Europe, balancing the interests of coming into this country or going back there, how could it not be in the child's best interests to remain in the UK? In other words, how do you balance these safeguarding issues and so on against the policy landscape and the position that the child has come from?

Chris Philp MP: You are essentially asking how a balanced decision is made between the child's best interests by being brought to stay with, for example, their uncle versus remaining in France. The scenario in which they remained in France would, I hope, not be a scenario in which they remained in a camp. One expects that the French Government would discharge their obligations to look after that unaccompanied child in the same way that we do and, in fact, I believe the French Government do that. They are very capable and very generous, in the same way that we are. Where they encounter unaccompanied children, they look after them in just the same way that we do. When they encounter the official system, the alternative is that they get looked after the French state in that example.

Let us say, hypothetically, it is an uncle that someone is coming to stay with. When assessing their interests in relation to coming to the UK, the social worker will think about any safeguarding issues that may arise in connection with that. You can probably imagine what potential risks they would be assessing. That is a judgment call made on a case-by-case basis by the social worker. The social worker will assess any safeguarding risks that may exist and decide how those balance against the alternatives, and they will make their judgment based on those facts.

Baroness Hamwee: Leave out the uncle. Talking about an uncle raises in everybody's minds what the situation might be. Let us say it is a sibling, because that happens too. Would the interest of a child in joining what immediate family members they have left weigh more?

Chris Philp MP: Yes, it will. A sibling of the same age is different to the other situation we just touched on, so that will be weighed carefully against the alternatives.

Q41 **The Chair:** In answer to Baroness Goudie, on the point that the UK draft unaccompanied-children agreement does not contain any right to appeal the decisions, you said that judicial review would be the route to appeal, if necessary. The judicial review system is under enormous pressure, and access to it is very limited and complicated. If this agreement were signed, the Government would

need to do more to make access to judicial review available for families, with the legal aid to go with it.

Chris Philp MP: The Home Office is the recipient of extremely large numbers of judicial reviews, so I am not sure that the Home Office would necessarily recognise the characterisation of judicial review as being only of limited availability. It certainly does not feel that way sitting on this side of the table.

The Chair: Legal aid for judicial review is of very limited availability.

Chris Philp MP: Ed will correct me if I am wrong, but legal aid is available for judicial review where permission is granted by the court to bring that judicial review. The legal aid follows the permission to bring it. In the current circumstances, Ed is advising me that, when it comes to bringing challenges to the Home Office's actions under Dublin, the remedy is judicial review. I will ask Ed to expand on that.

Edward Latham: Article 29 of the Dublin regulation requires member states to have an appeal or review process, and we do that by providing for judicial review. There is no appeal within the Dublin system through the tribunals for transfer decisions. The appeals are for only substantive asylum decisions.

Chris Philp MP: The manner of redress, whether under Dublin today or under our potential future agreement, if it is reached, is the same in both cases: it is judicial review. There is no diminution in the effectiveness of the appeal pathway.

Q42 **Lord Anderson of Swansea:** The Minister said that, in relation to children being able to bring in their parents, there is a danger of a collusive agreement between the parents and the trafficker, so that the child would be sent in advance. I put this point to the experts, who said there was no evidence to suggest that this had been the case. Is there, in fact, any evidence of this perverse incentive in practice whereby parents reach deals with traffickers and send their children in advance?

Chris Philp MP: In relation to the small boat arrivals, we see children who have been sent to the country without their parents. They are almost entirely facilitated by quite dangerous criminal gangs who are seeking to profit financially from this traffic. In evidence to this Committee a little while ago, the head of the Association of Directors of Children's Services—Mr Jones, from memory—said that 90% of unaccompanied children coming over on the boats did not have family members in the UK.

On the point about what basis we have for saying that people may be getting sent ahead to then bring their parents afterwards, this is an area in which Miv has more expertise than I do, so I will pass to her.

Dr Miv Elimelech: Last year, I spent a portion of time in several of the Greek camps. When you talk to members of staff there, who have UASCs in their care day in, day out, they will testify that a lot of the children are sent ahead by family members, and there is an expectation that they will forge their way in Europe, find work and

either send money back or pull over members of their family into Europe. We were told really clearly that a lot of children are forced into those situations.

We are really minded that the UK is not the first country that you will enter when you come to the EU, so we will always be a secondary or tertiary movement. We have to be really clear that we do not act in a way that further encourages children to make very dangerous journeys. Therefore, our policy is based on that. We are also a bit of a choice destination for certain nationalities. Children are trafficked or smuggled here because they know that the UK economy will support them. We cannot take policy decisions that risk that further.

When you go to the camps, they will give you very clear evidence of children being forced here by their families and communities, and ostracised if they are sent home. The risk of failure for them is really critical.

Lord Anderson of Swansea: Building on the question of our Lord Chairman about appeal procedures, did I understand you to say that judicial review is the only channel? Are there other channels of appeal and, if so, is legal aid available? Otherwise, it would be impossible for a child to appeal?

Chris Philp MP: You are asking about appeals, but in relation to which particular matter? It varies, depending on the matter at hand.

Lord Anderson of Swansea: It is any decision that we are not obligated to receive the child.

Chris Philp MP: Yes, you heard correctly. The remedy is judicial review, but that is the case with Dublin. If, under the Dublin regulation, the Government decide not to accept somebody, which the person feels is the wrong decision, their remedy is JR. If we enter into this new agreement, the remedy would still be JR. Both currently under Dublin and in the future, in relation to admission decisions and UASC reunification, the remedy both before and after would be JR.

As I mentioned, if an application for judicial review is granted permission to proceed, legal aid is automatically granted. I am not the legal aid Minister, but I think I am right in saying that there are a very small number of circumstances beyond that where legal aid might be granted. The nub of it is that, if the court grants permission for judicial review, legal aid will follow.

The Chair: Thank you very much, Minister. We have probably reached the end of our questions. Thank you very much indeed for the way you have engaged so comprehensively with them. Thank you also to your officials. If there is anything that they feel would be useful for us to have in writing to supplement what has been said, we would always be interested to receive it. I personally would be very happy to continue our discussion about France and how we can build on the co-operation with the French, which I agree with you is vital. I echo what you said about the work of the embassy in Paris and I will certainly be happy to do that.

Otherwise, thank you all very much indeed. Minister, we will, of course, produce a

record and give that to you to correct before it is published. With that, I conclude this meeting with renewed thanks.

Chris Philp MP: Thank you, Lord Ricketts. I would certainly like to follow up and have that discussion. I would like to thank the members. This has been the most comprehensive and detailed discussion of these matters that I have had since becoming the Minister, so thank you very much indeed for that.

The Chair: Thank you. The meeting is concluded.