

**UK RESPONSE TO COUNCIL OF EUROPE HUMAN RIGHTS COMMISSIONER -
MEMORANDUM ON THE HUMAN RIGHTS OF ASYLUM SEEKERS AND
IMMIGRANTS IN THE UNITED KINGDOM**

Recommendation 1

The Commissioner welcomes the UK's initiatives and generous response to international appeals to provide aid to Syrian refugees and to countries neighbouring Syria. Also praiseworthy is the UK Government's decision to resettle by 2020, 20 000 refugees from the region, as well as unaccompanied minor migrants in need of protection while in transit in Europe.

However, the authorities are urged to increase the number of refugees that may be resettled in the UK, given the fact that the UK is a large and prosperous European state with thus far relatively low numbers of asylum applications. It is also necessary for the UK, as also for other European countries, to step up the integration of Syrian refugees into its society. Given the protracted nature of the Syrian conflict, many of these refugees are likely to remain and become citizens. Integration policies should be overarching, covering human rights sensitisation and awareness-raising amongst the host communities and refugees, education, employment, housing, healthcare and other social services.

UK Response

The UK Government is clear about our moral responsibility to assist those who are suffering as a result of conflict in the world. We are proud of our tradition of providing protection to genuine refugees. We have been clear that the best approach is to make it possible for the majority of refugees to stay safely in their region of origin and to identify and resettle only the most vulnerable directly from the countries surrounding Syria. This provides these refugees with a more direct and safe route to the UK, rather than risking the hazardous journey to Europe in the hands of traffickers which has tragically cost so many lives.

Our priorities are to continue to provide humanitarian aid to those most in need in the region and to actively seek an end to the crisis. We believe this approach is the best way to ensure that the UK's help has the greatest impact for the majority of refugees who remain in the region and for the countries that are hosting them. On 4 February 2016, the Prime Minister announced that the UK will more than double our total pledge to the Syria crisis from £1.12 billion to over £2.3 billion. This is our largest ever response to a single humanitarian crisis. We also need to enhance efforts to help stabilize the countries from which migrants are travelling. This includes stepping up efforts to address conflict and instability as key drivers of migration, including in Syria.

The expansion of the Syrian Resettlement Scheme is one part of our comprehensive approach designed as far as possible to help refugees in the region but recognising that for some vulnerable people the only solution is to bring them to countries like the UK. The Syrian Resettlement Scheme is helping those in greatest need who cannot be supported effectively in the region, by offering them protection in the UK. The

Syrian Resettlement Scheme has already provided safe haven to more than 1000 vulnerable Syrians – 51% of them children.

We recognise that the expansion of the Resettlement Scheme will require an expansion of current networks and the impact on local communities and infrastructure will need to be managed carefully. That is why we continue to work with a wide range of partners including local authorities and civil society organisations to ensure that people are integrated sensitively into local communities.

Most of those refugees being resettled in the UK under the Syrian Vulnerable Person's Resettlement scheme or Gateway are invited to attend cultural orientation before they leave the region. Those who are able to are encouraged to attend. This includes information on life in the UK and on the rights and responsibilities of citizens and those resident here. Resettled individuals are also given integration support in the UK, which includes, English Language provision, education, access to healthcare and social care.

At the Conservative Party Conference, the Home Secretary said that we would build on offers of support to develop a community sponsorship scheme to allow individuals, charities, faith groups, churches and businesses to support refugees directly. This is why we are now working with the individuals and groups who have made offers on developing a sustainable model for helping vulnerable people settle and integrate in the UK and, where they are able, find employment.

We will develop a community sponsorship scheme, learning from the example of those in Canada and Australia, to allow individuals, charities, faith groups, churches and businesses to support refugees directly. We are working closely with international partners to understand how their schemes work, and with partners in the UK to make sure we design a scheme which works well here.

The Government announced on 28 January, that it will work with the Office of the UN High Commissioner for Refugees (UNHCR) to lead a new initiative to identify and resettle unaccompanied children from conflict regions in the exceptional cases where it is in the child's best interests to do so.

In the EU context, we are providing significant assistance to Member States facing particular pressures to ensure that all refugees can have effective access to protection, wherever they are. The UK has already provided more resource to European Asylum Support Office (EASO) coordinated support missions to countries such as Italy and Greece to help build their asylum capacity than any other Member State. We are currently supporting EASO's coordination of 'hotspots' in Greece and Italy, an EU measure designed to improve border security and asylum screening capacity at parts of the EU external border most under pressure.

The UK, although not part of the Frontex system, also continues to provide significant practical support to its operations, in particular through our Organised Immigration Crime Taskforce. And we have been participating fully in vital life-saving activities in the Mediterranean by providing Border Force cutters and HMS Enterprise (preceded by HMS Bulwark). These UK assets have saved over 8,000 lives to date.

We are also supporting the EU's proposals for sustainable protection through Regional Development and Protection Programmes in the Middle East, North Africa and the Horn of Africa. These programmes will improve the conditions for refugees seeking protection in their region of origin until they are able to return to their homes, will improve economic opportunities for refugees and host communities, and will improve the asylum systems of host governments.

Recommendation 2

The Commissioner expresses his serious concern about the long-standing plight and precarious situation of the 67 refugees and asylum seekers who remain with their families in the UK SBAs in Cyprus since 1998. The UK government retains its sovereignty and effective control over the SBAs, thus being responsible for this group of persons who entered Cyprus through the SBA of Akrotiri. The Commissioner urges the authorities to live up to the UK's tradition of humanitarianism and to meet its legal obligations, thus ending the protracted mental and psychological suffering of the persons concerned by resettling them, even belatedly, to the UK. There is no reason to believe that resettling this small group of persons to the UK after all these years would create a pull factor.

UK Response

The UK has been consistently clear from the outset that there is no question of any of the families on the Sovereign Base Area (SBA) being admitted to the UK merely by the accident of their arrival on the SBA and in consequence of the SBA's acceptance of its humanitarian duty to provide temporary accommodation and other forms of support until a long-term solution could be identified. It would be contrary to UK policy to accept the transfer of refugees and asylum seekers who have no close connection to the UK and it would also be inconsistent with our policy on asylum seekers who arrive in British Overseas Territories (BOTs) or Crown Dependencies.

The UK's Immigration Rules, endorsed by the UK Parliament, do not provide for a recognised refugee to seek admission on the basis of a transfer of their refugee status to the UK, whether in a BOT or any other state. This is because the Refugee Convention places no obligation on the UK to consider an asylum claim made outside the UK. We are also not required to facilitate the travel to the UK of those who wish to seek asylum here, and there is no provision in the Immigration Rules for someone to be granted entry clearance for this purpose. This applies irrespective of whether a person has been previously recognised as a refugee by another State in accordance with the Refugee Convention, by a BOT to which the Convention has been extended, or by the United Nations High Commissioner for Refugees (UNHCR) under its Mandate.

The UK exercises its discretionary power to admit individual refugees outside the Rules under three resettlement schemes in partnership with the UNHCR: (i) Gateway; (ii) Mandate; and (iii) the Syrian Vulnerable Persons Resettlement (VPR) scheme, enabling displaced people overseas who are recognised as refugees by UNHCR under its Mandate to be referred by UNHCR to be considered for resettlement in the UK.

Our discretion to accept refugees from outside UK territory is therefore exercised within well-defined partnership arrangements with UNHCR, and not outside them. The claimants have not been referred by the UNHCR under the appropriate scheme and plainly do not fall under any of these schemes. The UNHCR offices in London and Cyprus have expressed an interest in securing a durable solution, including resettlement in the UK, but they have never suggested that the UK has a duty under our international obligations to resettle them and grant them asylum.

The UK firmly believes that the durable solution is for them to take up the offer of residence in the Republic of Cyprus. The refugee families have long had, and still have, the opportunity to integrate locally in Cyprus. They have already done so to some extent, by sending their children to school in the Republic, using its health facilities, and working there.

The UK does not accept the description of an 'extremely precarious legal and social situation of these persons'. At least as far as the refugee families are concerned, their situation is the consequence of their persistently holding out for entry to the UK to which they are not entitled, rather than accepting the practical and lawful course proposed for them by the SBA administration, namely that they become residents of the Republic of Cyprus, whether residing in the territory of the Republic or on the SBAs (as about 10,000 Cypriots do under the arrangements which have prevailed since 1960). As such their current situation is entirely of their own making and they must take responsibility for that.

There is a current legal challenge in the High Court mounted by a group of individuals who are recognised refugees to a letter of 25 November 2014 addressed to the UNHCR in Cyprus in which this policy was again set out in relation to the 1998 arrivals. The claimants contend that the Refugee Convention has in effect been extended to the SBA, that the UK has a duty to consider their refugee status and facilitate their resettlement in the UK, and that the UK has unlawfully discriminated against them under Articles 8 and 14 of the ECHR. These are important matters of principle and we are vigorously contesting these claims. We shall of course review our position in the light of the outcome.

Recommendation 3

The Commissioner is worried by the dominant political discourse in the UK which is tainted by alarmism, laying emphasis since 2010 on a numerical target to reduce yearly net migration to a figure below 100 000. The Commissioner believes that such monolithic target figures, which have been put forward in the past by other European states as well, are not realistic and attainable, primarily because human out- and in- migration is an extremely complex social process that may be managed but not really controlled by setting numerical targets.

UK political leaders are urged to reflect on the language they use regarding foreign nationals and should avoid the term 'illegal (im)migrant'. People are not illegal. Their legal status may be irregular, but that does not render them beyond humanity. In this regard, political leaders are also urged to examine carefully and use research-based data in their public migration-related discourse. This needs to become more nuanced, especially given that political

leaders' statements are often manipulated, or distorted, by media and extreme, racist political organisations. At the same time, national political discourse needs to be more objective and to highlight concrete positive effects that migrants have on UK society, as is the case in many other European states. The authorities' attention is drawn to the fact that a considerable part of the public in the UK in fact appears to be interested and demands careful and accurate explanation of immigration-related evidence.

UK Response

The UK government believes that migration should be managed in the interests of the UK. We remain committed to reforms to bring migration down to sustainable levels, which is in the best interests of our country. Uncontrolled immigration makes it difficult to maintain social cohesion, puts pressure on public services and can drive down wages for people on low incomes.

Since 2010 we have changed the profile of migrants coming here to work and study from outside the EU, to ensure that we are genuinely welcoming the brightest and the best. We have taken a wide range of measures to cut out abuse of our immigration system by making it systematically harder for people to illegally enter, work or remain in the UK.

All claims for asylum are considered on their individual merits, and where people establish a genuine need for protection, or a well founded fear of persecution, refugee status will be granted. The net migration target has no impact whatsoever on these decisions.

The UK uses the UN recommended definition of a long-term international migrant to calculate net migration: "A person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence.

Recommendation 4

The Commissioner is struck by the draconian legislative and other measures that have been adopted by the UK in recent years, or are envisaged, in order to criminalise and thus curb irregular migration. Evidence shows that restrictive immigration law and policies ignite, in effect, irregular migration.³⁶ Council of Europe member states should undertake further efforts in order to view and tackle migration as a social issue, not a criminal law issue. Criminalisation is a disproportionate measure which exceeds a state's legitimate interest in controlling its borders and corrodes established international law standards that run counter to these kinds of measures.

In this context, the Commissioner urges the UK authorities to radically overhaul the current regime concerning migrant detention and redress the long-standing shortcomings that have been highlighted in recent years by a number of international and domestic overseeing institutions and authoritative reports. To this end, the UK should introduce into law and practice, at least, a maximum time limit applicable to migrant detention, as well as a system of an automatic, regular judicial review. The Commissioner underlines that in principle no asylum seeker should be subject to detention. The same holds

true for migrant children or other vulnerable persons, such as victims of sexual violence or pregnant women. The fact of having a dependent child must be ground for an adult not to be detained except in accordance with the lawful order of a criminal court. The UK authorities are urged to give effect to the recommendations contained in the Shaw report, notably those concerning the need to make effective and full use of the existing alternatives to migrant detention.

UK Response

The UK policy on immigration detention is that there is a presumption in favour of liberty and that detention should be used sparingly. When people are detained, it is for the minimum time necessary for the purpose for which it was authorised. Although there is no fixed time limit on immigration detention in the UK, no one is detained indefinitely. It would not be lawful to detain indefinitely under UK law. Detention will be lawful only for as long as there remains a realistic prospect of removal within a reasonable period of time. Regular reviews of detention are undertaken to ensure it remains lawful and proportionate, and individuals can apply for bail and challenge the legality of detention by judicial review or habeas corpus applications. UK immigration detention law and policy are compliant with the European Convention on Human Rights.

We have no wish to detain people for any longer than necessary but there are those who prolong detention because of their attempts to frustrate the removal process. Most people liable to be removed are managed in the community. The total reporting population at any one time is around 60,000 compared to around 3,400 individuals in the immigration detention estate at any one time. Most people detained under immigration powers spend only very short periods in detention. The majority of people in immigration detention - 63% - leave detention within 29 days. The overwhelming majority of detainees - 93% - leave detention within four months. The changes we are making in response to Mr Shaw's report were set out in a Written Ministerial Statement on 14 January.

As Mr Shaw's report says, NHS commissioning of healthcare is a major strategic step forward. It has already - in its first year of operation - brought improvements to healthcare in immigration removal centres.

A more detailed mental health clinical needs analysis in Immigration Removal Centres is being conducted using the expertise of the Centre for Mental Health. This will conclude in March 2016, and NHS commissioners will use that analysis to consider and revisit current provision to ensure healthcare needs, and especially mental health needs are being met appropriately.

Pregnant women will be considered as part of the new "adults at risk" policy that is being introduced to ensure that individuals at risk are not detained inappropriately, without compromising legitimate immigration control.

Decisions on whether or not to detain individuals have never been predicated on absolute exclusions for any particular group. This is for good reason. There will always be occasions on which it will be appropriate to detain particular individuals - even if they are vulnerable in some way. For example, it may be perfectly

reasonable to detain an individual, including a pregnant woman, for a short period of time at an airport if she has no right to enter the UK and can be put on a flight home very quickly. Or, an individual might present a risk to the public and that might outweigh the fact that she is pregnant. These are perfectly legitimate and appropriate uses of detention in a limited context and they are very much in the public interest.

Recommendation 5

The UK authorities are called upon to review and put an end to the 'Right to Rent' scheme which leads, as evidence has also shown, in effect to indirect discrimination and deprives migrants from their human right to adequate housing, which, under international human rights law, is not conditioned on a migrant's legal status. It is also recalled that under Article 31 of the European Social Charter, by which the UK is bound, states should provide shelter to irregular migrants who are under their jurisdiction and unable to provide housing for themselves. Although the shelter does not imply the same level of privacy, family life or suitability as the "adequate housing" standard, it must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating.³⁷

The UK should abstain from further criminalising interaction with irregular migrants in order to prevent further stigmatisation and marginalisation of migrants. Immigration-related offences that do not remain administrative in nature result only in a further rise of an anti-immigration and xenophobic climate in the country, despite the authorities' declared intentions. The UK authorities are urged to review the above provisions immediately.

UK Response

We do not agree with this recommendation. The Right to Rent scheme has not "in effect led to indirect discrimination" and does not deprive migrants from their human rights. The assertions are based on an unofficial and limited report issued by the Joint Council for the Welfare of Immigrants (JCWI) rather than the Home Office's evaluation of the scheme and the actual experience of the scheme's operation since December 2014.

The UK Government introduced the Right to Rent scheme in a phased manner starting in England's second largest urban conurbation and including England's second largest city on 1 December 2014. In doing so, the Government published a Policy Equality Statement and issued a Code of Practice on avoiding discriminatory behaviour. The guidance to landlords and letting agents also made clear that discrimination, both direct and indirect, is unlawful.

The impacts of the scheme were evaluated after the first six months of operation. This evaluation was informed and overseen by a panel of experts comprising the Equality and Human Rights Commission, local authorities, a national housing charity and bodies representing landlords and letting agents amongst others. The evaluation was bolstered by using expert independent research contractors and involving the use of mystery shoppers. The evaluation findings were published on 20 October 2015. The report also comprised separate submissions prepared by the two

independent expert contractors and a full disclosure of the data gathered and methodologies utilised.

The UK Government would question the extent to which the Memorandum uses JCWI's limited evidence base to draw wide-ranging conclusions about the impact of the Right to Rent scheme. The findings of the Home Office evaluation was drawn from a wider evidence base than the JCWI evaluation, including 17 online surveys, 12 focus groups, 36 interviews and 332 mystery shopping encounters. The evaluation involved tenants, landlords, agents as well as local authorities and voluntary and community bodies. It also looked at levels of homelessness and compared these to comparator areas. It is also worth reiterating that key stakeholders and discrimination experts, were involved in designing the research, and appraised as it took its course.

In terms of coverage, of the 45 responses to JCWI's tenants' survey less than half (17) were from people living in the area where the Right to Rent scheme was running. In contrast, the tenant survey carried out by the Home Office's independent contractors (IRIS Consulting) had 68 responses, all from people living in the phase one area.

The UK Government does not accept that the scheme has led to discrimination and it has been extended across the rest of England without any difficulties. In instances where people are vulnerable, the Government can provide permission to rent and there are other longstanding safeguards to protect those in significant need. The Right to Rent scheme is a legitimate means to ensure that the private rented sector remains accessible to UK nationals and lawful migrants. It is only right, building on long-standing legislation on access to social housing, that those illegal migrants who have no basis to be in the United Kingdom, do not have access to private rented accommodation.

Recommendation 6

As regards migrants' right to family reunification, the Commissioner underlines that although states must be able to retain their right to regulate and control the entry of non-nationals, there has been a progressive development in international and European law as regards the right to family reunification across borders. Respect of the right to family life requires not only that states refrain from direct action which would split families, but also that measures be taken to reunite separated family members when they are unable to enjoy the right to family unity somewhere else.

The Commissioner recalls that the UN Convention on the Rights of the Child stipulates that children should not be separated from their parents against their will (Article 9), and that governments should deal with cases of family reunification across borders "in a positive, humane and expeditious manner" (Article 10). Facilitating family reunification helps to ensure the physical care, protection, emotional well-being and often also the economic self-sufficiency of migrant communities. This is in the interests of everyone, including the host state.

In view of the above, the UK authorities are urged the overhaul and enhance migrant family reunification rules whose excessively restrictive nature has in fact run counter to the government's proclaimed goal of promoting social cohesion and respecting equality. To this end, the UK should heed and give effect to the 2015 recommendations of the Children's Commissioner for England, which are supported by the Commissioner. In particular, the 2012 income threshold rules need to be reviewed in order to lower and make the threshold realistic and flexible, thus providing redress to the thousands of families, particularly children, who have been adversely and seriously affected by forced family splitting.

UK Response

The purpose of the minimum income threshold, implemented on 9 July 2012 with other reforms of the family Immigration Rules, is to ensure that family migrants are supported at a reasonable level so that they do not become a burden on the taxpayer and they can participate sufficiently in everyday life to facilitate their integration into British society.

The minimum income threshold was set, following advice from the independent Migration Advisory Committee, at £18,600 for sponsoring a spouse or partner, rising to £22,400 for also sponsoring a non-EEA national child and an additional £2,400 for each further child. This reflects the level of income at which a British family generally ceases to be able to access income-related benefits.

The relevant Immigration Rules have been approved by Parliament, which also reinforced the public interest under the ECHR Article 8 right to respect for private and family life in migrants being financially independent through section 19 of the Immigration Act 2014. The policy has been tested and upheld by the courts as lawful (in particular, by the Court of Appeal in *MM & Others*), including under Article 8 and under the Secretary of State's duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children in the UK.

We have continued to keep the new family Immigration Rules under review and to make adjustments in light of feedback on their operation and impact. This review process is ongoing.