

Written Evidence by the Public Law Project (ASU0083)

Introduction

1. Public Law Project (PLP) is an independent national legal charity. Our vision is a world in which the state acts fairly and lawfully. Our mission is to improve public decision-making, empower people to understand and apply public law, and increase access to justice. We deliver our mission through five programmes: litigation, research, advocacy, communications, and training.
2. One of PLP's five strategic priorities for 2022-25 is ensuring a fair and humane immigration system. Given our specific expertise, this evidence focuses on the relocation of asylum seekers, electronic tagging, legal aid, and the Nationality and Borders Act 2022. The lack of response to any specific questions should not be taken as indicating that no issues arise in relation to the matter.
3. The legal framework and processes that asylum seekers must navigate is complex, and the lack of availability of immigration advice, particularly legal aid immigration advice, has a wide-ranging impact. The lack of access to justice for those in the immigration system, and the potential repercussions for asylum seekers where specialist advice is not accessible significantly impedes their enjoyment of human rights.
4. **Recommendations:**
 - i. **The UK should not relocate asylum seekers to third countries if there is a risk of refoulement or breach of their human rights;**
 - ii. **The Home Office should cease the practice of GPS tagging of asylum seekers and those on immigration bail due to its disproportionate and unjustifiable impact on Article 8 rights;**
 - iii. **The Legal Aid Agency must urgently invest in the sustainability of the immigration legal aid sector;**
 - iv. **The Home Office should monitor and report on the provision of accommodation to disabled asylum seekers;**
 - v. **All refugees should be treated equally and the regime of differential treatment should be ended; for children this should take effect immediately.**

Relocation of asylum seekers

Question 3: Is the policy of relocating asylum seekers to third countries consistent with the UK's human rights obligations?

5. No. Relocating asylum seekers to third countries is not consistent with the international law principle of 'non-refoulement' contained in Article 33 of the Refugee Convention, if there is a risk of refoulement and/or their human rights may be at risk.
6. The complex legal framework and process of seeking to relocate asylum seekers to a third country does not provide for effective access to justice; the timeframe to obtain legal advice, supporting evidence and respond to a notice of intent is short; there is no right of appeal against an admissibility decision (a claim treated as inadmissible will not be substantively considered in the UK);¹ there is a well-documented shortage of immigration advice, particularly legal aid immigration advice; and there are delays in obtaining advice under the Detained Duty Advice Scheme. This means a serious risk of breach of the individual's right to procedural fairness under Article 8 ECHR (which also imposes a duty of adequate investigation); and curtailed rights of access to court scrutiny.
7. PLP's concerns are set out in detail in evidence submitted to the House of Lords International Agreements Committee's inquiry into the Memorandum of Understanding between the UK and Rwanda.²
8. ***Recommendation: The UK should not transfer persons to a third country in the absence of legally binding provisions that guarantee the protection of their rights, and enforceable mechanisms for dealing with any breaches of those provisions, including an independent supervision mechanism with the power to suspend transfers and ensure the safe return of transferees to the UK.***

Electronic tagging

Question 5: Is the electronic tagging of asylum seekers a necessary and proportionate interference with their human rights?

¹ Nationality Immigration and Asylum Act 2002 (as amended by Nationality Borders and Immigration Act 2022), s80B.

² See Public Law Project, Written Evidence to House of Lords International Agreements Committee inquiry on UK-Rwanda Memorandum of Understanding (August 2022), available at: <https://publiclawproject.org.uk/content/uploads/2022/09/IAC-Rwanda-PLP-submission-in-template.pdf>.

9. No. This is not a necessary or proportionate interference with asylum seekers' right to respect for family and private life.
10. The impact of GPS tagging, (used by the Home Office since January 2021 for Foreign National Offenders and since June 2022 in the asylum expansion pilot) is vast. PLP recently published, in collaboration with BID and Medical Justice, a detailed report on the human impact of GPS tagging.³ The findings include:
- social stigma resulting in self-isolation, with parents especially reporting a profound negative effect on relationships with their children;
 - a significantly detrimental effect on mental health;
 - a lack of awareness that representations can be made on imposition or removal of a tag;
 - an extremely high evidential threshold for exemption from the process/consideration whether the breach is disproportionate (for example, a torture claim must have been accepted by the Home Office or First-tier Tribunal, or a modern slavery victim must have received a positive conclusive grounds decision);
 - ongoing practical problems with charging and/or faulty devices.
11. Home Office policy recognises that tagging (electronic monitoring) breaches Article 8, but justifies it as proportionate on the grounds that it “encourage[s] compliance with immigration rules and protect[s] the public”.⁴ However, the rate of ‘absconding’ is exceptionally low,⁵ and thus intrusive interference is not proportionate to the risk posed by migrants on bail. In addition, the Home Office can access individual trail data in several situations, including if an Article 8 immigration application is made. However, the Home Office does not routinely inform individuals of this, and it is unclear whether the data is held in a GDPR compliant way.⁶

³ Bail for Immigration Detainees, Medical Justice, and Public Law Project, ‘Every Move You Make: The Human Cost of GPS Tagging in the Immigration System’ (October 2022), available at: https://publiclawproject.org.uk/content/uploads/2022/10/GPS_Tagging_Report_Final.pdf

⁴ Tom Pursglove MP, Nationality and Borders Bill Committee debate HC Deb 4 November 2021.

⁵ Home Office response to a BID FOI request confirmed that only 2.7% of people released from detention absconded in 2021 and an even lower proportion (1.3%) absconded in the first six months of 2022.

⁶Independent Chief Inspector of Borders and Immigration, An inspection of the global positioning system (GPS) electronic monitoring of foreign national offenders March – April 2022 (July 2022), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088880/An_inspection_of_the_global_positioning_system_GPS_electronic_monitoring_of_foreign_national_offenders_March_April_2022.pdf.

12. Recommendation: The use of GPS tagging for those on immigration bail/asylum seekers should be ended immediately, due to its disproportionate and unjustifiable impact on those subject to tagging and their families.

Legal aid, accommodation, and subsistence

6. Is the support available to asylum seekers under the legal aid, accommodation, and subsistence rules compliant with the UK's human rights obligations?

13. No. Both the legal aid and asylum support systems currently fail to comply with human rights obligations and those under the Refugee Convention. This results in a lack of procedural protections under Article 8, and in unjustifiable interference with moral and physical integrity. There are additional risks of Article 3 harm, either if refouled, or in the UK for disabled asylum seekers in particular.
14. Asylum seekers need expert representation at all stages of their claim due to the legal complexity of the UK immigration system, as exacerbated by the Nationality and Borders Act 2022 (see below, response to Q10), interplay with the National Referral Mechanism, and Article 8 ECHR. There is a widespread risk of their human rights being breached due to the lack of legal aid provision, brought about by numerous factors; the controlled work contract requirements and remuneration structure in immigration and asylum work; the complexity of the law; problems with recruitment and retention in the sector; lack of legal aid for non-asylum immigration work.
15. We are witnessing the collapse of the asylum legal aid market, widely predicted since the implementation of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).⁷ There are vast areas of the country with insufficient or no legal aid providers to meet demand for asylum work.⁸ Over 40% of asylum applicants in England and Wales have not been able to access legal aid in 2021-2022, with an estimated 25,000 new applicants in the first half of 2022 being unrepresented.⁹

⁷ Jo Wilding, No Access to Justice: How Legal Advice Deserts Fail Refugees, Migrants and Our Communities (Refugee Action, May 2022), available at: https://assets.website-files.com/5eb86d8dfb1f1e1609be988b/62a1e16cba8478993c7d512c_No%20access%20to%20justice-%20how%20legal%20advice%20deserts%20fail%20refugees%2C%20migrants%20and%20our%20communities.pdf.

⁸ The Law Society, Immigration and asylum – legal aid deserts (07 June 2022), available at: <https://www.lawsociety.org.uk/campaigns/legal-aid-deserts/immigration-and-asylum>.

⁹ Jo Wilding, New Freedom of Information data indicates half of asylum applicants are unable to access legal aid representation (Refugee Law Initiative blog, 4 November 2022), available at: <https://rli.blogs.sas.ac.uk/2022/11/04/new-freedom-of-information-data-indicates-half-of-asylum-applicants-are->

Despite asylum applications rising from 12,508 in Q1 2022 to 15,506 in Q2, the number of new matter starts for immigration legal help and controlled legal representation fell from 8,777 to 8,330.¹⁰ The figures released in Q3 2022 show that there were 24,511 asylum applications. There is an unprecedented situation of unmet need in this area.

16. The Home Office policy of dispersing asylum seekers away from London means that applicants are placed in regions where there may be no local advice provision at all.¹¹ The Legal Aid Agency has been forced to ask individual providers directly if they are willing to be on a list of providers to be signposted to clients who have been unable to find a provider in the South West, further demonstration of market failure.¹²
17. Asylum seekers with Article 8 arguments can find that these are not advanced by representatives as the work is unfunded unless they apply for Exceptional Case Funding (ECF). The ECF grant rate for Article 8 immigration work was 87% for 2021-22,¹³ demonstrating that this work should be brought back into scope.¹⁴
18. The asylum accommodation and support system, despite policy safeguards, does not adequately meet the needs of disabled claimants. This results in unjustifiable breaches of their rights to moral and physical integrity and of statutory duties under the Equality Act.
19. The Home Office, and contracted accommodation providers, routinely breach their duties to appropriately and safely house disabled clients, including children, and fail to act with urgency even in proceedings where the court has ordered interim relief.

[unable-to-access-legal-aid-representation/](#).

¹⁰ Ministry of Justice, Legal aid statistics England and Wales bulletin April to June 2022 (29 September 2022), available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2022/legal-aid-statistics-england-and-wales-bulletin-apr-to-jun-2022>; Home Office, How many people do we grant asylum or protection to? (year ending June 2022), available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2022/how-many-people-do-we-grant-asylum-or-protection-to#data-tables>.

¹¹ For example, the Home Office are housing asylum seekers in hotels in Cumbria, a region with no Immigration Legal Aid providers. See Cumbria County Council, Refugees in Cumbria - Asylum seekers contingency (hotel accommodation - Frequently Asked Questions (FAQs)), available at <https://www.cumbria.gov.uk/refugees/asylumseekers.asp>; Lancashire Live, Cumbria Park Hotel refugee accommodation latest as support group steps up to help asylum seekers, available at: <https://www.lancs.live/news/local-news/cumbria-park-hotel-refugee-accommodation-25537705>.

¹² On 27 April 2022 the Legal Aid Agency wrote to PLP, making this request. Having shared this information PLP understands that this letter was sent to numerous other providers across the country and, anecdotally that a similar letter was also sent to a smaller group of providers. NGOs have also provided us with data demonstrating how difficult it is to place their clients with legal aid lawyers.

¹³ Legal Aid Agency, Exceptional Case Funding (ECF) applications and grants by category of law, 2013-14 to 2021-22, with quarterly data for Apr-Jun 2013 to Apr-Jun 2022 (29 September 2022), available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2022>.

¹⁴ Public Law Project, The case for broadening the scope of immigration legal aid (April 2021) available at: <https://publiclawproject.org.uk/content/uploads/2021/04/Legal-aid-briefing.pdf>.

PLP has supported several disabled adults and children who were placed in wholly unsuitable asylum support accommodation.

20. To illustrate, PLP represented a paraplegic client who was placed in a hotel with no access to a wheelchair for three months and therefore unable to leave his hotel room. He and his sister were subsequently placed in a first-floor flat which was inaccessible by wheelchair and to move around the flat, the client was required to drag himself along the floor. They were eventually moved to alternative accommodation, but this again has no disabled adaptations, with the disabled client being unable to leave or access the property unaided.
21. Another client with physical health problems was moved seven times within the space of sixteen months and has been without access to essential medical treatment for chronic neck pain for almost a year due to the most recent move. He is also isolated, having been removed from his friends and support network.
22. **Recommendations: The Legal Aid Agency should urgently invest in the sustainability of the sector so that at least 95% of asylum applicants can obtain legal aid by the end of 2023, and Article 8 immigration cases should be brought back into scope. Additionally, the Home Office should monitor and report:**
 - i. **annually on the extent to which it and contracted accommodation providers meet the accommodation needs of disabled asylum seekers**
 - ii. **Its performance in responding to interim relief orders made by the court in relation to disabled asylum seekers' accommodation**

Nationality and Borders Act 2022

10. To what extent has the enactment of the Nationality and Borders Act 2022 had an impact on the human rights of asylum seekers?

23. Not all parts of the Act are in force at the time of writing; this response considers solely the differentiation regime and its impact on the human rights of asylum seekers.
24. Article 31 of the Refugees Convention provides that states should not penalise refugees “on account of their illegal entry or presence”. However, Section 12 explicitly authorises differential treatment of refugees by allocating individuals to ‘Groups’. ‘Group 2’ receive much less favourable treatment than those in ‘Group 1’

based on their mode of arrival and time taken to present themselves to authorities. For example, those in Group 2 have a 10-year route to settlement with leave granted for 2.5 years at a time (in contrast to a grant of 5 years followed by settlement for Group 1), and face additional hurdles in seeking family reunion, contrary to the principle of family unity set out in the Refugee Convention and UNHCR Handbook. Additionally, those in Group 2 have no right of appeal or administrative review against the decision to place them in Group 2.

25. Unaccompanied asylum-seeking children can be granted leave to remain as Group 1 or Group 2 refugees. The statutory duty under Section 55 of the Borders Citizenship and Immigration Act 2009 obliges the Home Office to safeguard and promote the welfare of children, but inclusion in Group 2 is not in line with this requirement. Further there is a clear inconsistency between this duty and Home Office policy which, whilst acknowledging Section 55, states that best interests are not a factor in assessing which form of leave to grant (Group 1 or Group 2), although best interests remain a factor in deciding the length of leave.¹⁵
26. Setting these provisions against the backdrop of the severe delays in Home Office decision-making, the Act further impacts asylum seekers' Article 8 rights (and breaches the Section 55 duty to make decisions concerning children in a timely manner). The complexity of the admissibility process (referred to in the response to Q3), and the need for applications every 2.5 years for those in Group 2, only compounds these delays, leaving refugees in an indeterminate state of limbo.
27. **Recommendation: All refugees should be treated equally and not penalised for mode of arrival or time taken to present themselves to authorities. The differentiation regime should be ended, and for child refugees this must happen immediately.**

¹⁵Home Office, Permission to stay on a protection route for asylum claims lodged on or after 28 June 2022 (28 June 2022), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120043/Permission_to_stay_on_a_protection_route.pdf.