

Law Centre NI response to the Northern Ireland Affairs Committee: experiences of minority ethnic and migrant people living in NI

About Law Centre and our experience of supporting migrant communities

1. Law Centre NI (LCNI) promotes social justice by providing specialist legal services to advice organisations and disadvantaged individuals in Northern Ireland. We provide legal advice, casework, training and policy services in immigration, employment and social security. LCNI has long advocated for migrant rights in NI. LCNI was one of the first legal providers to offer legal advice and support to asylum seekers in NI. Our immigration service has supported hundreds of asylum seekers and refugees as well as victims of human trafficking and other vulnerable migrants and we currently provide legal advice and assistance to Syrian refugees arriving in NI through the Vulnerable Persons Resettlement scheme. Our Migrant Justice Project adopts a blend of legal, policy and community engagement tools to ensure that migrants secure durable immigration solutions and to address barriers and challenges associated with precarious immigration status.
2. Our employment service provides legal advice and representation to migrant workers including persons subject to labour exploitation and forced labour. We work closely with the advice sector, migrant sector and trade union movement to help ensure that migrant workers are aware of their labour rights and can enforce them.
3. Our social security service has particular expertise in relation to migrants' eligibility to social security including complex right to reside or cross border issues.
4. LCNI informs and seeks to influence immigration policy at a regional and UK level, directly informed by our legal experience. We are members of the NI Strategic Migration Partnership, the Department of Justice's NGO Engagement Group on Human Trafficking, the Anti Trafficking Monitoring Group, the Home Office Asylum Stakeholders Forum and the Refugee & Asylum Forum. We also work with sister organisations in the Republic of Ireland to convene the North-South Immigration Forum.
5. In this short submission, we wish to draw the Committee's attention to particular issues affecting persons subject to immigration control in NI. We also identify a number recommendations for the Committee's consideration.

NI approach to immigration

6. The Racial Equality Strategy 2015 – 2015 recognises that the Executive does have powers to address some of the problems faced by persons living under immigration control in NI despite immigration policy remaining an excepted matter.¹ LCNI welcomes this acknowledgment and the positive initiatives developed by NI government departments in recent years including: setting up a Crisis Fund for

¹ Office of the First Minister and Deputy First Minister, '[Racial Equality Strategy 2015-25](#)' (OFMDFM, 2015), para 9.5.

vulnerable migrants, providing free English classes for asylum seeker and refugees, ensuring all asylum seekers have access to free healthcare, providing independent guardianship for all separated minors.² The Law Centre is proud to have played a key role in these initiatives.

7. The Executive notes that NI's regional interests may not always coincide with those of Great Britain and has developed a different approach to immigration at times.³ LCNI has urged the Executive Office to build on this statement and to seek to fully exercise its powers within the confines of immigration law.⁴ It is noted that the Scottish Government has committed to ending migrant destitution and has developed a number of measures to this end⁵ and the Welsh Government is developing emergency accommodation options and referral routes to support pathways out of destitution.⁶ Similar initiatives are urgently needed in NI.

8. **The Law Centre invites the Committee to:**

- **acknowledge the approach adopted by the Executive Office and its willingness to support persons subject to immigration control;**
- **explore the need for devolved institutions to have increased powers to address local needs caused by immigration policy.**

Health and economic outcomes of migrants in NI

a) Poverty and destitution within the asylum system

9. In its 2020 report on destitution in the UK, Joseph Rowntree Foundation found that more than a quarter of destitute households (28%) in 2019 were headed by a migrant to the UK.⁷ JRF reports that the share of migrants in destitution exceeds their population share and that migrants appear to be 'seriously and increasingly disadvantaged with regards to access to both cash and in-kind forms of support' (p28). Heightened destitution risks among migrant groups can be partly attributed to the 'hostile environment' policy, pursued via immigration and associated legislation, which has (further) restricted the housing and financial support available to asylum seekers.⁸

10. LCNI is acutely aware of the prevalence of destitution across the asylum process. Destitution can affect physical health and mental health (with anxiety, depression and post traumatic stress being the most commonly cited conditions⁹) and places an unbearable stress on relationships between family and friends as 'good will' support

² *ibid.*

³ *ibid.* para 9.3.

⁴ Law Centre NI, 'Response to draft Refugee Integration Strategy' (LCNI, 2020).

⁵ See: Scottish Government, '[Ending Destitution Together A Strategy to Improve Support for People with No Recourse to Public Funds Living in Scotland 2021-2024](#)' (2021); Everyone Home Collective, '[Route Map 2: Scotland's ambition to end destitution and protect human rights](#)' (October 2020), at 2.

⁶ See: Written Statement: '[Support for those with No Recourse to Public Funds](#)', Jane Hutt MS, Deputy Minister and Chief Whip, 26 August 2020.

⁷ Suzanne Fitzpatrick et al. '[Destitution in the UK](#)' (Joseph Rowntree Foundation, 2020) p 19.

⁸ Malfait, R, Cottrell, S and Scott-Flynn, N, 'Migrant destitution: survey and consultation: final report. Report commissioned by the Strategic Alliance on Migrant Destitution (Homeless Link, 2018).

⁹ Blackmore R, Boyle JA, Fazel M, Ranasinha S, Gray KM, Fitzgerald G, et al. (2020) The prevalence of mental illness in refugees and asylum seekers: A systematic review and meta-analysis.

cannot always be sustained. Destitution can make asylum seekers particularly vulnerable to exploitation¹⁰ and can negatively impact on community cohesion and social exclusion.¹¹ Destitution also puts pressure on local emergency services, as well as on the voluntary and community sector.

11. Destitution has a particularly grave impact on children in NI. Families in NI struggle to buy healthy food, nappies, medication, clothing, books, etc.¹² It is particularly difficult for families to meet the costs associated with caring for children with disabilities or health conditions. Destitution impacts significantly on children's education, their ability to integrate and dampens their aspirations in life.

12. **As a means to improve the health and economic outcomes of migrants in NI, the Law Centre invites the Committee to recommend that the UK Government:**

- **Provide a coherent, unified, simplified and accessible system of support for asylum seekers from arrival until refugee status and/or departure;**¹³
- **Provide additional financial support for asylum seeker children, pregnant women and persons with health conditions or disabilities;**
- **Grant asylum seekers the right to work.**

b) Access to public funds

13. Evidence shows that homelessness can have a significantly adverse impact on health: it can cause and exacerbate existing health conditions.¹⁴ LCNI commends the adoption of the '*Everyone In*' scheme by the NI Housing Executive as an early response to address the Covid-19 pandemic. An innovative feature of '*Everyone In*' is its availability to all homeless persons including those subject to the No Recourse to Public Funds (NRPF) condition. While some migrants have experienced practical barriers in accessing '*Everyone In*',¹⁵ LCNI welcomes that up to 30 NRPF migrants have been supported through this initiative in NI.¹⁶

14. However, '*Everyone In*' is a temporary initiative and does not provide a long-term solution to homeless migrants. Regrettably, there has been no substantive change in Home Office policy. It is clear that Home Office NRPF policy significantly constrains the ability of devolved institutions to provide an effective response to homelessness.

15. A person who is in a financial crisis situation in NI can apply for assistance from Discretionary Support, which is administered by the Department for Communities.¹⁷

¹⁰ Hannah Lewis et al, 'Precarious Lives: Forced Labour, Exploitation and Asylum' (Bristol University Press: 2014).

¹¹ Suzanne Fitzpatrick et al. 'Destitution in the UK' (Joseph Rowntree Foundation, 2018).

¹² See: Law Centre NI response to 'Home Office consultation on asylum support rates' (2018) and NICRAS, 'The effect of destitution on refugees on NI' (NICRAS, 2016). The NICRAS study is five years old; regrettably there has been very little progress and the issues highlighted by the report still stand.

¹³ This was a recommendation by the Joint Committee on Human Rights, 'The Treatment of Asylum Seekers' (2007), para 121. Almost 15 years on, no progress has been made on this.

¹⁴ Local Government Associations, 'The impact of homelessness on health' (LGA, 2017).

¹⁵ Luke Butterly, '[Homeless migrants missing out despite Everyone In' pandemic policy](#)' *The View Digital*, 25 February 2021.

¹⁶ Information provided by NIHE to the All Party Group on Homelessness on 2 June 2021.

¹⁷ [Extra financial support | nidirect](#)

Discretionary Support is designed to be flexible, which allows the DfC to make a necessary award to meet needs, either by way of an interest free loan or a non-repayable grant. However, Discretionary Support is listed as a public fund (paragraph 6 of the Immigration Rules) and so the Department for Communities cannot make it available to persons who are in the NRPf category. This is an example of how UK policy prevents devolved institutions from responding to needs felt locally. This places pressure on NI's voluntary and community sector and, at times, may also necessitate a response from the emergency services. In June 2021, the Communities Minister announced a review of Discretionary Support: this provides an opportunity to decouple Discretionary Support from the list of public funds.¹⁸

16. As a means to improve the health and economic outcomes of migrants in NI, LCNI invites the Committee to recommend that the UK Government:¹⁹

- **Revise its NRPf policy to ensure that the condition can be promptly removed to enable people at risk of destitution or homelessness can quickly access benefits and housing;**
- **Remove Discretionary Support from the list of public funds.**

c) Economic outcomes for victims and survivors of modern slavery

17. The Department of Justice has led efforts in shaping NI's response to modern slavery and human trafficking. A robust victim-centred strategy is in place, which includes a focus on supporting victims and survivors.²⁰

18. Victims and survivors of modern slavery and human trafficking are often keen to obtain decent work. In addition to providing financial independence, decent work and the acquisition of new skills can also help rebuild a survivor's sense of dignity and self-worth and thus plays an important role in the process of (re)integration.²¹ However, many persons who have been recognised as victims by the trafficking determination (NRM) process experience difficulties in securing an immigration status that provides access to the labour market.

19. Recognised victims of trafficking are not automatically granted leave to remain. Home Office guidance states:

Someone will not normally qualify for a grant of leave solely because they have been identified as a victim of human trafficking or slavery, servitude and forced or compulsory labour – there must be compelling reasons based on their individual circumstances to justify a grant of discretionary leave, where they do not qualify for other leave on any other basis such as asylum or humanitarian protection.²²

¹⁸ Department for Communities, '[Communities Minister Hargey commissions Discretionary Support review](#)' 7 June 2021.

¹⁹ See: NRPf Network, 'Policy changes that are needed in order for councils to be able to protect the welfare of residents with NRPf during the pandemic and to end rough sleeping'.

²⁰ Department of Justice, 'Modern Slavery Strategy for NI 2021/22' (DOJ, 2021).

²¹ International Labour Organisation, '[Global Guidelines on the economic reintegration of victims of forced labour through lifelong learning and skills development](#)' (ILO, 2020).

²² Home Office, '[Victims of modern slavery – competent authority guidance](#)' 21 March 2016, p 72.

20. Accordingly, there is an additional immigration process for recognised victims of trafficking whereby they may be granted Discretionary Leave to Remain in the form of a Residence Permit. This permit is valid for one year and is renewable. The victim may eventually become eligible for settlement after five years. The temporary one year status creates ongoing uncertainty which adversely prospects of long-term employment and integration.
21. **As a means to improve the economic outcomes for victims and survivors of modern slavery, LCNI invites the Committee to recommend that the UK Government:**
- **Revise its policy to grant all recognised victims of trafficking with a Residence Permit;**
 - **Increase the duration of a Residence Permit to five years (which is the duration of refugee status).**

New Plan for Immigration

22. LCNI coordinated an analysis of the impact of the *New Plan for Immigration* on Northern Ireland on behalf of the Refugee & Asylum Forum.²³ Members are gravely concerned about the proposals and their potential for causing serious harm to individuals, communities and wider society in NI. Members consider that a number of the Home Office proposals: (i) tread on devolved competencies; (ii) may restrict devolved powers in a range of areas; (iii) undermine a number of strategic priorities for the NI Executive and (iv) may undermine the principles contained in the Belfast (Good Friday) Agreement.²⁴
23. Particularly concerning is that the *New Plan for Immigration* makes reference to neither Northern Ireland, nor the presence of a land border nor the functioning of the Common Travel Area. Proposals such as the proposed extension to the Clandestine Entrant Civil Penalty Regime could have serious implications for NI stakeholders such as hauliers, transport providers – e.g. Translink bus drivers – as well as for groups travelling across the island of Ireland for social, recreational, religious purposes, etc. The continued functioning of the Common Travel Area has been a significant area of focus for both the UK and Irish governments in recent years and yet does not appear to have been considered by the Home Office in this consultation.
24. The Refugee & Asylum Forum has written to the NI Executive to request that it adopts a robust position on the proposals, cognisant of the damage they may cause to refugee communities and beyond in NI.

²³ The Forum is an informal network of organisations that support asylum seekers and refugees in NI. Membership is diverse and includes small community organisations, national charities and officials from the Executive Office, the Health & Social Care Trust, the Education Authority, etc.

²⁴ The proposals will undermine a number of strategic priorities for the NI Executive including: Together: Building United Communities; Racial Equality Strategy; Refugee Integration Strategy (forthcoming) 2021/22 Modern Slavery Strategy for NI. The proposals risk creating operational difficulties for the work of the Education Authority and the NI Health Service as well as PSNI efforts in reducing race hate crime. Further, they will result in increased demands and expenditure felt by the Executive Office Crisis Fund, emergency services, voluntary and community sector.

25. LCNI invites the Committee to:

- consider the analysis prepared by the Refugee & Asylum Forum, which has been submitted separately;
- conduct its own examination of the potential impact of the *New Plan for Immigration* on NI;
- ensure that Home Office policy properly considers implications for NI.

EU Settlement Scheme (EUSS)

26. The online EUSS application process is a significant improvement compared to traditional paper-based Home Office applications. Many applicants have been able to apply to the EUSS without assistance: this is to be welcomed. The approach of EUSS casework, whereby caseworkers proactively get in touch with applicants where necessary, is also welcome.

27. However, LCNI has identified a number of issues relating to the operation of the EUSS as follows.

- a) Due to the *De Souza* case, eligibility to EUSS is wider in NI than in GB. Specifically, family members of 'relevant persons of Northern Ireland' may be eligible to apply; this includes family members of British or dual British/Irish citizens.²⁵ Awareness of this provision appears to be relatively low including by staff at the EUSS Resolution Centre.
- b) A key concern for our clients is the lack of physical documentation provided by the EUSS process. EUSS applicants are doubtful that an email is sufficient in terms of providing their status and are anxious that it might not be accepted by prospective employers, decision makers, etc.
- c) While many EUSS decisions are made promptly, delay is not uncommon. As of 31 March 2021, almost 200,000 applications remained pending.²⁶ This is a significant figure and concerning given the proximity of the EUSS deadline. Delay is particularly common in cases involving third country family members and/or criminality. If an EUSS application is refused, the applicant has remedies such as a new application, administrative review and/or appeal to the First Tier Tribunal. However, the *absence* of a decision can be stressful for EUSS applicants.
- d) Obtaining biometric appointments has proved to be difficult for some (third country) EUSS applicants. Appointments must be booked online, however, appointment slots are not always readily available. It is stressful and time consuming for applicants to find and book slots.

²⁵ See [Statement of Changes in the Immigration Rules](#) May 2020.

²⁶ As of 31 March 2021, 5,301,470 applications had been submitted. 4,977,740 applications had been concluded. Of these, 53% (2,623,720) were granted settled status, 44% (2,173,270) were granted pre-settled status and 3% had other outcomes (including 55,950 refused applications, 60,170 withdrawn or void applications, and 64,580 invalid applications). This means that 197,110 applications remained pending. [EU Settlement Scheme quarterly statistics, March 2021 - GOV.UK \(www.gov.uk\)](#)

- e) Satisfying the EUSS identity requirements can be difficult for applicants whose ID is held by a different section of the Home Office. There does not seem to be a process in place whereby documents that are already being held by UK Visas & Immigration (UKVI) can be provided to the EUSS unit for verification.
- f) Working in partnership with the criminal justice charity NIACRO, LCNI has raised concerns with the NI Justice Minister about the barriers experienced by prisoners in NI in accessing the EUSS. The barriers are numerous and are compounded by Covid-19 restrictions.²⁷ The effect of these barriers is that few NI prisoners have been able to submit EUSS applications. The Law Centre welcomes the (belated) publication of Home Office guidance which recognises that there may be 'reasonable grounds' for which persons released from prisons after the EUSS deadline may make a late application to the scheme.²⁸ The Home Office has committed to 'work closely with the HM Probation and Probation Service' to ensure that persons in custody can apply to the EUSS.²⁹ This work must be prioritised.

28. Under the EUSS scheme, persons who are granted pre-settled status do not have full access to benefits. To be eligible, a person must demonstrate that s/he is exercising a qualifying right under EU law e.g. worker, self employed person, etc. However, some categories of people – including persons in poor health and/or disabilities, with caring responsibilities and victims of domestic violence - find it difficult to meet this criteria this and therefore ineligible for means-tested benefits. Women are disproportionately affected. The Law Centre is currently challenging the legislation that bars such persons from accessing social security.

29. LCNI invites the Committee to recommend that:

- **Pre settled status holders are eligible to access social security;**
- **the Home Office works with NI stakeholders, including government departments, to raise awareness of 'relevant person of NI' provision;**
- **a physical option – similar to the Biometric Residence Card – is available to EUSS applicants;**
- **delays in EUSS decision making are addressed so as to provide EUSS applicants with an effective remedy;**
- **measures are adopted to ensure that EUSS can obtain copies of and/or verification of documents held by other sections of the Home Office;**
- **the Home Office works with the NI Prison Service and/or Probation Service to ensure that:**
 - i) **prisoners can apply to EUSS from custody**
 - ii) **persons leaving prison are informed of and can avail from the 'late application' provision.**

²⁷ Barriers include: prisoners do not have access to smartphones or computers that would allow them to complete the EUSS application online; prisoners do not hold on their person the necessary identity documents and/or additional support documents that are necessary to complete the application; other logistical issues within the prison setting around bio-metric evidence collection; application form only available in English; no access to specialist immigration advice in prison system, etc.

²⁸ Home Office, ['EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members'](#) Version 12.0, 21 May 2021, p 39.

²⁹ Written Question tabled by Claire Hanna MP on 12 March UIN 167972. [Response provided on 17 March 2021](#)

Frontier Workers

30. The Frontier Workers Permit scheme went live in December 2020.³⁰ EEA citizens who live in the Republic of Ireland who have worked in NI must have a permit in order to enter the UK as a protected frontier worker from July 2021.
31. LCNI is concerned that awareness of this scheme is low. Accordingly, we have sought to raise awareness, including by publishing a legal briefing paper and circulating information through social media.³¹
32. In March 2021, the Law Centre hosted a roundtable discussion with the Home Office and NI stakeholders including officials from the Department for Economy, the NI Strategic Migration Partnership and the advice sector. The Home Office informed participants that its efforts to promote the scheme had primarily been aimed at employers. No engagement had been planned with the Irish government and/or relevant Irish agencies despite the fact that the relevant workers reside and access services in the Republic of Ireland.
33. Further, unlike the EUSS scheme whereby the Home Office has developed a number of supportive initiatives– including translated materials and funding for advice organisations – nothing comparable has been developed for frontier workers. The Home Office’s rationale is that the intended users of the scheme are assumed to have sufficient language and IT skills to navigate the application process.
34. LCNI is concerned about the Home Office’s assumption with regards to the skill level of frontier workers in NI. Our experience is that frontier workers working in NI are typically low skilled and work in the agricultural or food production sectors. Thus the profile of the frontier worker in NI is likely to be different to that of other frontier workers e.g. commuters between mainland Europe and, for example, the City of London. Targeted support measures may be necessary to assist frontier workers in NI comply with the scheme.
35. LCNI has sought data from the Home Office as to the number of Frontier Worker Permits the Home Office has issued to persons normally resident in Ireland. The Home Office has advised that this data is not available.³²
36. EEA frontier workers who fail to apply for a permit may be penalised as illegal workers post July 2021. Employers may also face heavy penalties if they employ workers who have not registered with the scheme. Covid-19 is a complicating factor as furloughed workers may not have received communications issued by their employers. Further, the Home Office guidance on the scheme does not address whether a worker who has been furloughed can retain worker status for purposes of this scheme.
37. It is in the interests of workers and employers to ensure that frontier workers are aware of and can access the scheme. The alternative is for workers to apply for work

³⁰ [Frontier workers casework guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

³¹ [New Legal Briefing on the Frontier Workers Permit... | Law Centre NI](#)

³² Written Question tabled by Stephen Farry MP. [Response provided on 19 April 2021](#)

permission through the points based immigration system: this option is much more expensive for workers and more onerous for employers.

38. LCNI invites the Committee to:

- **Examine the operation of the Frontier Worker Permit Scheme in NI, including the availability of data.**
- **Review the effectiveness of the Home Office's communication and engagement strategies with stakeholders (including the Irish Government) to date.**

Conclusion

39. LCNI welcomes the Committee's interest in the experiences of minority ethnic and migrant people living in NI. We are willing to provide further information to this inquiry if helpful.

June 2021