



Controlling Britain's Borders

The challenge of enforcing the UK's immigration rules

David Wood

CIVITAS

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Summary

- The UK can be proud of its record in providing sanctuary to those in need and it is essential that the UK continues to uphold the principles of the 1951 Refugee Convention for those fleeing war and persecution around the world.
- This requires an asylum system which is able to quickly and efficiently process genuine claims whilst at the same time sifting out and ensuring the removal of those with no valid claim to be here.
- The UK asylum system proceeds slowly, with claims taking many months and sometimes years to process, and with only a minority of those refused asylum ever facing removal.
- There is evidence that the system is failing to keep up with the volume of applications: the backlog of cases awaiting an initial decision for six months or more has more than trebled from 4,081 in 2010 to 14,306 in 2017.
- Fewer than half of applications for asylum are ultimately granted, even taking into account those successful on appeal. Between 2010 and 2016, there were on average 24,532 main applicants per year, 52.8 per cent of which were refused, numbering some 80,813 across the period 2010-2016.

- Removals of failed asylum seekers have been falling from more than 15,000 a year in the mid-2000s to fewer than 5,000 a year recently. In 2017, there were 2,541 enforced removals and 2,301 voluntary departures.
- This means that less than half of failed asylum seekers are subsequently removed. Of the 80,813 applications refused or withdrawn between 2010 and 2016, only 29,659 were removed – leaving 51,154 failed asylum seekers in the country from that seven-year period alone.
- The failure to properly enforce immigration rules risks undermining public support for the asylum system. Members of the public – including those who tend to be skeptical about immigration – are sympathetic to the plight of refugees but they also sense that the system is prone to abuse.
- The answer to tackling illegal economic immigration lies ultimately in raising living standards and increasing economic opportunities in the nations from which people are leaving.
- But it should also be possible to operate the UK asylum system more effectively, so that it is less prone to abuse. This might be achieved by streamlining the initial decision process to make more efficient use of resources; adopting new technology that would allow caseworkers to establish the truth of claims more quickly; and exploring different ways of securing the removal of individuals to countries who are too often reluctant to accept their nationals back.

Introduction

The principles of the United Nations Refugee Convention hold as strongly today as they did when it was signed in 1951: an individual should not be returned to a country where they face serious threats to their life or freedom. It is essential that the UK's asylum system is nothing but supportive of those who are genuinely fleeing persecution.

But upholding this convention requires a policy and enforcement infrastructure that is capable of quickly and properly identifying genuine refugees, and delivers their needs whilst dealing appropriately with those found to have no such claim. The system adopted by the UK is not efficient or very effective and this has the effect of encouraging abuse. A large number of those claiming asylum here are not refugees but economic migrants with no legal claim to remain here, who exploit the asylum system to prolong their stay, often indefinitely.

Tens of thousands of illegal immigrants enter the UK every year, besides those legal migrants who are counted in the official statistics, and the simple truth is that having reached these shores, the overwhelming majority of those who wish to remain do so whether they have a legitimate claim to be here or not. The asylum process, which is routinely used as a tool by those who are encountered and apprehended, is part of the reason for this.

The process for handling asylum applications is a lengthy

one, with straightforward cases having a performance target of an initial decision being taken within six months, and those which are not deemed straightforward having a target of 12 months.¹ Those targets are often not met. Those whose claims are refused – which amounts to two-thirds of claimants – are then able to mount an appeal which may take another year or so to be heard. It does not end there: after an appeal is dismissed a second tier appeal can be (and usually is) applied for on paper, and if that is unsuccessful an oral application can be made. This can all take a considerable period. Judicial Review proceedings can also be pursued, challenging decisions of the Home Office, courts or tribunals. Cases can be delayed for years and that time period can eventually be used as a justification for a raft of different applications, for example the applicant or his partner having children in the UK, which may form the basis of a human rights application under Article 8 of the Human Rights Act.

Even after the appeals process has been exhausted – when still only about half of all initial claimants have been granted refugee status – only a minority are ever removed from the UK. Such individuals will then continue to live here, on the edges of society, often in quite perilous and vulnerable circumstances. The numbers of failed asylum seekers removed falls far short of those judged to have no right to be here each year, and so there is a mounting backlog of cases awaiting removal.

It is important to bear in mind that such individuals are not refugees. The UK provides asylum or other forms of protection and resettlement to between 10-20,000 refugees every year. Those who have failed in their claim for asylum, even after lengthy appeal processes, and then refuse to leave the UK are, in effect, illegal immigrants with no right to remain in the UK. These individuals have very often applied

for asylum at the point at which they have been encountered by the authorities and threatened with deportation: they are making last-ditch bids to avoid removal. Many would have had previous applications to remain in the UK refused. From my experience I would estimate about half of asylum claimants have made previous immigration applications and been refused. Only a small proportion of these subsequently leave the country, and even fewer are forcibly removed when they do not wish to go.

That this is the case – that those who arrive here illegally usually manage to evade removal – provides an incentive for further attempts to reach the UK by people who do not have a legal right to be here.

The UK is not alone in this challenge. There are global trends driving this phenomenon and many developed nations – not least across Europe – face similar experiences. Public pressure on the subject has been mounting in Europe, particularly illustrated by the pressure Angela Merkel has faced for her open door policy to refugees, which has broken the political stranglehold she had on politics in Germany. But it nevertheless raises serious questions for public policy and has implications for the highly emotive debate around immigration, which is already marked by a lack of trust among voters for what they are told by politicians.

In an earlier Civitas publication, *The Politics of Fantasy*, Alasdair Palmer and I described how the immigration levels as described in the media and by politicians bear little resemblance to the reality. This is because the net migration statistics produced by the Office for National Statistics – running at about 270,000 in the year to the end of March 2018² – make no attempt to include any estimate of the numbers of illegal immigrants coming into the UK each year. These are substantial: the Home Office’s internal estimate is that

between 150,000 and 250,000 foreign nationals a year fail to return home when they should.³

This number comprises those who entered the UK illegally (in the backs of trucks, via use of forged travel documentation or impersonation, or via the Common Travel Area); those who entered on a visa and stayed beyond the limit of that visa (visit, work and study in particular); those who applied for further leave to remain in the UK and have been refused but remained here (the Managed Migration Pool); foreign nationals who have committed serious crimes and served with a Deportation Order but have not been removed from the UK and refuse to leave; and those who sought asylum, have been refused and have exhausted all avenues of appeal.

The failings of the asylum system which are considered in this pamphlet are an important component of the latter group. While there are thousands of genuine refugees who reach the UK who are rightly granted asylum each year, for illegal immigrants who are encountered the asylum process provides a default route to delay, and often avoid, deportation. Individuals seeking to abuse the UK immigration system who are encountered by immigration officials would routinely raise different forms of legal challenge, including asylum claims, as the evidence is clear that the longer the individual manages to remain in the UK, the more likely they are to avoid deportation.

This issue – like the wider immigration debate – is a sensitive one which often evokes pity and sympathy towards immigrants who are usually less fortunate than ourselves. This is understandable, and few would want to blame individuals for trying to make a better life for themselves by coming to a richer nation like the UK. But it is important to remember that anybody who is living in the UK without the right to be here is breaking the law and for the rule of law

to be maintained and respected it needs to be enforced. The UK has a right to set and enforce an immigration policy as all other countries of the world do.

Some may and do argue that, irrespective of whether individuals in the UK are here legally or illegally, they should all be extended the hand of friendship. But if people do not want to see immigration controls enforced, then the honest thing to do is to campaign for an open-door immigration policy as such would be the effect. Such a proposal is, of course, nowhere near mainstream political thinking and this is hardly surprising: the practical challenge of welcoming into the UK anybody who would like to come here, from anywhere around the world, would be utterly overwhelming. In fact, the political centre of gravity on this subject has shifted in the opposite direction as each of the major parties, responding in large part to the Brexit vote, have in recent years abandoned their support for the free movement of people even within the EU.

It is an important principle that people fleeing persecution should be given refuge by countries in a position to offer it. But where asylum processes are being used as a way of facilitating economic migration it is essential to be able to quickly and efficiently distinguish between the two, in order to ensure those entitled to help receive it quickly, and to ensure that UK citizens do not lose faith and support for a system that is rife with abuse. It ought to be possible to do better in enforcing immigration rules than we have been doing, and that must start with a better understanding of the challenges we face.

Crisis in the English Channel

As this pamphlet went to press there was an increase in attempts by migrants to reach the UK via the English

Channel in small boats and dinghies. While the numbers have so far been very small compared with those reaching the UK by other means, nevertheless this is a worrying trend. Comparisons with migrant activity in the Mediterranean are unavoidable and there is a risk that these Channel crossings escalate in the same way.

As with the Mediterranean route, facilitators are paid to organise these crossings, and will resort to even less seaworthy vessels as the certainty of 'rescue' increases. The profits of the organised crime groups thus grow as the strategy succeeds with the migrants reaching the UK. The crime groups are then motivated to increase their lucrative trade.

The French authorities have never effectively policed the organised crime and illegal immigration issues surrounding the crossings of the Channel. Migrants seeking access to the UK are invariably also illegal entrants to France but little or no action is taken. They do not effectively investigate the criminals involved which leads to open advertising for migrant customers by those crime groups in the Calais area. Early signs are that the French have responded to the pressure on this occasion and are acting to prevent some departures and intercept migrants. That, and the UK response, has seen a quick reduction in such arrivals in the UK.

The UK used to patrol its coast with five cutters. Recently there has apparently been only one performing that function. Whilst there has been some redeployment (to the Aegean Sea and the Mediterranean) austerity measures would have reduced the defences. The Border Force also used to have mobile border officers who visited small ports and airports; austerity has seen these resources greatly reduced also. Aerial surveillance of the coast has also been dismantled.

What could be done? More cutters could and should be deployed as preserving life is paramount. The difficulty,

acknowledged by the Home Office, is that this would attract more crossings in less seaworthy vessels as the migrants and criminals know they can rely on being rescued, with the authorities effectively providing a taxi service to the UK. The other difficulty is how the Home Office traditionally reacts to such a crisis, particularly under pressure from media scrutiny, by diverting resources away from other priority areas. Austerity has left no fat in the system and the reallocation of resources leads to gaps and vulnerabilities in other areas of the immigration system.

So, deploying more rescue ships can be counter-productive unless accompanied with an agreement with the French to accept the return of the migrants who are rescued in the Channel. France is a safe country where the protection needs of migrants can be catered for. The Refugee Convention states that refugees should claim asylum in the first safe country they reach (which is rarely France, individuals having come from much further away). The French must recognise that fatalities in the Channel will impact on them as well as, if not more than, the UK. Consistent returns to France would quickly and effectively stop the crossings as migrants would not pay for a hazardous crossing doomed to failure and the organised crime groups would fail to attract customers. Most critically, lives would be saved.

Pressure should be maintained on the French to tackle the organised criminality and police the coastal departure locations for the dinghies. These are serious crimes committed in France. The UK can provide further support through the recently established UK-France Coordination and Information Centre at Calais formed to tackle the criminality behind these crossings. Early signs are that these warnings have been heeded. Time will tell.

1

The asylum system: applications, refusals and removals

Refugees and their rights are defined under the 1951 United Nations Convention Relating to the Status of Refugees. Article 1 of the convention describes a refugee as:

...any person who... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹

Asylum claims within the UK are handled by UK Visas and Immigration, a division of the Home Office. When an individual applies for asylum they are registered, and an initial screening interview is undertaken, normally within 10 days. This establishes the issues and allows for enquiries to be conducted to facilitate a further, more comprehensive interview later. It is rare for the applicant to be detained during this process; rent-free accommodation will usually be provided, as well as a subsistence allowance, currently £37.75 per week for each member of a household. The

asylum seeker is also entitled to NHS care and any children will be required to attend school, with free meals provided.²

The substantive interview, which may take place several months later, is lengthy, often taking four hours, and seeks to establish the asylum seeker's identity and nationality, as well as testing the credibility of their claim for protection. In investigating the claim, asylum caseworkers have reference to guidance and are assisted by information on the asylum seeker's country of origin.³ Some countries, for example, would persecute and even execute open homosexuals so that would be explained in the guidance as it could form the basis of a claim. As the claim is evaluated, other enquiries may be made; medical examinations may be conducted (to identify symptoms of torture, for example) and expert evidence taken.

An initial decision is then made. If asylum is granted then the individual will be issued with documentation and can work, claim benefits and potentially bring dependents to the UK. If they require continued support, responsibility for this transfers from the Home Office to the local authority.

If the claim is refused and the failed asylum seeker is over 18 years of age, then incentives are provided to encourage them to return home. In most cases, however, the failed asylum seeker will appeal the decision. Only if the case was clearly 'unfounded' can the caseworker 'certify' it under the Immigration and Asylum Act 2002, effectively preventing an appeal; this might be the result, for example, in respect of an applicant from a 'safe' country.⁴

The initial caseworking by UK Visas and Immigration will usually take six months. If the application is refused, the applicant then has 28 days to submit an appeal. The appeal will then take in the region of nine to 12 months, during which period their status here remains lawful. Further

challenges can follow as previously explained. From the point of applying for asylum then, an individual can usually expect at least a minimum of a year, and potentially several years, of lawful residence in the UK. As of March 2018, there were 42,352 asylum seekers in the UK receiving support with accommodation or subsistence while their claims were being determined; a further 4,333 were receiving 'Section 4' support, which is provided to those who are destitute, have exhausted their rights of appeal, but who are temporarily prevented from leaving the UK.⁵

Until 2015 there was a system of Detained Fast Track (DFT), under which claimants who were considered to be highly unlikely to succeed in their application (for example, originating from what was considered a safe country) were detained and an expedited system operated which saw initial decisions and appeals all completed in 10 weeks. Over time the Home Office stretched the reach of the DFT ambit which led to a legal challenge in 2015 where the court ruled that the process was 'systematically unfair' because insufficient time was provided for the preparation of the case.⁶ The Court of Appeal rejected a Home Office appeal against the decision. The decision has had a considerable impact on failed asylum seeker removals and caseworking. The ruling did appear to allow for a fast track system but with processes and timings modified to ensure the system was fair. The Home Office has not sought to replace the DFT and the Ministry of Justice have not re-instigated the expedited timescales for appeals. The process is only now used for those who claim asylum when they are in detention awaiting deportation. They would be individuals for whom a travel document has probably been secured and whose appeal rights expired in respect of all other applications.

How many applications are received – and how many refused

The UK asylum system processes tens of thousands of applications every year. In the past decade there has usually been in the region of 20-30,000 applications per annum. At the height of the 2015 European migration crisis these numbers topped 30,000 for the first time since the early 2000s, when the Le Touquet treaty was signed (more on that below). The most recent data shows that in the year to March 2018, there were 26,547 asylum applications to the UK. Many of these applicants would, in addition, have dependents; there is usually one dependent for every four main applicants, meaning the number of people seeking asylum each year is about 25 per cent higher than the number of applications.⁷

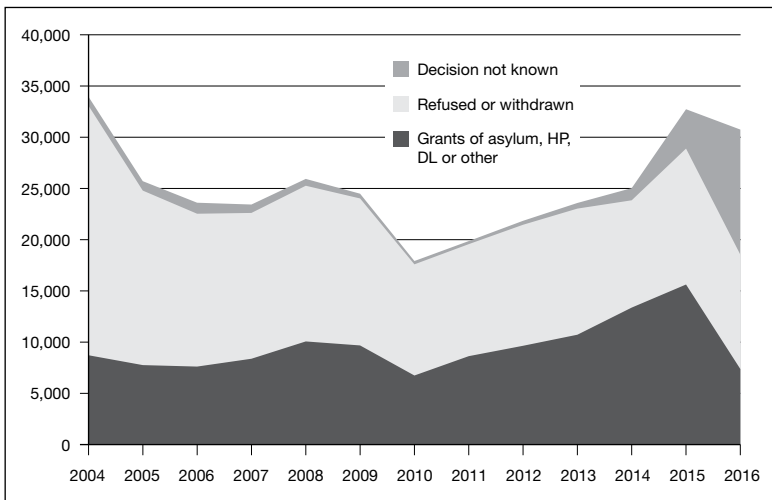
The majority of these applications are refused on an initial decision. Of the 21,327 initial decisions made in the year to March 2018, only 30 per cent resulted in either the granting of asylum or another form of protection; the number of people, including dependents, who were granted asylum or protection was 8,406 (of which 3,050 were children).⁸ The most common nationalities of applicants were Iranian (2,482 applications), Pakistani (2,401), Iraqi (2,391), Sudanese (1,754) and Bangladeshi (1,542). There were 619 applications from Syrians (although 5,760 more Syrians were accepted as part of the Vulnerable Person Resettlement Scheme (VPRS), under which 11,649 people have been resettled in the UK since 2014).⁹

About three-quarters of those who are refused asylum on an initial decision lodge an appeal against that decision. In 2016, the number was slightly lower than in previous years, at 62.4 per cent (8,241 appeals lodged out of 13,213 initially refused), but since 2004 it has usually been in a range between 70 and 85 per cent. Of those who appeal, usually

about a third are successful. In 2016, 32.5 per cent of appeals lodged with known outcomes were allowed. The number of asylum seekers whose decisions are initially refused, but then allowed on appeal, is in the region of 2,500 to 4,500.¹⁰

Taking appeal outcomes into account as well, the proportion of asylum applications that are ultimately granted is usually less than half, although in recent years it has sometimes been slightly more than half.¹¹ On average, between 2010 and 2016, there were 24,532 main applicants per year, 10,301 of which were granted asylum or other types of protection, 11,545 of which were refused (including after appeal) or withdrawn, and 2,686 the decision was not known or pending (see Figure 1). Of those cases with a known outcome, 52.8 per cent were refused, numbering some 80,813, across the period 2010-2016; by now, two years later, the number of failed asylum seekers will have almost certainly have been more than 100,000 since 2010.

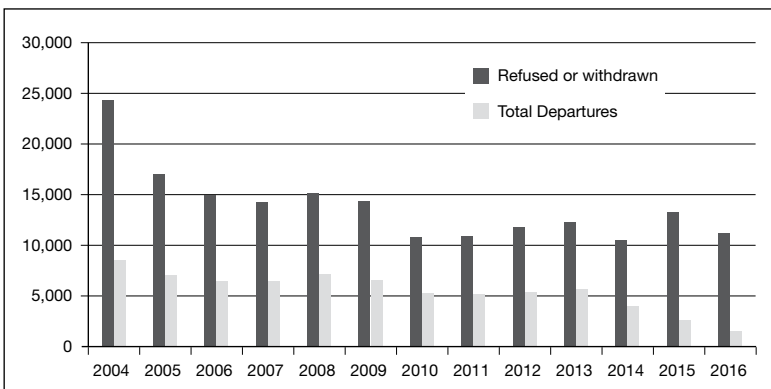
Figure 1: Outcomes of asylum applications, 2004-2016



Source: Asylum data tables, Volume 2, Table as_06

Usually less than half of those refused asylum then leave the country. Most will remain in the UK for at least several years longer. Removals of failed asylum seekers have been falling over the past decade or so from more than 15,000 a year in the mid-2000s to fewer than 5,000 a year more recently. In 2017, there were 2,541 enforced removals and 2,301 voluntary removals.¹² In some years – 2010 and 2011, for instance – these numbers have nearly matched the number of applications refused or withdrawn that year. But, of course, there is a timelag from earlier years with higher numbers of applications that these numbers reflect. Outcomes analysis by the Home Office suggests that less than half of failed asylum seekers are subsequently removed (see Figure 2).¹³ Of the 11,545 applications refused or withdrawn on average between 2010 and 2016, only 4,237 were subsequently removed. That amounted to only 29,659 removals compared with the 80,813 applications refused or withdrawn across that period – leaving 51,154 failed asylum seekers in the country from that seven-year period alone.

Figure 2: Outcomes of asylum applications, refused/ withdrawn and removed, 2004-2016



Source: Asylum data tables, Volume 2, Table as_06

Irrespective of the outcome of their application, once an asylum seeker has arrived in the UK they are usually here to stay. Many who do voluntarily return are incentivised by financial packages. The UK will pay for their flight and they will receive financial support to help in reintegration back home. The government website advertises this as £2,000 with which they can 'find somewhere to live, find a job or start a business'.¹⁴

The timing and nature of claims

The truth is that while there are thousands of genuine claims for asylum each year, thousands more are abusive applications. A substantial number of claimants have previously made other immigration applications which have been refused. Many claims are submitted by individuals who are at the point of being deported because they have no legal right to be in the UK. Sometimes, they will be literally at the airport, on a plane on the way out of the country, when their solicitor will lodge an application for asylum. A claim for asylum has to be considered and thus the deportation process has to stop, irrespective of what the obvious outcome may be. Detention is normally not maintained and, even in respect of abusive applications, deportation is at best delayed, and in many cases avoided as time passes, the applicant absconds, and the process frustrated.

That an application is made at the point of deportation is not in itself proof that someone is not a refugee, but this is a common tactic used by those who are simply illegally in the UK. The asylum process is regularly used as a final attempt to remain in the country – it is often the default mechanism of those illegals who are caught. One of the challenges presented by the asylum system is that there is no time limit in which a claim must be made. On arrival

at the UK, some migrants do seek asylum immediately, but these are low in number. Many more do not put in a claim until they are detected, and often the claim is made when they are about to be deported. The proportion of applicants who claim asylum immediately on arrival in the UK at the port is only about 10 per cent; the rest are made by people who are already in the country.¹⁵ In my experience, approximately 20 per cent of applicants claim at the point at which they are detained for removal, and many of these will have been in the UK for a considerable period of time. The bulk of applications arise following interventions from enforcement visits (such as illegal working operations) or lorry drop cases. Some 93 per cent of 'clandestine entrants' discovered by borders and immigration or law enforcement in, most commonly, the backs of lorries lodge a claim for asylum, a 2015 report found.¹⁶

In addition to this, before they have arrived in the UK they have almost always passed through other safe countries first. The refugee convention allows for asylum to be claimed at any stage and, of course, every signatory country should abide by the convention. The UK would always properly wish to be in a position to grant refuge to people genuinely requiring sanctuary. But there are legitimate questions to be asked about an individual who may have travelled through, say, Italy and France, and does not claim asylum until they reach the UK, and even then often after considerable delays. Why would someone who was fleeing tyranny and seeking sanctuary wait that long?

One would expect that such a person would usually apply for asylum at the first safe opportunity. Genuine refugees, who have been forced from their homes by persecution or war, would often wish to be able to return home at some point when safe, and would therefore prefer to remain close

to their home nations. Given that it is virtually impossible for those from Africa and the Middle East to reach the UK without passing through a number of safe, developed European nations, therefore, this raises questions about the separate motives of those who do not claim for asylum until they reach these shores. Many will have made perilous journeys across the Mediterranean in small boats and then the English Channel in the backs of lorries, often exposing themselves to the risk of considerable harm and even death.

In 1990, EU member states considered which countries should be responsible for examining asylum applications. The decisions made, updated on several occasions since, are known as the Dublin Convention. Central to it was an agreement that applicants for asylum should do so in the first safe state they entered.¹⁷ The convention then allows for such an applicant to be returned to that nation if they illegally move on to another country. For an applicant to be returned to another country under the Dublin arrangements, it has to be shown that the immigrant has lived in that other country subject to the agreement for a period of time or made an asylum application in that other country. When they have applied for asylum, fingerprints are taken. Within Europe those fingerprints are shared and thus the previous application can be identified, and the immigrant returned to that country. In the absence of that fingerprint identification it is not so easy to prove a period of residence in another country. For this reason a migrant intent on reaching the UK will do their best to avoid being finger-printed elsewhere. This is not usually hard; Italy, for example, where a large proportion of migrants first arrive in Europe, makes no attempt to finger-print migrants on entry because it has no intention of processing their claims. The authorities fingerprint all illegal immigrants who are encountered in the

UK. The convention also states that if an individual avoids detection in another state for six months or more then third state removal cannot happen. This incentivises those whose motive is to seek to remain in the UK to avoid engagement with the authorities.

Public attitudes and the importance of getting it right

An extensive public consultation on this topic recently revealed just how little faith voters have in the government's handling of immigration; only 15 per cent of respondents in the ICM research felt immigration had been managed competently and fairly.¹⁸ While asylum is but one part of the wider immigration debate which has risen to the top of the political agenda in recent years, the same consultation revealed how important it is to ensure that the rules we have are enforced properly, if they are to be supported by the public. This may well have been reflected in the Brexit result, where immigration featured highly. Very few people would not want any immigration, but they would wish to see immigration controlled, which is not permitted under the EU's rules on freedom of movement.

There are sympathetic attitudes towards refugees across all social backgrounds, ages and ethnicities, with 55 per cent of the UK population agreeing with the statement: 'Britain should protect refugees fleeing war and persecution.' Even among those who were most hostile towards immigration there was an acknowledgement that 'the needs of refugees were different from other groups of migrants'.¹⁹

Despite this sympathy, however, many people also displayed certain anxieties about those seeking asylum, including that many were not genuine refugees:

A significant concern voiced by the citizens' panels was the perception that many asylum-seekers were not genuine.

Rather than fleeing war and persecution, the groups often expressed concern that asylum-seekers were drawn to the UK by the perceived generosity of welfare benefits. The movement of refugees across Europe appears to have reinforced this view, with participants questioning the motives for such a journey.²⁰

This demonstrates the vulnerability of public support for refugees to perceptions that the asylum system is prone to abuse, although it is wrong to attribute this abuse to 'welfare tourism'. In my years engaged in the enforcement of immigration rules, I was clear that the overwhelming majority of migrants wished to reach the UK to work, whether in the black or legal economy. The perception that migrants were seeking to exploit the benefit system here was, in my experience, not well founded (however many migrants benefit from the system with, for example, income support to supplement low salaries which they receive).

Being able to demonstrate that the asylum system is properly managed, and that those without a valid claim to be here are not allowed to stay, is therefore essential to ensuring continued public support for genuine refugees who do have a valid right to asylum in the UK. Dealing with abuse of the system is fundamental to securing public support for genuine refugees.

2

The challenge of enforcing immigration rules

The UK asylum system attracts in the region of 10-15,000 applications a year from individuals who ultimately have no valid claim and less than half of these are then subsequently removed. This means that the UK's immigration rules are not being properly enforced and the population of illegal immigrants is constantly growing. That the rules are not enforced is then a further encouragement to others tempted to make the same voyage to the UK without a legal right to be here.

The reality is that most illegal immigrants are not refugees but economic migrants, some of whom will then enter an asylum application when they are encountered. Our commitment to the refugee convention and the right of appeal under the rule of law allows for such an application to delay their deportation for many months and even indefinitely. In that period few are detained and, if their claim/appeal fails, are invariably not available for enforcement action to be undertaken.

While it is understandable that these people wish to make a better life for themselves in developed nations like the UK, it is important to remember that if they have no case for asylum then they are in the UK illegally. While many commentators continue to use the term 'asylum seeker' to

apply to individuals who have claimed asylum, this is a misnomer after that claim for asylum has been refused and appeal options exhausted. They are then ex-asylum seekers. The government does not deport asylum seekers – it deports people whose claims for asylum have been rejected as bogus. They are really then simply illegal immigrants.

This section looks at the causes of this, which break down into two main areas: the first concerns the economic drivers of international migration, the 'pull factors' that attract people to richer nations from poorer nations; the second concerns the failure of the UK asylum system to adequately enforce immigration rules which, because it is susceptible to abuse and is known to be so, itself creates an additional pull factor.

Pull factors and the international picture

Hundreds of thousands of people cross the Mediterranean every year in search of a new life in Europe. In 2015, the number of sea crossings from North Africa and Turkey topped 1 million. Thousands a year do not make it, dying on the voyage. While numbers have fallen since the peak of the Mediterranean migrant crisis of 2015, in the first eight months of 2018 there were 75,253 arrivals – 70,678 by sea, 4,575 by land – and 1,540 identified as dead or missing.¹ It is not unreasonable to assume that there are many more unreported and undiscovered deaths. The most common home nations of those making the voyage across the Mediterranean in 2018 were Syria (7,049 between January and September), followed by Iraq (4,600), Guinea (3,890), Tunisia (3,729), Mali (3,116), Eritrea (3,027), Morocco (2,916) and Afghanistan (2,444).²

Most arrive in Greece, Italy and Spain but patterns shift as efforts are made to deter travel via certain routes and to

return migrants. Greater and incentivised support from the Libyan coast guard in intercepting vessels at sea has led to a significant reduction in arrivals in Italy since late 2017, for example, as has Italy's refusal to allow a number of NGO vessels to disembark at its ports. At the same time, however, numbers have increased on routes into Greece and especially Spain, where there were more arrivals than in either Italy or Greece in the first eight months of 2018.³

While the number of deaths has fallen as fewer crossings have been attempted, the UNHCR (the UN refugee agency) points out that this has been accompanied by a higher ratio of deaths-per-crossing as a result of restrictions on NGO activities in the Mediterranean and other measures designed to curb migrant flows.⁴

Drivers of migration into Europe

Those who are part of this enormous movement of people are all seeking a better life in one way or another. But the precise circumstances from which they are trying to escape vary widely. The UNHCR stresses the genuine persecution from which many of those travelling to Europe are trying to escape, while de-emphasising the economic incentives that undoubtedly exist:

Some continue to flee armed conflict, insecurity, and human rights violations, while others seek international protection on account of religious, ethnic or political persecution, persecution due to their sexual orientation or gender identity, or to escape different forms of sexual or gender-based violence. Some make these journeys to reunify with family members in Europe while others are seeking employment or education opportunities⁵

There can be little doubt, however, that the economic incentives to migrate to Europe from much of the

developing world are huge, with wages of a different order of magnitude in the former compared with the latter. These wage differentials are maintained by visa controls, restricting the right to work in richer countries to only a relatively tiny proportion of people (usually, the better-skilled) from the rest of the world. As the trade economist Dani Rodrik puts it, this is an enormous inducement to those from poorer countries wishing to make a better life:

Labor markets are much more segmented internationally than any other market. This extreme segmentation, and the huge wage gaps it gives rise to, induces illegal migrants from low-income countries to take serious risks and endure extreme hardships in the hope of improving their incomes and the living standards of their families back home.⁶

The issue is complicated by the fact that an individual may be an asylum seeker as well as an economic migrant. Writing at the height of the Mediterranean crisis in 2015, the Cambridge economist Robert Rowthorn noted:

According to the [1951] definition a person may be simultaneously an economic migrant and a refugee. The Syrians currently streaming through Greece and the Balkans towards northern Europe are frequently described as people fleeing persecution. This is misleading. It is true that many of them originally left Syria to escape persecution, but by the time they enter Europe they have previously found protection in Turkey or elsewhere, often in a refugee camp. They are economic migrants seeking a better life than they currently enjoy. However, according to the UN definition, they are still classified as refugees if it is unsafe for them to go back to Syria.⁷

Myths exist and are perpetuated in many countries, where youths grow up being told, and believing, that the streets

of the UK are ‘paved with gold’ and that prosperity is guaranteed to those who succeed in reaching the country. Those who do reach the UK have often made major sacrifices, with family and wider community assets being pooled to pay facilitators organising the journey. Life, of course, is not so easy as anticipated in the UK, as evidenced by large numbers of migrants residing under the M4 in west London, and those living in very basic conditions in ‘beds in sheds’ in various parts of London. It is rare though for those migrants to feed the truth back to friends and relatives back home, with most maintaining a pretence of success. The myth is thus continued and grows. I have accompanied enforcement officers on many of their visits to these areas and taken the opportunity to speak to the immigrants who were encountered. Many are living in the most appalling conditions and have seen little improvement in the life they left behind.

The number of people on the move has increased in part due to conflict in Syria and elsewhere and in part due to the publicized opportunities to cross the Mediterranean and the awareness of those opportunities. Development economists Alexander Betts and Paul Collier write:

A combination of state fragility – in countries such as Syria, Somalia and Afghanistan – and increased opportunities for mobility has intensified refugee movements and made for one of the big policy challenges of the 21st century – not mention a deadly risk for the people involved involved.⁸

The Mediterranean crossings of recent years have been high profile in the news, advertising those routes to millions of people, and prominent on social media. Facebook often features more than 500 pages advertising the services of people smugglers, an issue that prime minister Theresa May recently raised with the EU during Brexit talks.⁹

These routes have also been supported by NGOs who have rescued migrants who have been stranded at sea. What has emerged in the Mediterranean has been, in effect, some NGOs providing a taxi support service for the criminal gangs who are facilitating the movement of illegal immigrants to the shores of Europe. The opening up of this route has partly been the result of the removal of Colonel Gaddafi from Libya, which has led to anarchy there. Organised criminals and people traffickers have exploited this situation, putting would-be immigrants in very unsafe boats (which are purchased at minimum cost and would probably not reach Europe), then contacting the NGOs, telling them that a boat full of asylum seekers was coming, and where. The NGOs have then come and picked them up and taken them, usually, to Italy.¹⁰

Whilst the NGOs have good intentions, saving lives at risk in unseaworthy vessels, the trouble is that the policy of picking up stranded migrants and transporting them to Europe acts, of course, as an inducement for more migrants to risk the crossing, as unsafe as it is, and for criminals making money from this process to continue doing so. NGOs did not manage to rescue all migrants and many have perished on the journey.

If intercepting those boats and taking the passengers back to Libya was a consistent, well-implemented policy – the numbers would reduce very quickly, and would eventually fall to close to zero. No one would pay money to be taken, at high risk, half a mile out to sea only to be taken straight back. Indeed, as noted already there is evidence that this crossing route has already reduced in the past year or so as the Libyan coastguard has been given more support to intercept boats, and as NGOs have been restricted in their use of Italian ports.

But there are various alternative routes. One was the route through Turkey and across the Aegean Sea to Greece. An agreement with the Turkish government, involving substantial payments to Turkey by the EU, has seen much greater intervention by the Turks which has, to a large extent, cut off this route. The Aegean Sea was also a route where fatalities were high, graphically illustrated when the lifeless body of three-year-old Alan Kurdi was washed up on the beach of Bodrum on 2 September 2015, the publication of his picture shocking the world.

The arrangements with Turkey would now appear to be working, reducing the fatalities and pressure on the Greek Islands and government. Recently numbers have been increasing on the African route through Morocco and into Spain. This illustrates the way in which organised crime groups will adapt to the evolving challenges and how any 'solution' needs to consider displacement that may occur.

Facilitated illegal immigration into Europe, and ultimately for many into the UK, has been well-documented for many years.¹¹ Forced trafficking has been one aspect of this, including the experiences of young women lured into prostitution in the UK with the promise of a better life.

Organised criminals offer different packages for migrants to travel to the UK and Europe. Participants will be coached on what to do on the journey and at the desired destination as part of the higher-priced packages. If their destination was the UK they would be told not to claim asylum in mainland Europe, as such an application would involve the taking of fingerprints and an audit trail of living and claiming in that country. They are told to claim asylum if caught in the UK, perhaps when emerging from the back of a lorry, in which they had been concealed.

They will be told to destroy all documents that could reveal their identity or nationality, and that when they claim asylum, they must have a clear and plausible story. One would be to say that they are Syrian perhaps, another that they are Eritrean and fleeing compulsory military conscription. If they are from a country that persecutes gays, they may be instructed to say that they are openly gay. The package may often include a contact to call when they reach the UK, to provide advice how to avoid engagement with the UK immigration system and how to navigate it in the event on a problem.

Britain's leaky borders

The vast majority of illegal immigrants entering the UK do so from France, across the English Channel, mainly via ferry but also the Channel Tunnel. They may also enter the UK via Ireland given the open border into Northern Ireland from the Republic. This route is heavily abused.

The English Channel

Illegal entrants crossing into England from France are a lower number today than they were in the early 2000s, when the annual number of asylum applications rose above 100,000 – total entrants would have been much higher than that as many would not have been detected. The large reductions in these numbers have been achieved as a result of the Le Touquet treaty, which was signed by Tony Blair and Jacques Chirac in 2003. Prior to Le Touquet, checks were made by UK authorities only after boats and lorries had arrived in Dover. Because they were on British soil, migrants found concealed in them could immediately apply for asylum in the UK and the claims would have to be processed by the UK authorities. The illegal entrants could not be detained in

large numbers and thus their details were recorded and they were told to subsequently report to immigration authorities, released and provided financial support whilst their claim was considered. The numbers completely overwhelmed the systems and the claims took many years to resolve.

Le Touquet moved UK border controls to northern France and Belgium, and brought French and Belgian border controls across to Dover. This meant those without a legal right to be in one of the countries could be prevented from making the crossing in the first place. Now thousands of UK-bound illegal immigrants are removed from lorries in France. When discovered they are all handed to the French authorities. If they choose to claim asylum, the claim would then be in France. But few of those removed from the trucks claim asylum there. The French authorities take the details they provide (which often would not be the correct details) and release them. Their fingerprints are not taken by the French authorities. The former encampment at Sangatte, where immigrant numbers rose to above 8,000, was an example of this reluctance to claim asylum in France, as those residing there were awaiting an opportunity to evade border controls and make their way to the UK. The French took little action to 'police' those migrants who, of course, were invariably illegal entrants into France. The majority at the camp had been removed from the backs of lorries, trying to reach the UK, on many occasions.

Another benefit from Le Touquet has been the practical advantage that there is more space and time to conduct searches in Calais than in Dover. The lorries arrive one to two hours before the boat departs, allowing more time for checks and any searches to take place before the lorries are loaded into the ferry, while the infrastructure of the port provides more space for inspections and searches. The very

nature of the restricted space and road network would not allow for large numbers of lorries to be delayed and searched at Dover without causing significant disruption to south east Kent.

President Emmanuel Macron came to power in 2017 promising to renegotiate the Le Touquet treaty.¹² However, any prospect of the deal being ended seems to have receded for now. In January 2018, Mr Macron and prime minister Theresa May reaffirmed their commitment to the deal, with the UK offering more financial support for border security in Calais and promising to take in more child refugees from the camp in Calais.¹³

Numbers of detected illegal immigrants and asylum claims have fallen significantly as a result of Le Touquet. Nevertheless, still tens of thousands of illegal migrants do successfully reach the UK via the English Channel.

Airports

Illegal migrants and asylum claimant traffic via UK airports is at a much lower level than via the English Channel and Common Travel Area. Their travel via air is often supported by forged documentation or by the traveler impersonating another with a stolen or fraudulently-obtained genuine passport. In certain circumstances EU citizens can use their national ID cards to travel to the UK and this is a common area of abuse. The Italian ID card has been particularly abused as it is comparatively easy and cheap to obtain; an immigrant from, say, Afghanistan may obtain one and then be subject to minimal checks at UK borders. Some will secure a UK passport which has been genuinely obtained. The trade in travel documents is controlled by organized crime who offer travel documents as part of a 'premium' package for illegal entry.

Some will travel with a facilitator who books an ongoing flight from the UK airport. The immigrant would hand the travel document to the facilitator at the UK port who will remain airside, whilst the immigrant would present him or herself to UK controls undocumented and claim asylum. The individual would be instructed to delay their presentation to UK Immigration, so it cannot be ascertained which flight the person arrived on to remove any risk of being returned. Those with false documentation may destroy their documents and again present themselves at UK controls and claim asylum. It is an offence to travel to the UK without the proper documentation, but fleeing persecution is a statutory defence to that offence¹⁴ and so any prosecution cannot take place until an asylum claim has been resolved.

The precise numbers who successfully enter the UK through these efforts are not known but will be in the low thousands. The proportion of asylum claimants who make their applications at UK airports is comparatively low.

The Ireland route

The other route heavily exploited by illegal immigration is via Ireland and the Common Travel Area, flying from elsewhere in Europe, or further afield, into Dublin or other Irish ports, then travelling north and crossing on one of the various ferries to the UK mainland. A popular route is the ferry from Belfast to Stanraer, for which there is no passport required or immigration checks conducted. Ireland is commonly used as a route for immigrants who have previously been deported from the UK (often EU citizens who have served a term of imprisonment and are then subject to a re-entry ban into the UK) and wish to return. EU citizens are not subjected to checks at Irish ports, and thus their previous deportation from the UK is not identified.

Immigration and asylum controls in the UK

Once an asylum claim is made, the caseworking process then takes considerable time.¹⁵ The time these processes take reflect both the challenges that need to be overcome in assessing claims correctly, the allocation of resources dedicated to these processes and the efficiency with which they are used.

Evidence that the system is currently failing to keep up with the volume of applications can be seen in the steadily mounting backlog of cases awaiting a decision since 2010. In that year there were 14,881 cases pending a decision; that had more than doubled by 2017, to 32,734. Of those, 14,306 were cases that had been awaiting an initial decision for more than six months (up from 4,081 in 2010).¹⁶

The first thing to note is that in nearly all cases asylum seekers will have no documents or other proof of identity. It is true to say that some genuine refugees may have had to flee their property or location without any time to collect documentation, but it is also true to say that a majority of illegal entrants intentionally destroy documentation as they know identity documentation is required to affect their removal from the UK once a decision has been made for that to happen. The destruction may also have taken place in order to make it harder for immigration officials to establish their true story if they are making a bogus asylum claim.¹⁷ Back in 2003, the then Home Office minister Beverley Hughes described the problem even among those arriving at airports, who must have had documents in order to board the flight:

The very large majority of people who arrive at our ports who are going to claim asylum arrive undocumented. ... a large majority of those actually arrive at airports, where, patently, they will have had documents in order to board the

plane. So we are convinced that a large proportion of people who claim asylum at ports, particularly at airports, have documents when they board, but destroy them, or they are taken away from them by facilitators. It is very important, both in terms of assessing a person's claim, but also in terms of removing somebody if their claim is refused, to be able to document people.¹⁸

This is little different today; still most of those intending to claim asylum arrive without documents and this presents the twin challenge of both establishing the veracity of their story, and of removing them if their story does not stand up.

Nationality-swapping

One method of deception that is commonly used is nationality-swapping, whereby an asylum seeker will claim they are from a certain country which will provide a greater likelihood of a successful application. Kenyans may claim to be Somalians, for example, because they are physically similar and the UK finds it extremely difficult to deport Somalians; Kenyans are deported because Kenya is viewed as a safer country and there is greater cooperation from the authorities there in supporting the process. Kenyans know that if they want to stay in the UK under asylum rules, that swapping nationality will greatly increase their chances.

Caseworkers are trained to ask questions that will test credibility. There is 'country of origin guidance' provided by the Home Office that provides cultural background information that should be familiar to a person from a particular nation. They might be asked what church they go to, or to name the street where they used to live. If they know nothing about the area that they claim to be from, then the claim is likely to be rejected as their credibility would be dented. A well-prepared false applicant can, of course,

be tutored and prepared for this interview and organised crime would offer such packages.

Claims to be under-18

Another area of abuse is immigrants claiming to be younger than 18 when they are much older. This is because they know, or have been briefed, that even if refused asylum they will not be detained nor deported if they are under 18. If a failed asylum seeker is under 18 years of age, apart from in wholly exceptional cases, no action is taken or contemplated until after he/she has reached that age. Where the age of an asylum seeker claiming to be under 18 is disputed, the matter is referred to social services as what are known as 'Merton cases'. The number of disputed cases fell during the 2000s but has been rising again since 2011. In 2017, there 716 disputed cases. Of the 673 resolved, 384 were found to be over 18, but this number varies by year. In the decade 2008-2016, there 14,289 asylum seekers who had claimed to be under 18 who were in fact adults.¹⁹

There are potential safeguarding dangers that arise from this situation, because if they are accepted as under-18, when they are in fact far older, they will be put into the care of social services and placed into school alongside children. This happens in many cases. There was a recent example in Surrey where a school contacted the Home Office amid parental concerns that an asylum-seeker pupil, ostensibly 15 years old, appeared to be about 30.²⁰

Of course, many asylum seekers will have their children with them and then the process is more complicated. Caseworkers have a legal duty, under Section 55 of the Borders, Citizenship and Immigration Act 1999, to take 'regard' of the best interests of children in decisions they make. This impacts on initial decisions and, if refused

asylum, has again to be factored in when considering deportation. Article 8 of European Convention on Human Rights (ECHR) also has to be considered, in providing a right to family life.

Deportations and removals

As we have seen already, most asylum seekers remain in the UK whether their application is accepted or not. Even when claims are refused, only a minority of individuals in recent years have been removed and so there is an increasing backlog of illegal immigrants who are still in the country having attempted to exploit the asylum system. As time passes, the extension of their stay in the UK provides further opportunities to mount a legal challenge against removal, such as under Article 8 of the ECHR (as many start families in the UK) or other provisions of the law. Many make successive applications raising different or amended grounds for a claim. Courts have alluded to this on many occasions and been critical of the practices of some lawyers.²¹

The failed asylum seekers are documented in the immigration system and known to the authorities, having applied for asylum, often been provided with accommodation and subsistence while their claim is considered, and invariably have had an appeal heard against the refusal to grant asylum. Once legal hurdles are removed, the primary difficulty in removing the individual is securing the cooperation of their host country.

Lack of travel document

A key difficulty of removal of many individuals is that the Home Office does not have a travel document – a passport – for the person. Where they have one (which is an extremely rare occurrence), removal could and would take place quite

quickly after all legal challenges were resolved, as there would be no further obstacle. It will usually be necessary to go to their home country's embassy and ask for an emergency travel document, enabling the person to travel. This presents real challenges, because many countries insist on a requirement to establish, to their satisfaction, that the individual is indeed one of their nationals. Many additionally also require to see definitive proof of the individual's identity. This is very difficult when, as described already, the large majority of asylum seekers will have lost or destroyed their papers even before arriving in the UK, and would not wish to cooperate with their own removal from the country. For those who had fraudulently claimed asylum, the opportunities to frustrate the removal process are enormous.

The individuals are thus usually unwilling to help in the process of proving their nationality or identity, and indeed may be seeking to falsify both. With a non-compliant person, it is very difficult to assemble the documentation that is required by some countries in order to remove them. An embassy may, for example, be prepared to issue a limited number of travel documents per month, but may want to make enquiries regarding the individual in their country which can include physically going to their last address to establish that the person lived there. That might not be difficult with a compliant person who wants or accepts he/she has to return, but if someone does not want to leave the UK then they are not going to provide that information. Or they will furnish false information.

This leaves the Home Office in a situation where an asylum claim might be rejected because they are clearly, for example, not Syrian as claimed – they do not know the language, they could not describe the road in which they

said they had lived all their life, and so on. But, at the same time, what it cannot be established to anybody's satisfaction is who that person actually is, or their nationality. So whilst they can be refused asylum – very often they cannot be deported.

These difficulties are compounded by a genuine resistance by a lot of these countries to taking people back. The identity and nationality requirements vary considerably between countries. There are about 100 countries who accept the UK judgement on nationality and identity where an official can issue a letter taking the place of a passport (they are called 'EU' letters), but these largely relate to non-controversial countries, such as EU states. Many countries are simply unwilling to cooperate sufficiently, and particularly if they suspect the individual has been seeking asylum, because then the individual has effectively been accusing the government of that country of persecuting or failing to protect them. For that reason, the countries are often not told the nature of the immigration claim that has been refused. If the individual has committed criminal offences in the UK then the home country may also resist on the basis they are now criminals. One High Commissioner from a Commonwealth country told me once that its nationals arrived in the UK 'honest men' and that the UK had made criminals of them, so why should they be expected to take them back! The particular country has a very high rate of violent crime. It was a preposterous claim but the High Commissioner kept a straight face.

The scale of these difficulties varies from country to country. Some will want documentary proof of the individuals' identity or nationality, which can rarely be provided; others will accept them on the basis of an interview that they conduct with the individual which satisfies them of the persons nationality. This of course again requires a

degree of cooperation. The cooperation will often depend on an individual in the embassy or high commission in the UK and some can be quite helpful and pragmatic. I found some to be at the other end of the extreme and simply will not cooperate. When persons travel to the UK on a visa a copy of their passport is retained in the system. I have wide experience of seeking to remove foreign national offenders, who are subject to deportation having served a prison sentence in the UK. Some embassies refuse documentation on the basis they are not sure the individual is one of their nationals despite being provided a copy of the passport they used to travel from that country to the UK!

Finally, if travel documents are obtained, they will only last for a maximum of three months, and more often for just one month. A non-compliant person, who will be aware of what is happening, will disappear and ensure they are not found until that period has expired. A year or so later, their circumstances may have changed, or circumstances have changed in their home nation, enabling a new human rights claim on those grounds. Or perhaps they might have a child by this time and so they seek to stay on the basis of their right to family life. A vicious circle develops with removal obstructed, delays occurring, further claims made and time elapsing which eventually leads to permanent residency for the immigrant.

When an applicant has been refused asylum, and all appeals have failed, they are effectively then unlawfully in the country and have to leave. While it is very difficult to remove non-compliant individuals to many countries, for the reasons explained, it is true to say that when individuals are compliant, as the law would demand they are, there is no country in the world to which he/she cannot be removed and the removal can happen quite quickly.

Abuse of the legal system and processes

Appeals and legal challenges to asylum refusals play a significant part in the time it takes to conclude cases and ultimately abusive applications can and do impede the legitimate removal process. The asylum system requires a right of appeal, but it is a system which has been heavily abused by some lawyers. This is particularly so in respect of last-minute challenges to deportation, often seeking an injunction in the hours before removal before an on-call High Court Judge who is not a specialist in the area. Over 75% of Judicial Review applications to the Administrative Court are for asylum and immigration matters. In 2011, for example, there were a total of 11,200 applications for permission to the Administrative Court, of which 8,649 were for asylum and immigration matters (77%). Only 54 of those applications resulted in a successful outcome for the applicant. Such applications often follow many previous challenges mounted on similar or identical grounds and the courts have been very critical of members of the legal profession for failing to properly advise the judge of the case history, thus inviting a decision without the correct or incomplete information.

In the case of *Hamid*, 2012, the then President of the Queen's Bench Division, Sir John Thomas, was scathing of this practice:

These late, meritless applications by people who face removal or deportation are an intolerable waste of public money, a great strain on the resources of this court and an abuse of a service this court offers. The court therefore intends to take the most vigorous action against any legal representatives who fail to comply with its rules. If people persist in failing to follow the procedural requirements, they must realise that this court will not hesitate to refer those concerned to

the Solicitors Regulation Authority. ... The fact that a judge is being asked to make an order out-of-hours, usually without a hearing, and often without any representations from the Defendant's representative and in a short time frame, means that the duty of candour (to disclose all material facts to the judge, even if they are not of assistance to the Claimant's case) is particularly important.

Similar criticisms followed by Sir Brian Leveson in the case of *R (Butt) v Secretary of State for Home Department* (2014) EWHC 264 (Admin) and by Mr Justice Green in *Okondu v Secretary of State for the Home Department* (2014) UKUT 377 (IAC). Further criticisms from the judiciary have continued up until the present time. Frustrations regarding these matters were again aired by the courts in three cases which were linked together at the High Court 2018 which concluded:

Given the failure of lawyers to take heed of the warning by the President of the Queen's Bench Division in *Hamin* 2012 and the reiteration of those concerns expressed by the present Lord Chief Justice in 2018 in *SB Afghanistan* (ibid), we consider that we should set out some guidelines as to the procedure to be applied in the future.

The court then went on to provide guidelines and clear intentions to report lawyers to the professional bodies for breach of the guidelines in the future. The solicitors in the cases before the court were reported to their professional bodies.

There are many other cases which could be quoted. The judiciary is not noted for such outspoken criticism of lawyers, and the cases follow a pattern and continual abuse of the courts. Whilst legitimate appeals and challenges greatly extend the time taken to dispose of asylum cases, it

is accepted that this is a necessary part of the process, even if those cases take longer than desirable to the claimant and the Home Office. The abusive applications are a serious concern and place a considerable burden on the public purse, through unnecessary legal fees, aborted removal processes, prolonged detention and administrative costs at the Home Office.

3

What can be done?

The challenge outlined in this paper is that once migrants reach the UK they are usually here to stay whether they have a valid claim to be here or not. This means that these numbers add to an ever-growing number of migrants in the country who have no lawful entitlement to be here. Furthermore, the failure to deal with this situation provides an incentive to further attempts to come to the UK by people who have no right to be here.

There needs to be a two-pronged approach to the problem: to reduce the numbers of illegal immigrants who enter in the first place, and to improve the rate of removal for those who are refused asylum. Progress on these two fronts will have the further benefit of deterring future attempts to come unlawfully to the UK, which is also critical if we are to be able to manage this system with the resources that are realistically likely to be available. The numbers of claimants in 2003, prior to the Le Touquet Agreement exceeded 100,000. This overwhelmed and effectively 'broke' the immigration system with many of the claims not resolved for many years after. If the current backlog was to continue to grow, it would again overwhelm systems, if it has not already done so.

There need to be changes to the approach so that asylum cases can be decided quicker, which means that genuine asylum seekers can be provided with sanctuary promptly,

and with that, access to the benefits the UK can provide for them. But there also has to be a clear deterrent for abusing the system – which means an effective removal system, and/or a system which prevents bogus asylum claims from being made in the first place.

The difficulty is that if claimants know that all they have to do is to reach the UK, or Europe, claim asylum, and then disappear if the claim fails (that they can work in the black economy and, while they probably won't be able to access state benefits, they won't be deported either) then that is an incentive to pay criminals and take the risk of crossing the Mediterranean and, ultimately, the English Channel. The asylum system then becomes a tool of abuse for those we, as a country, have not provided with an entitlement to be here. Once an individual has been in a country unlawfully for a number of years, the courts are very reluctant to order their removal and many can then regularise their stay. Again, the unlawful entrants know this, and the systems incentivise deceptive behavior.

Preventing illegal immigrants getting into the UK

It is not easy to see how the borders could be made significantly more secure without incurring considerable delays at the ports. There are many systems in place to detect illegal entrants in lorries, civil penalties for negligent drivers, and criminal sanction for those complicit with the migrants (as some are). Border control officials have the equipment to X-ray whole trucks, for example, which is very effective. But that takes 20 to 30 minutes for each truck and there are potentially hundreds of trucks loaded onto each ferry. Stepping up X-rays would therefore create either long tailbacks for trucks or require a very large increase in investment in resources to undertake the process more

quickly. The UK has invested heavily in the infrastructure and security in Calais in the past few years which has had an impact on the numbers of migrants discovered in trucks.

One measure that might be introduced is to insist that lorries have tamper-proof locks to a recognized standard to secure their vehicle trailer so that any entry would involve interfering with the lock and would be obvious. If lorries had to have such locks, that would do two things. First, it would prevent migrants gaining access to the lorries. Second, if a migrant was found in the back it would provide clear evidence of complicity by the driver as access would not be possible without the cooperation of the driver. That would act as a strong deterrent because for those drivers who are complicit now the risks are low. Drivers can make significant profit (payments of £500 per migrant are common, and some trucks can accommodate twelve or more) just to park their vehicle insecure in a certain car park, perhaps whilst the driver takes lunch, allowing migrants to conceal themselves in the trailer. Detections result, at the worst, in a civil penalty of £2,000 (which their companies would often pay) as that complicity cannot be proved to a criminal standard. If, however, when migrants were discovered in a vehicle, the involvement of the driver could be proved, the vehicle would be impounded, and criminal proceedings would follow. A sentence of imprisonment would be normal in such cases and the court can order forfeiture of the truck. Such locks would potentially provide the evidence. Whilst the UK is in the EU, EU law may prevent such legislation, but the UK may be able to consider such legislation in the future.

Improving the rate of removal

Improving the rate of removal might focus on two specific goals: speeding up the asylum caseworking and appeals

processes, and then ensuring more of those whose claims fail are deported. There are various ways in which the government could set about this, some requiring additional resources, others conserving resources. Whilst asylum removals have dropped significantly, the Home Office have managed to maintain and improve the deportation of foreign national prisoners, with record numbers of such deportations in recent years.

Streamlining the initial decision process

First, the casework and interviews process could be streamlined. The Home Office has about a thousand staff members dealing with asylum casework, and they will be assessing the 20-30,000 claims a year which the UK currently receives. They probably do not have sufficient time to properly decide cases in the current model. This could be helped by the provision of additional resources; that is to say, more caseworkers. But part of the resource issue relates to the fact that a similar approach is adopted to each case. There is room for some rationalisation of the workload.

Only a small proportion of genuine asylum claims should take a substantial amount of time to resolve. These are cases where perhaps specialist evidence is required. Torture cases are an example of those which can take time, not just because of the interview but because of the expert medical examinations that would often form part of the evidence.

But in most cases, there is more that can be done to save time by concentrating on the substance of the claim and testing that. Currently every applicant is subjected to a lengthy interview. There is frequently no need to do this. For example, if it can be established for certain that

a person is Syrian, say, then the caseworker really does not need to go further; the reality is that the claim will be successful as the guidance rightly acknowledges the protection needs of fleeing Syrians. There is no need for further investigation. It might take half an hour of solid investigation to show someone is or is not Syrian. If that is established, then that is as much work as needs to be done on this case.

When I was at the Home Office, I tried to persuade caseworkers to rationalise their time in this way but I failed, because it is just not the culture. The caseworkers are passionate about their task, wish to be very thorough and are fearful that shortcutting (as they would see it) involves some 'risk' for which they may be blamed if an error was made. Politicians in recent years have shown a much greater willingness to 'blame' officials than in the past when ministers (rightly, as officials cannot respond to criticism) accepted responsibility for policy decisions and the performance of their departments. The reality is that any system relying on human judgement will include errors, ie wrong decisions. Caseworkers feel that they have to treat everybody the same, interview each claimant in the same way, and that fairness requires them to do this.

This different approach may occasionally make an error, but so will every approach, including and in particular where human judgement is required, and the cost savings of making a decision in a week as opposed to three to six months – during which time the asylum seeker must be accommodated and provided with subsistence payments – would be very significant. Above all, it would enable the average period allocated to each case to be shortened significantly and therefore free up caseworkers' time to focus on cases that are more difficult to establish.

Adopting new technology

Another way in which the caseworking process could be improved is with the use of new technology. For example, there has been a new system of integrity screening developed called Validated Automated Screening Technology. This works in a new and, independent evaluation confirms, highly-reliable way, with accuracy rates of up to 90 per cent. The system highlights individuals who demonstrate signs of deception. Tests can be conducted in any language and are complete in less than 20 minutes. Operatives require minimum training. This is an example, and there may be other technology available. Such tests would not need to be used as primary evidence, which would be controversial. But they would allow interviewers to, for instance, quickly identify potential questionable areas in the application (by indicating the answer to nationality was incorrect, for example) in order for questioning and enquires to focus in on those areas. This may allow for very quick positive decisions of granting asylum with resultant resource savings and reduced trauma for those genuine applicants.

It would not be about removing the interview process, the human element or the bureaucracy, but helping caseworkers navigate the evidence. And it would not be about proving that the applicant is lying, but about being reasonably confident that they are telling the truth. That could save a lot of time, enabling caseworkers to get to the truth more quickly. Such systems are worthy of evaluation at the Home Office.

Speed up the appeals process and stop 'legal abuse'

One critical improvement would be to speed up the appeals process. The judgement in the Detained Fast Track case left room for its reintroduction with better safeguards. The use of an expedited system is justified in many cases, and

the Home Office would need to be cautious as to the cases that were placed in the process. The Ministry of Justice are resistant to its re-introduction, which does require difficult organization within the Tribunal system. The ability, in highly abusive applications, to be able to quickly decide the case, deal with appeals and remove unsuccessful applicants would act as a deterrent to such applications.

The courts have continually highlighted abusive claims for Judicial Review and other challenges within the asylum and immigration areas. Such strident comments by the judiciary arise from frustration of the level of abuse they witness. The courts have now set down guidelines which could help, although previous attempts by the courts to do so have not dampened the abuse. There have been changes to Legal Aid over the years and limitations as to where it can be applied for. Clearly legally aided cases should be supervised, and fee reductions imposed in such cases. This is an area which should also attract greater interest from the regulatory bodies for the legal profession.

Detaining more at the end of the appeals process

The removals rate could be improved by detaining more of those who, at the end of an appeals process, are refused asylum and for whom it is known that a travel document could be secured. If they were detained at that point, there would be less opportunity for them to abscond when (or if) their travel documents are obtained later. There was a stage in the past when the Immigration Service were informed of the decision of the court before the applicant to allow for action to be taken in appropriate cases. Such arrests would require additional spaces, or for reallocation, in detention centres, which could be expensive. Overall resources and detention spaces in particular have been cut back in recent years.

Fast-tracking those with the weakest cases

The Detained Fast Track (DFT) system was introduced in 2000. It detained up to 4,200 asylum seekers a year at centres such as Yarl's Wood. This was suspended, however, in 2015 after the Court of Appeal ruled it was 'structurally unfair'. Liz Truss, then justice secretary, tried to resurrect this idea with a similar scheme in 2017, focused on deporting failed asylum seekers in detention and foreign criminals.¹ The Home Office had stretched the boundaries of DFT, leading to the court's finding. A very diluted system now operates in respect of those in detention for other purposes who claim asylum. The judgement of the courts did allow for the system to be restarted but with additional safeguards for those affected. The Home Office should work with the Ministry of Justice to seek to resurrect the DFT system which was part of the deterrent for false claims. Its loss is a factor in the reduced removals of failed asylum seekers. Whilst any new scheme would need to take full cognizance of the court's findings, there would appear to be room for the most abusive applicants to be accommodated within such a scheme.

Removing failed asylum seekers without travel documents

There is a further step that the Home Office could explore, however, in terms of those nations that refuse to provide travel documents and accept the return of individuals we are confident are their nationals. The UK Government could place a much higher priority in challenging some of the countries which refuse to cooperate with the documentation process. The countries are often, for example, those for whom the UK provides substantial financial aid. There would be many immigrants for whom the Home Office has good evidence of their nationality but are nonetheless

refused documentation by their embassy. I have knowledge of some other countries who do not accept these refusal to provide travel documents and simply place the immigrant on a plane and return them to the host country, challenging those countries to refuse to accept their own nationals. In my role at the Home Office, I made an overseas trip to an African country which routinely refused to provide travel documents for the deportation process. I asked my officials to arrange a dinner with representatives from a variety of countries who were performing immigration liaison roles in that African country. The purpose of the dinner was to establish if they had the same difficulties with the country, and if so, how they dealt with it. I was told by one representative how, when they were sure of an individual's nationality and the country refused a document, they simply placed them on a flight to the country and the representative in the country met the flight. They were successful in these deportations. This would be controversial but could start with cases (which may be foreign national prisoner cases) where we have a copy of the current or expired passport used in a visa process. It is difficult to imagine that the host country would refuse to accept such individuals.

Obstacles to progress in this area include an unwillingness to identify and criticise countries that fail to cooperate in this way for the sake of diplomacy and immigration objectives being sacrificed for other diplomatic objectives. We need to be firmer with the countries who do not cooperate, highlight these failures and respond to those challenges.

'Hostile environment'

Successive governments have privately accepted that the illegal immigration problem cannot be tackled through deportations. Those deportations are important as they

signal a response to illegal behavior and encourage voluntary departures. The current government, when Theresa May was home secretary, introduced a 'hostile environment' policy to encourage illegal migrants to leave and discourage them from coming in the first place'. This has received a lot of criticism in the aftermath of the Windrush affair: those who arrived from the West Indies many years ago, who were caught up in the well-intentioned policy and many inadvertently adversely affected. The impact on some of them has been substantial.

The principle of putting in place systems that mean that someone who is here illegally cannot claim benefits, cannot open a bank account, rent a flat, obtain a driving licence, work or secure secondary healthcare would be supported by most, but what the Windrush case illustrated is the importance of executing such policies carefully and accurately. The Windrush problem was quite exceptional, concerning people who had arrived in the UK a very long time ago, and for whatever reason had never been registered here. Many then had never applied for a passport or travelled and thus had not engaged with certain systems of government even though they had worked here lawfully for many years. When the hostile environment was introduced huge government and other databases were washed through the immigration system. This checked in an automated way whether there was immigration records of those claiming benefits, checked certain HMRC records, checked bank account holders, driving licence records and many more systems. The way the system tends to work is if a foreign national is found not to be registered with the Home Office then there is a presumption the individual is not here legally. Washing those systems produced lists of people who were foreign and for whom there was no

record of being granted legal status to remain in the UK and who were thus presumed to be in the UK illegally. Normally that is correct. Correspondence is then sent to those persons identified and a process starts. And so, some Windrush people who had every legal right to be here were identified as possible illegal immigrants. Those individuals should have been spotted within the checks and balances which were in place sooner and dealt with appropriately. They were not.

For those who are illegally in the UK, the idea of making life difficult to operate as an unlawful resident is defensible. There will never be the resources, or the operational ability, in the system to support the deportations required to keep up with the flow let alone tackle the backlog. Correctly administered, the policy reduces the pull factor, encourages those without lawful residence in the UK to apply for leave to remain and encourages others to leave. The government has to carefully implement new approaches to avoid the collateral damage that can occur, affecting innocent people like the Windrush victims. That is the challenge.

Austerity raises its head again here, with cuts in the Home Office and Immigration System directed at reducing personnel, where the major costs lay, driving the desire to automate systems with minimum requirement for human intervention. In part, that removes some checks and balances and needs reconsidering. Deportation invariably takes place after challenges to the Home Office and I suspect all those adversely affected by Windrush challenged what was happening to them either personally, through a legal adviser, the courts or political representative. Such challenges and correspondence are dealt with by different caseworkers and staff which undoubtedly militated against the 'pattern' being identified of those adversely affected. Had

it been identified, corrective action could have been taken. In any complex system there are errors – there always have been in the immigration system – which leads to corrective action, including occasionally deported individuals being returned to the UK. Errors identified need to be analysed to ensure there are not similar cases, and challenges against deportation need to be assessed for patterns.

Brexit will increase the pressures on the immigration system as inevitably EU citizens will revert to the same status as migrants from the ‘rest of the world’ at some stage. There will be applications for asylum from some, but far larger numbers will stay beyond their permitted time, commit offences and otherwise fail to comply with conditions of their stay. This will all absorb additional resources of the system which is unlikely to be funded.

The asylum policy

Currently asylum claims can be made at any stage, even when an applicant has been in the UK for many years and made several applications for leave to remain in the UK which have been refused. Applicants who arrived in the UK illegally, would invariably have passed through many safe countries without claiming asylum before reaching the UK. This policy encourages the abuse of the system. It is accepted that there may be wholly exceptional trauma cases where an individual, for good reasons, does not make an immediate claim, but such late claims should place a duty on the claimant to show they have good cause for the delay in claiming before the claim is considered. If there were no justifiable reasons then the claim would automatically fail without further consideration. Whilst the UK is part of the EU and its policy infrastructure this would not be possible but it could be considered after Brexit.

The international dimension

The immigrants that arrive in the UK are at the end of a long journey during which they have often traversed the Mediterranean and several European nations. So, there is an international dimension to addressing the flow of people at earlier stages of their journey, which discourages economic migrants while better facilitating support for genuine refugees.

International cooperation

Part of this involves better delineating the responsibilities of European nations. The Dublin Convention in particular provides that a migrant can be returned to the first country in Europe that they are documented arriving in; it will then be the responsibility of that first country to assess their claim for asylum. The first country where a migrant arrives is responsible for taking that individual's fingerprints, and placing them on a Europe-wide database.

This system does not work as well as it should do, however, because countries in southern Europe are loath to fingerprint immigrants – and thereby take responsibility for processing them – upon arrival. If the UK can show that a migrant has spent three months in another country then the Dublin Convention provides a right to return them there, although it can be very difficult to prove this if they have not been fingerprinted, and there are defined timescales in which this needs to be achieved. We need to find a way to share the burden of this more effectively so that immigrants do not need to cover such large distances but ensuring that the southern European nations that receive them are not left to shoulder the burden on their own. This will always be difficult to achieve but if the overall numbers of irregular migrants can be greatly reduced arriving into Europe, thus

everyone's burden potentially reduced, there may be scope for such agreement.

That reduction needs to be found through the better policing of the Mediterranean border into Europe. The EU entered into a 3bn Euro deal with Turkey to motivate the Turks to properly police the crossing of the Aegean Sea to Greece and other EU countries. That has reduced the numbers arriving in the Greek Islands by a spectacular amount.² Migrant deaths in the Aegean have also evaporated as a result. The Turks are now policing their coastal area effectively, which demonstrates what can be done. Significant inroads have been made into the Mediterranean route, through Italian and EU interventions and agreements with Libya, which have seen significant reductions.

This is a massive European problem – other nations receive many more immigrants, and asylum claimants, than the UK. There is a strong incentive to work together in order to reduce the numbers of arrivals. The EU, and the combined countries of the EU, spend billions of Euros each year managing this problem and there are frictions, crime and public order issues in various parts of Europe caused by uncontrolled migration. The issue has been driven up the political agenda across Europe, a continent that has been historically very tolerant to immigration since World War Two. As noted already, support for the Libyan coastguard has made a significant difference, and it is that kind of initiative that needs to be built upon.

One solution might be for the EU to become far more involved, using the EU Border Force (Frontex) and naval vessels supplied by constituent members – to pick up/rescue the people on those boats and take them straight back to Libya, on the basis that Libya is the nearest coastline. At the same time, the migrant boats would be destroyed.

If the traffickers know that any boat with refugees on it will be sent back to Libya – then that will reduce the willingness to pay and remove their customer base. At the same time there would need to be an initiative to ensure those traffickers did not move their operation along the coast to Morocco, Egypt, Algeria or Tunisia – but those countries are more likely to have an effective police and enforcement capability, and would not want to be a magnet for migrants, taking the place of Libya.

New refugee camps in north Africa

For such an approach to work it would be essential that there was a system in north Africa and particularly Libya where migrants could be screened to identify those who are genuine refugees and agreement reached with European countries to offer settlement to a proportion of these. Such arrangements would require the creation of reception facilities in Libya, for the screening of migrants. Those with an apparent genuine asylum claim could be identified, and they could be distributed between European nations according to an agreement on how many each would take. This could be financed by European nations and run by the UNHCR. This would be a far more humane system: identifying genuine refugees before they risk their lives crossing the Mediterranean, and relocating them fairly across the EU (and the UK, after Brexit), while taking a much tougher approach towards those who continue to try to get across the sea.

Whilst there has been a considerable focus on migrant deaths in the Aegean and Mediterranean Seas, there has been less publicity on the fate of many of those travelling across the African land mass, often from Sub-Saharan Africa, facing rape, assault and murder by traffickers and those that

perish from the struggle of that journey before reaching the coast of Libya.³ The current situation encourages economic migrants to make these journeys. Again, if it was known that the onward journey to Europe was policed it would discourage such risks.

There is a model for this in what is happening with the refugee camps in Jordan, as well as the UK's commitment to taking 20,000 Syrians from there. Many other EU countries also take migrants from the camps. The camps provide some paid work for the migrants resident there and reconstruct a more normal life than they have fled from. The suggested camps in Libya would be different, in that it is not suggested that migrants spend years in the camp but are screened and then either moved onto Europe as genuine refugees or rejected from the system after consideration (and fingerprints taken). Some assistance in repatriation to their home country should be available and part of the arrangements. There would be many difficulties to overcome in securing these camps in Libya where there is no stable government, but the prize of succeeding would be high. It would quickly be known that the route via the Mediterranean was effectively closed and the flow of migrants to the region would reduce greatly.

Tackling root causes – discrepancies in wealth internationally

In the absence of physical controls, there is little to be done to prevent the flow of migrants from poorer nations to those richer when the differences in wealth and living standards are as great as they are today. The lure of a better life in Europe is likely to attract people from far afield to risk life and limb until such time as life is improved sufficiently in their home nations. In the end, probably the only way effectively to

reduce economic migration is to grow the economies of the countries from which the claimants are coming from to an extent that opportunities for prosperity and better lifestyles exist at home. The current movement of migration, legal and illegal, has a considerable impact on the poorer donor nations, often with their doctors, nurses, wealth creators and other skilled workers departing for richer nations where they can receive better reward for their efforts.

There is a need for better and more coordinated foreign aid between countries, bringing with it a requirement for those nations to accept return of their own nationals who seek to travel illegally to Europe. This ultimately would benefit those countries. A major obstacle to some of those economies growing, and to the effective use of aid, is the systemic corruption which exists. It is a sad fact that many of the poorer nations of Africa and elsewhere have corrupt regimes which discourage inward investment and perpetuate the existing poverty.

Conclusion

The subject of refugees generates strong emotions and feelings. There is universal support for genuine refugees who have fled terror in their own nations. There is certainly some sympathy with those departing their home countries to better their lives, having often left extreme poverty with no discernible future. The UK, in common with the rest of Europe, whilst accepting its responsibility under the UN Convention on Refugees, otherwise wishes to decide who travels to, lives and works in the country. That position would seem to be widely supported by mainstream politics and the majority of voters, in the UK and Europe.

The current abuses in the system risk undermining the well-placed sympathy for refugees and the speed with which necessary support can be provided to them. There is, thus, a noble objective in seeking reforms to the system to ensure support is focused and delivered in a timely way. Improvements in transportation, communication and 24-hour media and technology will see the pressures from the movement of migrants grow rather than diminish. There is no end in sight to troubled areas of the world and the poorest regions of the world witness greatest growths in population. Living standards have always greatly varied between nations and parity of economic wealth is never likely to be achieved in respect of many of these poorer

nations, thus a continuous motivation will exist for the movement of people.

There is no silver bullet that will end that economic movement of migrants, or therefore attempts to reach the UK by people who do not have the right to do so, or the abuse of the asylum system here and in Europe. But there are things that can be done to ameliorate the situation, from providing better economic support to poorer nations, to removing some of the pull factors that make the UK an attractive target destination. The purpose of this paper has been to shine a light on the asylum system, its weaknesses and its importance, and offer some insight and suggestions as to how the system can be improved.

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Introduction

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The UK receives tens of thousands of asylum applications ever year. Usually less than half are found to be valid, even at the end of lengthy appeal processes, and yet only a minority of those subsequently leave the country. As a result there is a mounting backlog of illegal immigrants waiting to be removed. Most never will be.

David Wood, Theresa May's former Director General of Immigration Enforcement at the Home Office, here sets out the challenge of maintaining Britain's border controls and shows how the system largely fails to deal with those who are here illegally. One of the central difficulties revolves around the asylum system, and the scope for its abuse by those who are not refugees but submit applications as a last-ditch bid to avoid deportation.

This risks overwhelming resources and lengthening the time it takes to process the claims of genuine asylum seekers who are fleeing persecution and war. It also helps undermine voters' trust in the system and fuels anger that the rules are not enforced properly.

'It is essential that the UK's asylum system is nothing but supportive of those who are genuinely fleeing persecution,' Wood writes. 'But where asylum processes are being used as a way of facilitating economic migration it is essential to be able to quickly and efficiently distinguish between the two, in order to ensure those entitled to help receive it quickly, and to ensure that UK citizens do not lose faith and support for a system that is rife with abuse.'

'It ought to be possible to do better in enforcing immigration rules than we have been doing, and that must start with a better understanding of the challenges we face.'

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