

# HOME OFFICE CONSULTATION: NEW PLAN FOR IMMIGRATION

Response from Humanists UK, April 2021



## ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 100,000 members and supporters and over 100 members of the All-Party Parliamentary Humanist Group.

We are a human rights-based organisation with particular expertise in freedom of religion or belief. For the past three years, our asylum support service has supported over 50 non-religious asylum claimants. It is currently the only organisation in the UK providing support to the non-religious. In addition to supporting individual claimants, we have played a key role in advocating improved treatment of non-religious asylum claims. We helped the Home Office develop a training course for asylum assessors on claims concerning persecution based on religion or belief and drafted case studies on the persecution of the non-religious for inclusion in the training materials. We also assisted in the roll-out of this course, delivering training directly to hundreds of asylum assessors on how to identify genuine non-religious claimants. We are also a member of the Home Office's Equality Stakeholder Group.

## PERSECUTION OF HUMANISTS – SOME GENERAL OBSERVATIONS

'In my observations, humanists, when they are attacked, are attacked more viciously and brutally than in other cases.'<sup>1</sup>

The UN Special Rapporteur on Freedom of Religion or Belief, Dr Ahmed Shaheed, highlights the fact that humanists are one of the most vulnerable belief groups around the world to hate crime and state-sponsored persecution. In 13 countries being non-religious is a capital crime under blasphemy and apostasy laws and it is an imprisonable offence in over 40 more. In the past five years there has been a worrying global trend of increased communal and vigilante violence against humanists, which has resulted in numerous high-profile murders – for example, that of Mashal Khan, who was beaten to death by fellow students at his University in Pakistan, simply for calling himself 'The Humanist' on Facebook.<sup>2</sup> The result is that in many countries, there is virtually no openly non-religious community at all – it is simply impossible to be so. Speaking in 2020, Dr Shaheed stated 'Humanists are the invisible people of the present 21st century. While almost everybody is persecuted when they are in a minority, the attacks on humanists are particularly

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<sup>1</sup> Dr Ahmed Shaheed, UN Special Rapporteur on Freedom of Religion or Belief, speaking at Humanists International's 2017 General Assembly in London. <https://humanism.org.uk/2017/08/07/humanists-uk-hosts-international-conference-on-threats-to-liberal-democracy-and-humanism/>

<sup>2</sup> Humanists International, "'Humanist' murdered by fellow university students for alleged 'blasphemy'", 13 April 2017: <https://humanists.international/2017/04/humanist-murdered-fellow-university-students-alleged-blasphemy/>



violent. They are exposed to harm in the communities where they live, and of course, for many of them, the family is not a safe place. The pandemic therefore intensifies that.<sup>3</sup>

## RESPONSE TO CONSULTATION QUESTIONS

### Foreword

**1. The foreword provides a high level outline of the New Plan for Immigration, including reforms to make the system fair, but firm. Overall, how far do you support or oppose what is being said here?**

Strongly oppose

### Chapter 1: Overview of the Current System

We have chosen not to answer question 2. We believe that the format of question 2 makes it impossible to effectively evaluate the proposals. Firstly, the questions begin with the premise that the respondent agrees with the fundamental policy and can only comment on its effectiveness rather than its appropriateness. Secondly, the question is misleading. At face value, 'improving access to justice' is undoubtedly a good proposal, but we are unable to articulate in our answers whether what is actually being proposed does indeed do this or present evidence in support of or against what is proposed.

**3. Please use the space below to give further detail for your answer. In particular, if there are any other objectives that the Government should consider as part of their plans to reform the asylum and illegal migration systems.**

### Improving decision-making

The Government has set 'fairness' as its main criterion for reform in this plan, but has failed to look inwards at its own processes and decisions to assess areas of injustice and ineffectiveness. Currently, 76% of all asylum claimants wait longer than six months for a decision, and 36% of Home Office refusals appealed by the claimant are overturned.<sup>4</sup> This suggests that there is a serious need for reform of Home Office practices to ensure fair outcomes for claimants, including timely and accurate decisions.

In 2010, the Independent Chief Inspector of Borders and Immigration stated as his first recommendation on decision-making that the Home Office 'as a matter of priority, assesses how it can deliver performance improvements consistently; and how it proposes to deliver its target of concluding 90% of cases within six months by December 2011' – citing staffing levels as one of the

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<sup>3</sup> 'Humanists International, Pandemic measures misused to roll-back rights of humanists and the non-religious, new report shows', 10 December 2020: <https://humanists.international/2020/12/freedom-of-thought-report-2020/>

<sup>4</sup> Refugee Action, 'Facts about Refugees': <https://www.refugee-action.org.uk/about/facts-about-refugees/>.



key problems in achieving this.<sup>5</sup> Over a decade later, the Independent Chief Inspector again highlighted staffing as a primary concern in his 2020 review of resettlement schemes, recommending that the Home Office 'ensure that the resourcing of the UK Resettlement Scheme within UKVI has sufficient capacity at senior levels to manage the policy and strategy challenges, including cross-departmental dependencies, and at working level to run the scheme day-to-day, ensuring that all roles have up-to-date Job Descriptions'.<sup>6</sup> The Inspector had previously found that job descriptions and grades were poorly defined and training was insufficient for assessors to be deployed as needed.

Yet this plan does not address staffing, resources, or training as part of the proposed reform, although these have been evidenced as major causes of delays and bottlenecks in the system. A key objective of reform to the asylum system must be to look at the Home Office's operational capabilities and address its long-term failings.

We describe in detail in answer to question 22 where decision-making with regard to non-religious asylum claimants is lacking and how it can be improved.

We have chosen not to answer questions four, five, and six.

## Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny

**Please use the space below to give further feedback on the proposals in chapter 2. In particular, the Government is keen to understand:**

- (a) If there are any ways in which these proposals could be improved to make sure the objective of providing well maintained and defined safe and legal routes for refugees in genuine need of protection is achieved; and**
- (b) Whether there are any potential challenges that you can foresee in the approach the Government is taking to help those in genuine need of protection. Please provide as much detail as you can.**

### Rejection of a two-tier asylum system

We fundamentally reject the modest proposals to improve and expand the resettlement schemes as a justification (or trade-off) for the creation of a two-tier asylum system in which those who have not been able to access these schemes, and thereby have little choice but to use irregular means of entry, receive less favourable treatment.

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<sup>5</sup> John Vine, *Asylum: Getting the Balance Right? A Thematic Inspection: July – November 2009* Independent Chief Inspector of Borders and Immigration, 2010. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/544764/Asylum\\_Getting-the-Balance-Right\\_A-Thematic-Inspection\\_2010.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/544764/Asylum_Getting-the-Balance-Right_A-Thematic-Inspection_2010.pdf)

<sup>6</sup> David Bolt, *An inspection of UK Refugee Resettlement Schemes (November 2019 – May 2020)* Independent Chief Inspector of Borders and Immigration, 2020. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/933956/An\\_inspection\\_of\\_UK\\_Refugee\\_Resettlement\\_Schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933956/An_inspection_of_UK_Refugee_Resettlement_Schemes.pdf)



### **Commitment to resettlement**

We are concerned that the Government's past record and lack of clarity or targets within this plan undermines its claim to improve legal access routes for refugees. Without clear, accessible, and timely legal routes to resettlement, refugees will continue to be forced to resort to irregular and more dangerous means of entry, undermining other objectives in this plan. Although it constantly claims to have a 'proud history' of supporting legal routes for resettling refugees and has restated its commitment to doing so in this plan, in practice the Government has demonstrated consistent reluctance and resistance to resettling refugees. The UK's longest-running resettlement scheme, the Mandate Scheme, has seen a consistent fall in the numbers being resettled from 165 per year pre-2020 to only 11 in 2019.<sup>7</sup> Further, only 350 child refugees were admitted of the approximately 3,000 entitled to entry into the UK under section 67 of the Immigration Act 2016 (known as the Dubs Amendment) before the Home Office closed this route in January 2017. The consistent decline in numbers and failure to reach targets cast serious doubt on the Government's commitment to resettlement programmes which these proposals do nothing to address. Without any new pledge on numbers, it is hard to estimate the number of asylum seekers who may benefit from these proposals and therefore they are unlikely to be effective in deterring people from irregular routes.

### **Potential prioritising of persecuted religious groups**

We are also concerned that the proposal to prioritise resettlement from particular minority groups persecuted for their religion or belief may not be legal under the Human Rights Act. Section 6(1) of the Human Rights Act 1998 states:

'It is unlawful for a public authority to act in a way which is incompatible with a Convention right.'<sup>8</sup>

Article 9 of the European Convention on Human Rights (ECHR), as set out in Schedule 1 of the 1998 Act, states:

'1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

'2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'<sup>9</sup>

Article 14 of the ECHR, as set out in Schedule 1 of the 1998 Act states:

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<sup>7</sup> *Ibid.*

<sup>8</sup> Human Rights Act 1998, section 6. <https://www.legislation.gov.uk/ukpga/1998/42/section/6>

<sup>9</sup> Human Rights Act 1998, schedule 1. <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>



'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'<sup>10</sup>

The Home Office is a public body and accordingly is required to act and make decisions which are compatible with the ECHR rights of the asylum claimants it serves. A decision by the Home Office to grant resettlement privileges to an asylum claimant of one particular religion – specifically because they hold that belief – over another refugee who does not is direct discrimination and incompatible with the Home Office's Article 14/9 duties.

Additionally, the proposal to prioritise refugees for resettlement upon the basis of their membership of a particular religion or belief group fails to take into account the Home Office's obligations under Section 149 of the Equality Act 2010 (the Public Sector Equality Duty) which provides:

'(1) A public authority must, in the exercise of its functions, have due regard to the need to –  
...  
'(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it'.<sup>11</sup>

Ultimately, each claimant's case must be considered on its own merits, in which the general risk of persecution to those who hold or do not hold a certain religion or belief can be taken into account. However, it would be discriminatory and unlawful to have Government policy specifically prioritising one group over another due to a protected characteristic.

As explored in detail in question 22, current Home Office guidance and country information is severely lacking in information about non-religious persecution globally. We are therefore concerned that the non-religious would likely be left out of any future scheme to prioritise persecuted minority groups.

We have chosen not to answer questions 8 to 18 on family reunion for unaccompanied minors and ending anomalies in British nationality law as this falls outside of our areas of expertise.

## Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System

**19. To protect life and ensure access to our asylum system is preserved for the most vulnerable, we must break the business model of criminal networks behind illegal immigration and overhaul the UK's decades-old domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?**

- **Ensuring that those who arrive in the UK, having passed through safe countries, or have a**

<sup>10</sup> *Ibid.*

<sup>11</sup> Equality Act 2010, section 149. <https://www.legislation.gov.uk/ukpga/2010/15/section/149>



**connection to a safe country where they could have claimed asylum will be considered inadmissible to the UK's asylum system.**

Not at all effective

- **Seeking rapid removal of inadmissible cases to the safe country from which they embarked or to another third country.**

Not at all effective

- **Introducing a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin (as it would breach international obligations) or to another safe country.**

Not at all effective

- **Bringing forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of inadmissible asylum seekers.**

Not at all effective

- **Making it possible for asylum claims to be processed outside the UK and in another country.**

Not at all effective

**20. To protect the asylum system from abuse, the Government will seek to reduce attempts at illegal immigration and overhaul our domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?**

- Changing the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK.

Not at all effective

- Supporting decision-making by setting a clearer and higher standard for testing whether an individual has a well-founded fear of persecution, consistent with the Refugee Convention.

Not at all effective

- Creating a robust approach to age assessment to ensure the Government acts as swiftly as possible to safeguard against adults claiming to be children and can use new scientific methods to improve the Government's abilities to accurately assess age.

Not at all effective

**21. The UK Government intends to create a differentiated approach to asylum claims. For the first time how somebody arrives in the UK will matter for the purposes of their asylum claim. As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?**





### Rejection of a two-tier asylum system

We believe that the plan to introduce a temporary protection order for those who have entered the UK by irregular means or are present in the UK without permission before making a claim is outside both the spirit and the letter of the UK's obligations under the Refugee Convention 1951.

The Home Office has presented no evidence in this proposal to suggest that the creation of a temporary protection order will be effective in discouraging irregular asylum entry. It seems that this provision will only serve to impoverish and add uncertainty to those with this status regardless of the risk of persecution they face.

We fundamentally reject the proposal to create different pathways for asylum seekers depending on the legal status of a person upon entry into the UK. The lived reality of persecution means that it is often not practical for asylum seekers to obtain legitimate travel documents from recognised governmental authorities nor wait to gain legal permission to enter, such as a visa. It is simply not the case for the vast majority of those who are forced to flee persecution in their country of origin. But this does nothing to undermine their credibility as an asylum claimant or to cast doubt on the threat of persecution that they face, and therefore it should not affect the protection afforded to them. Thus, the Refugee Convention recognises,

'A refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge. It would be in keeping with the notion of asylum to exempt from penalties a refugee, escaping from persecution, who after crossing the frontier clandestinely, presents himself as soon as possible to the authorities of the country of asylum and is recognized as a bona fide refugee.'<sup>12</sup>

A individual's ability to gain legal travel documents and entry permission is often affected by their protected characteristics, such as religion or belief, sex, marital status, and race, and the extent to which those characteristics are persecuted in their home country. Penalising those unable to access legal routes may therefore be indirectly discriminatory, which is prohibited not only by the Human Rights Act but by the Refugee Convention itself.

Article 31 of the Convention states:

'1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.'<sup>13</sup>

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<sup>12</sup> United Nations High Commissioner For Refugees, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary* by Dr Paul Weis <https://www.unhcr.org/4ca34be29.pdf>

<sup>13</sup> Guy S. Goodwin-Gill, *Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection*, United Nations High Commissioner For Refugees. 2001 <https://www.unhcr.org/3bcfdf164.pdf>



Although the above wording stipulates direct entry from a country where the person's life is at risk, it is clear that the intention of the Convention is that there should be no distinction or penalty for unauthorised entry. The spirit of the Convention is further highlighted by the Office of the United Nations High Commissioner for Refugees who has stated:

'The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement. Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. Developments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination. The Convention further stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum.<sup>14</sup> *(emphasis added)*

Although there are certain exceptions to penalising illegal entry and the creation of a two-track system is not specifically detailed in the (non-exhaustive) list of prohibited penalties above, it is clear that the Convention does include provision that illegal entry should not affect the outcome of the asylum claim or should render it inadmissible – as is proposed by the Home Office. In fact it advises against any penalties at all. Therefore it is clear that this proposal is not in line with the intents and purposes of the Refugee Convention. For this reason, it runs directly counter to the UK's treaty obligations and should be rejected.

**22. The UK Government intends on introducing a more rigorous standard for testing the 'well-founded fear of persecution' in the Refugee Convention. As the Government considers this change, what, if any, practical considerations should be taken into account?**

**Improving decision-making and credibility assessments**

Before considering raising the bar of what is considered 'a well-founded fear of persecution', we believe that the Government needs to consider how it can improve the quality and accuracy of decision-making and credibility assessments within the asylum process, especially with regard to the level of understanding of non-religious beliefs and the persecution of the non-religious globally, which is currently severely lacking, as well as how it assesses credibility in religion or belief claims.

<sup>14</sup> Office of the United Nations High Commissioner for Refugees, *Convention And Protocol Relating to the Status of Refugees*. <https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNT+S+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+int+o+force+4+October+1967%29+606+UNTS+267>





### **Need to address the exclusion of non-religious victims of persecution**

Currently 13 countries maintain the death penalty for blasphemy or apostasy and in over 40 more these are imprisonable offences. Such individuals can flee to the UK and claim asylum under the 'religion' ground of the 1951 Refugee Convention. However, with a refugee system that is primarily understood in terms of religious persecution (religious minority groups or converts from one religion to another), the Home Office has failed to consider the experience of an often invisible group, those who are persecuted because they are non-religious.

General Comment 22 of the UN Human Rights Committee makes clear the right to freedom of thought, conscience, religion, or belief within the Universal Declaration Of Human Rights includes 'non-theistic and atheistic' beliefs, but the conceptual framework that defines beliefs favours traditional religions over other belief systems. The Comment describes how the right can be manifested through 'worship, observance, practice and teaching', specifically formal worship, use of ritual formulae, objects, and symbols, the observance of holidays, dietary regulations, and distinctive clothing rules. This highlights the deficiencies within the right, leading to the non-recognition of beliefs that are not represented by institutions or do not have doctrinal behaviours. This has created a hierarchy of beliefs within the international legal regime, with established religious beliefs being given greater consideration over non-traditional religions, religious dissenters, and non-religious beliefs, and a disconnect between the law and the lived experience of belief for those groups.

When applied to asylum the deficiencies within this framework become starker. On the face of it, the 1951 Refugee Convention is not inclusive in its language, stating only 'religion' as a ground. An asylum claim made on this ground rests upon establishing the credibility of the claimant: being able to demonstrate they genuinely hold persecuted beliefs. The inherent credibility problems in adjudicating such claims are often referred to as the 'religious imposter' problem.<sup>15</sup> A lack of clear guidance on how a genuine non-traditional belief or lack of belief can be manifested and assessed by the Home Office has led to a failure to recognise non-traditional beliefs. This in turn has unfairly led to negative credibility claims. Amnesty International's 2004<sup>16</sup> and 2013<sup>17</sup> reports concluded that poor credibility assessment is an endemic problem within the Home Office. A paper by the All-Party Parliamentary Group on International Freedom of Religion or Belief<sup>18</sup> addresses how the non-recognition problem is manifested at the policy level through the lack of religion or belief literacy among decision-makers, leading to poor credibility assessments. This problem needs to be

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<sup>15</sup> Michael Kagan, 'Refugee Credibility Assessment and the "Religious Imposter" Problem', *Scholarly Works*, 629. 2010. <https://scholars.law.unlv.edu/facpub/629/>

<sup>16</sup> J Shaw, and R Witkin, *Get it Right: How Home Office decision-making is failing refugees*, Amnesty International, 2004. [https://www.amnesty.org.uk/files/get\\_it\\_right\\_0.pdf](https://www.amnesty.org.uk/files/get_it_right_0.pdf)

<sup>17</sup> J Shaw, and M Kaye, *A Question of Credibility: Why so many initial asylum decisions are overturned on appeal in the UK*, April 2013. Amnesty International [https://www.amnesty.org.uk/files/a\\_question\\_of\\_credibility\\_final\\_0.pdf](https://www.amnesty.org.uk/files/a_question_of_credibility_final_0.pdf)

<sup>18</sup> Z Meral, and A Gray, *Fleeing Persecution: Asylum Claims in the UK on Religious Freedom Grounds*, All-Party Parliamentary Group on International Freedom of Religion or Belief, 2016. <https://appgfreedomofreligionorbelief.org/media/Fleeing-Persecution-Asylum-Claims-in-the-UK-on-Religious-Freedom-Grounds.pdf>



addressed as a matter of urgency and before the Home Office considers changing the threshold of persecution.

For example, in 2018 the Home Office rejected a claim for asylum on the grounds that the humanist claimant, when asked to name ancient Greek philosophers who were humanists, did not name Plato and Aristotle (neither of whom was in fact humanist!). The claimant, Hamza bin Walayat, an ex-Muslim 'apostate' and member of Humanists UK, would as a humanist face ostracism, violence, and persecution if returned to his native Pakistan.<sup>19</sup> During his substantive interview, he was subjected to an extraordinary line of questioning, revealing a fundamental misunderstanding of equality and human rights protections by the Home Office with regard to non-religious people. He was chastised for stating 'your religion as Humanist despite knowing that this is not a religion.' Semantics aside, it has been long established in UK and international law that references to religion must be read as including references to non-religious beliefs. The law protects non-religious people from persecution just as it protects religious people.

The fact that humanists do not subscribe to a set of religious beliefs does not mean humanism isn't treated the same as religions for the purposes of prevention of persecution. However, the Home Office currently does not have sufficient capacity/understanding to accurately and fairly assess the credibility of people claiming to be non-religious, and as described above the outdated wording of the international asylum instruments encourages this shortcoming. This again needs to be resolved before the Home Office considers placing additional barriers to recognition into its policies.

### **Lack of correct information to assess level of persecution against the non-religious**

Additionally, country guidance and policy notes on which asylum decision-makers rely to determine the risk faced by a claimant if returned to their country of origin often do not include the treatment of the non-religious. This has wrongly led decision-makers to conclude that there is no risk, or to treat the non-religious in the same way as other named minority groups, such as Christians or Ahmadis, whose situation and treatment is distinctly different and not comparable. For example, the country policy and information notes on Pakistan contain separate reports on the treatment of Christians, Shias, and Ahmadis. However, there is no mention in any of the guidance of atheists, humanists, or other non-religious people.<sup>20</sup> This is significant because although the aforementioned religious groups are subject to various forms of persecution, they also enjoy a degree of tolerance that is not afforded to apostates, those who leave Islam, who comprise the majority of Pakistan's non-religious population. It is not acceptable that the lack of accurate information on the treatment of non-religious people should continue.

In 2019, we helped the Home Office develop a training course for asylum-assessors on cases based on persecution based on religion or belief, and drafted case studies on the persecution of the

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<sup>19</sup> Humanists UK, 'Home Office tells humanist he'll be deported for not identifying Plato or Aristotle' 17 January 2018. <https://humanism.org.uk/2018/01/17/home-office-tells-humanist-hell-be-deported-for-not-identifying-plato-or-aristotle/>

<sup>20</sup> UK Visas and Immigration, 'Pakistan: country policy and information notes' <https://www.gov.uk/government/publications/pakistan-country-policy-and-information-notes>



non-religious for inclusion in the training materials. We also assisted in the roll-out of this course, delivering training directly to well over 100 asylum-assessors on how to identify genuine non-religious claimants. Although this training was a positive step forward, there is still a long way to go to ensure that interview practices, country guidance, and credibility assessments are correctly carried out to ensure those from non-traditional religions, religious minorities, and the non-religious receive fair treatment.

We have chosen not to answer question 23, as we utterly reject a two-tier asylum system where those who enter illegally are treated less favourably. See our comments above.

**25. Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand: (a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and (b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform. Please provide as much detail as you can.**

#### **Rejection of plans to amend the Nationality, Immigration and Asylum Act 2002**

We fundamentally reject the proposal to amend sections 77 and 78 of the Nationality, Immigration and Asylum Act to allow for the deportation of asylum seekers before the conclusion of their cases. There is nothing within the Refugee Convention to suggest that an individual can be removed whilst an asylum application is pending, save in time of war or grave and exceptional circumstances. No blanket policy is permissible. The Convention states:

‘Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.’<sup>21</sup>

Moreover, the proposal is very vague on essential points such as where these claimants will be located, how this location will be determined to be safe, by what mechanism they can return to the UK if their asylum claim is successful, or what considerations there will be for people with disabilities, children, pregnant women, or those who have suffered from torture or similar traumas. Most notably, the proposal has not considered the impact of Article 6 of the European Convention on Human Rights, the right to a fair trial. How can the Home Office guarantee the integrity and fairness of its decision and the decisions of the appeals tribunals if the claimant is not present in the UK to attend and give evidence in person?

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<sup>21</sup> UN Office of the High Commissioner for Human Rights, *Convention relating to the Status of Refugees*, Article 9 – Provisional measures, <https://www.ohchr.org/en/professionalinterest/pages/statusofrefugees.aspx>



The off-shore processing model has been shown to be a failure in deterring asylum claimants, has consistently been condemned for poor conditions where it has been introduced, and has no legal basis in UK law. This proposal is not new. It was first suggested by Tony Blair in 2003, under the name of Regional Protection Areas, but is essentially the same proposal. He claimed that the Refugee Convention did not mandate that claims had to be processed in the country of application and that as long as these processing centres did not expose claimants to cruel or degrading treatments they could be legally implemented.<sup>22</sup> He was wrong on both accounts. The proposals were dropped after it was concluded that the UK would need to withdraw from both the Refugee Convention and the European Convention on Human Rights to do so. The then Government stated that:

'If we want to reduce our asylum obligations we could completely withdraw from the Convention. However, this will bring us little gain unless we can withdraw from or alter Article 3 of ECHR [sic] [prohibition of torture]. If we could change Article 3 then withdrawal from Geneva Convention may be worth considering. The danger here is that a UK or European withdrawal would lead to the collapse of the Convention with developing countries reasoning that they need not tie themselves to obligations that the developed world is not prepared to keep. This would result in increased global flows of refugees with millions of people being left in limbo without protection. Therefore any future withdrawal from the Geneva Convention needs to be couple[d] with an alternative protection regime for refugees.'<sup>23</sup>

This could hardly be seen as a realistic or desirable solution. As this plan also contains a commitment to 'upholding all of our international obligations, including the European Convention on Human Rights, the Refugee Convention', it is clear that off-store processing centres cannot be legally implemented. There has been no change in law caused by Brexit: these obligations reside outside the EU institutions.

Furthermore, the Home Office has presented no evidence in support of its claim that off-shore processing centres will deter irregular entry or tackle trafficking. Following the introduction of off-shore processing centres in Australia, more people arrived in the first 10 months of the policy than at any other time in Australian history. Within three months, the forecast capacity of the offshore detention centres had been exceeded, meaning the majority of those who came would never be sent offshore.<sup>24</sup>

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<sup>22</sup> Tony Blair, *Letter from Tony Blair to Costa Simitis*, 10 March 2003. <https://www.statewatch.org/media/documents/news/2003/apr/blair-simitis-asile.pdf>

<sup>23</sup> UK Government, *New Vision for Refugees*, 7 March 2003. <https://docplayer.net/11237195-Uk-government-new-vision-for-refugees-from-7-march-2003-summary.html>

<sup>24</sup> Jane McAdam and Madeline Gleeson, 'Australia's offshore asylum centres have been a cruel disaster. They must not be replicated by the UK' *The Guardian*, 2 October 2020. <https://www.theguardian.com/commentisfree/2020/oct/02/australias-offshore-asylum-centres-have-been-a-cruel-disaster-they-must-not-be-replicated-by-the-uk>



In such circumstances, it is hardly surprising that conditions inside these centres have been condemned by the UN Refugee Agency, which in 2018 called for urgent medical interventions. It issued a statement that,

'Australia's so-called "offshore processing" policy continues to exacerbate the dire health condition of vulnerable men, women and children alike. Too many, from children not yet of school age to their elderly grandparents, are now critically unwell. This deterioration has been reflected in a growing sense of despair, resulting in increasing self-harm and suicide attempts in both Papua New Guinea and Nauru in recent months. Following years in held detention, and continuing uncertainty and hopelessness after more than five years, the acute needs of refugees and asylum-seekers are in no way comparable to those of the respective local populations.'<sup>25</sup>

We simply would not want such policies implemented in the UK. Nor do we believe that this will offer value to taxpayers as the cost of detaining a claimant in an offshore facility will far exceed the cost of them living in the community in the UK. In Australia it is estimated to be up to 50 times more expensive.<sup>26</sup>

## Chapter 5: Streamlining Asylum Claims and Appeals

**26. The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?**

- **Developing a 'Good Faith' requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.**

Not at all effective

- **Introducing an expanded 'one-stop' process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively – setting out full details and evidence to the Home Office and not adding more claims later which could have**

<sup>25</sup> UNHCR Regional Representation in Canberra, 'UNHCR Appeals for Urgent Medical Intervention by Australia' UNHCR <https://www.unhcr.org/en-au/news/press/2018/11/5bff8f237/unhcr-appeals-for-urgent-medical-intervention-by-australia.html>

<sup>26</sup> Jane McAdam and Madeline Gleeson, 'Australia's offshore asylum centres have been a cruel disaster. They must not be replicated by the UK' *The Guardian*, 2 October 2020. <https://www.theguardian.com/commentisfree/2020/oct/02/australias-offshore-asylum-centres-have-been-a-cruel-disaster-they-must-not-be-replicated-by-the-uk>



**been made at the start.**

Not at all effective

**• Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the 'one-stop' process.**

Don't know

**27. The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims:**

**• Providing more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims.**

Fairly effective

**• Introducing an expedited process for claims and appeals made from detention, providing access to justice while quickly disposing any unmeritorious claims.**

Not at all effective

**• Providing a quicker process for Judges to take decisions on claims which the Home Office refuse without the right of appeal, reducing delays and costs from judicial reviews.**

Not at all effective

**• Introducing a new system for creating a panel of pre approved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by parties.**

Don't know

**• Expanding the fixed recoverable costs regime to cover immigration judicial reviews (JRs) and encouraging the increased use of wasted costs orders in Asylum and Immigration matters.**

Not at all effective

**• Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.**

Not at all effective

We have decided not to answer question 28 as the policy intention behind the question is unclear. It is already the case that claims must be brought as soon as possible and claimants must act in good faith and failure to do so can be taken into account when assessing credibility. It is unclear what is





being proposed in this question and the binary choice of agreeing or disagreeing with these vague statements does not allow for consideration of nuanced circumstances such as *sur place* activity that gives rise to a legitimate asylum application of someone in the country who no longer has permission to remain.

**29. The Government proposes an amended 'one-stop process' for all protection claimants. This means supporting individuals to present all protection-related issues at the start of the process. The objective of this process is to avoid sequential and last-minute claims being made, resulting in quicker and more effective decision making for claimants. Are there other measures not set out in the proposals for a 'one-stop process' that the Government could take to speed up the immigration and asylum appeals process, while upholding access to justice? Please give data (where applicable) and detailed reasons.**

We do not believe that this proposal will be effective. A one-stop process was already introduced by the Nationality, Immigration and Asylum Act 2002. Since then there have been further attempts to revise the appeals process. However, there is no supporting evidence that this has been effective in speeding up the asylum process or has impacted the quality of decision-making.

Approximately one-third of the outstanding cases that we are supporting are being made by claimants without legal representation or advice. Therefore, often claimants are representing themselves at appeals, are unaware of what evidence they need to present at each stage of the appeal, and are not aware of other avenues or rights available to them. We believe that this proposal is likely to cause further confusion and unfairly penalise claimants who have been unable to access appropriate legal advice.

One of the main obstacles faced by claimants in bringing all protection claims at the same time is accessing legal aid financing to do so. Often claimants are forced to bring asylum claims and Article 8 claims separately or sequentially (or to abandon the latter entirely) as Article 8 claims are no longer supported by legal aid and legal firms are not paid for the time they spend preparing that part of the claimant's case. In order to avoid last minute appeals or launching of new cases, we recommend that the Government expand legal aid funding available for asylum claimants, including making legal aid available to asylum claimants who are also making Article 8 claims as part of or supplementary to their case.

**30. Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand:**

- (a) If there are any ways in which these proposals could be improved to make sure the asylum and appeals system is faster, fairer, and concludes cases more effectively;**
- (b) Whether there are any potential challenges that you can foresee in the approach the Government is taking around streamlining appeals.**

We oppose the proposal to develop a 'Good Faith' requirement for claimants and their legal representatives. Legal representatives are already legally required to adhere to a code of conduct



including candour. Moreover asylum claimants who are found to be dishonest in any aspect of their claim, including delaying making an application, can be penalised through an adverse credibility finding. It is not clear what this proposal is aiming to achieve or whether it is redundant in recreating a requirement which already exists.

We have decided against answering questions 31 to 41 on chapters 6, 7, and 8 as issues relating to modern slavery, people smuggling, and foreign national offenders are beyond our areas of expertise.

### Public Sector Equality Duty (and other general questions)

#### **42. Below is a list of protected characteristics under the Equalities Act:**

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

**From the list of areas below, please select any areas where you feel intended reforms present disproportionate impacts on individuals protected by the Equalities Act. Please expand on your answer for any areas you have selected, providing data (where applicable), further information and detailed reasons.**

#### **• Protecting those Fleeing Persecution, Oppression and Tyranny (Chapter 2)**

As we have expanded on above, the proposal to prioritise minority groups could well disproportionately impact some of those who fall under the protected characteristic of religion or belief in a way that is contrary to both the Human Rights Act and the Equality Act. Therefore we have opposed this proposal. It is also likely to negatively impact upon the characteristics of race and sexual orientation, and we recommend that the Home Office conduct a thorough equality impact assessment of this proposal as it is required to do by law.

#### **• Disrupting Criminal Networks and Reforming the Asylum System (Chapter 4)**

We are seriously concerned that the proposals to create a two-tier asylum system, where those who enter the country by irregular means are placed onto a less favourable track, will profoundly affect some individuals based on their protected characteristics. The ability of an individual to travel internationally to flee persecution, to apply and receive valid travel documents, to access resettlements schemes, vulnerability to trafficking, and many other factors can be affected by their age, disabilities, sex, race, and religion or belief. We strongly recommend that the Home Office conduct a thorough equality impact assessment of this proposal as it is required to do by law.



We are concerned that the proposal to expand the Government's asylum estate, end hotel accommodation, and introduce off-shore accommodation for asylum processing will negatively impact people with disabilities who have specific housing needs.

We believe that the proposal to change the well founded fear of persecution test will negatively impact many claimants making claims on the basis of religion or belief, where the current bar already provides evidential challenges for claimants, especially for non-religious claimants who are systematically missing from consideration in international refugee regimes and from country-based guidance.

**43. And in which areas, if any, of the intended reforms do you feel there are likely to be the greatest potential equalities considerations against the listed protected characteristics? (tick all that apply)**

- Strengthening Safe and legal routes (Chapter 2)
- Reforming the asylum system (Chapter 4)

**44. Thinking about any potential equality considerations for the intended reforms in each of the areas, are there any mitigations you feel the Government should consider? Please give data (where applicable) and detailed reasons.**

With regard to the proposal to prioritise resettlement for minority groups, we do not believe that there is a suitable mitigation and instead recommend that the proposal be dropped. If pursued it is likely to result in a legal challenge.

The proposal to create temporary protection status impacts upon so many protected characteristics that it is difficult to see how it could be fairly and legally implemented.

**For more details, information, and evidence, contact Humanists UK:**

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