



Refugee Family Reunification in the UK: Challenges and Prospects



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The Families Together Programme

Families Together is a multi-donor grant fund that is led and directed by a coalition of sector partners, hosted by the British Red Cross. For more on the Families Together Programme, please visit <https://www.redcross.org.uk/about-us/whatwe-do/how-we-support-refugees/families-together>.

Final responsibility for this report lies with the authors and its content does not necessarily always reflect the position of the British Red Cross, the Families Together Programme or its partners. This report takes into account case law and policy developments prior to 31 January 2021.



Contents

Foreword	1	
Executive Summary	2	
Key Findings	4	
Key Recommendations	6	
1. Introduction	8	
1.1 The debate on refugee family reunification in the UK	8	
1.2 Research approach	10	
1.3 Structure	11	
2. The international and European legal framework on refugee family reunification	12	
2.1 The right to family unity and family reunification in international law	12	
2.2 Family reunification under the European Convention on Human Rights	13	
2.3 The notion of family under international law	15	
2.4 Additional safeguards for unaccompanied children	18	
2.5 Refugee family reunification as a route to international protection	19	
3. The legal framework for refugee family reunification in the UK	21	
3.1 Legal routes for refugee family reunification	21	
3.1.1 Refugee Family Reunion under Part 11 of the Immigration Rules	23	
3.1.2 Family visa applications for “other family members” – Appendix FM and Part 8 of the Immigration Rules	25	
3.1.3 Leave “outside the Rules”: exceptional circumstances and compassionate factors	28	
3.2 Issues with the current legal framework	29	
3.2.1 The scope of the right to family reunification: what makes a family?	29	
3.2.2 Inability of refugee minors to act as sponsor for their immediate family members	32	
3.2.3 Quality and accessibility of the law	36	
3.3 A legal framework in need of reform	37	
3.4 Main findings and recommendations	38	
4. The application process and decision-making	39	
4.1 Main issues with the application process and decision-making	39	
4.1.1 Navigating the online application system	39	
4.1.2 Evidentiary matters	41	
4.1.3 The quality of decisions	45	
4.1.4 Dealing with complex and non-standard applications	46	
4.2 Positive developments and remaining issues	47	
4.2.1 The onshoring of decision-making	47	
4.2.2 The impact of the onshoring process on the quality of decisions	49	
4.2.3 Formalising the link between the asylum process and Refugee Family Reunion	50	
4.3 Tackling the problem at its roots: the need for a paradigm shift in the approach to Refugee Family Reunion	53	
4.4 Main findings and recommendations	56	



Contents

5. Legal assistance for Refugee Family Reunion	58
5.1 The regulatory framework for immigration advice and services	58
5.2 Publicly-funded legal assistance for refugee family reunification	60
5.2.1 Legal aid for Refugee Family Reunion after LASPO	60
5.2.2 The LASPO Review	64
5.2.3 Exceptional Case Funding	66
5.3 Recognising Refugee Family Reunion as a route to protection	68
5.4 Main findings and recommendations	71
6. The role of the charitable and pro bono sector	72
6.1 Mapping the availability of free legal support	72
6.1.1 Refugee support charities	72
6.1.2 Law Centres Network and Citizens Advice Bureaux	75
6.1.3 University law clinics	76
6.2 Challenges for the pro bono sector	78
6.2.1 Capacity	78
6.2.2 Regulation	79
6.2.3 Funding	80
6.3 The way forward: collaboration, partnership and specialisation	81
6.4 Main findings and recommendations	85
7. Conclusions and Recommendations	86
Endnotes	93
List of Organisations Interviewed	105
Glossary and Acronyms	106



Foreword

The publication of this report comes at a critical moment in time, where the principle of refugee protection and family reunion are at significant risk of being undermined in the UK.

On the 24 March 2021, the UK government published The New Plan for Immigration; a series of proposals including sweeping changes that undermine how the UK fulfils its international obligations to those seeking asylum, most notably by proposing differential treatment according to the way a refugee arrived in the UK. This will include restricted family reunion rights for some refugees.

The proposals are deeply alarming as refugee family reunion provides the only safe and regular route for refugee families, who have been forced to separate because of persecution or conflict, to reunite. From 2015-2019, more than 29,000 people were able to enter the UK to be reunited with their family via family reunion. The vast majority of visas were granted to women and children, often living in insecure and dangerous places. Restricting access to this vital safe route will result in families being left with the harrowing choice of staying permanently separated from their loved ones, or embarking on treacherous, expensive, unregulated journeys to reach them in the UK.

If the government are serious in their ambition to expand 'safe' routes, they must abandon the proposal to restrict access to family reunion for some refugees. Rather, it should change the existing rules on family reunion, as per our recommendations below, so that more people can access this vital, existing safe route.

What we are calling for:

- Expand the criteria of who qualifies as a family member for the purposes of refugee family reunion allowing adult refugees in the UK to sponsor their adult children and siblings who are under the age of 25; and their parents;
- Give unaccompanied refugee children in the United Kingdom the right to sponsor their parents and siblings who are under the age of 25 to join them under the refugee family reunion rules;
- Reintroduce legal aid for all refugee family reunion cases.

Families Together is a coalition of over 50 organisations who support the expansion of the UK's refugee family rules, including a number who work directly with refugees in the UK to support their applications for family reunion.

The Families Together Coalition

#FamiliesTogether

www.familiestogether.uk

Executive Summary



Separation from family members during forced displacement and flight can have devastating consequences on the well-being of refugees and their ability to integrate within the new host community.

Family reunification – broadly defined as the process by which refugees and other beneficiaries of international protection are able to be reunited with their family members – is of paramount importance in ensuring that the right to family life of refugees is respected. Refugee family reunification also plays a crucial role as an instrument of protection, through which vulnerable family members – most often women and children – who may themselves be in danger due to their association with a refugee can be brought to safety.

The right of refugees to family reunification is recognised at the international level, and international bodies underline that States are under a duty to provide accessible and effective family reunification procedures which allow for the swift reunification of refugee families.

In the United Kingdom, the legal and policy framework regulating family reunification for refugees and beneficiaries of humanitarian protection has been the subject of extensive debate – and criticism – for some years. Common

concerns raised by refugees, refugee support charities and independent observers include the restrictive rules on eligibility, the unnecessarily burdensome nature of the application process, the lack of free qualified legal support and the unpredictability of the decision-making process.

This report aims to contribute to this debate by providing a comprehensive assessment of the UK legal framework relating to refugee family reunification and its implementation in practice, including the position in respect of legal aid, and the availability of qualified assistance in making applications for family reunification.

The overall purpose of the report is to make recommendations aimed at ensuring that the UK framework is fully compliant with the UK's international obligations, and to improve the effectiveness and fairness of the UK family reunification system in practice.

Chapter 1 introduces the importance of refugee family reunification and provides an overview of the debate which has taken place in the United Kingdom in the years since the withdrawal of legal aid for Refugee Family Reunion applications following the entry into force of the Legal Aid, Sentencing and Punishment Act 2012 (LASPO). It also explains the meaning of key terms and



how they are used in the present report and the methodological approach adopted in its preparation.

Chapter 2 sets the scene for the analysis of the UK system by providing an overview of the international legal framework relevant to refugee family reunification. The chapter examines the main instruments of international refugee law and international human rights law and the practice of international monitoring bodies. It also examines the extent to which family reunification should itself be seen as an instrument of protection, and a means by which those who would otherwise qualify for refugee status may escape situations in which their life or well-being is at risk. A separate section explores the enhanced protection accorded to children under various human rights instruments, most notably the United Nations Convention on the Rights of the Child.

Chapter 3 examines the legal framework for refugee family reunification in the UK, in particular the routes under Part 11 and Appendix FM of the Immigration Rules and the possibility for family members of a refugee to be granted leave “outside the Immigration Rules” on the basis of exceptional circumstances or compassionate factors.

The focus of the report then shifts to the application of the legal framework in practice, with a view to identifying the practical obstacles which refugees encounter when trying to exercise their right to family reunification.

Chapter 4 assesses the application and decision-making process. It provides an account of the developments which have occurred in recent years, including the so-called “onshoring” of Refugee Family Reunion applications to a

dedicated team of caseworkers within the Asylum Directorate within UK Visas and Immigration (UKVI). Relying on both interviews with stakeholders and published material, the chapter then discusses the complexities and obstacles which arise at the various stages of the process.

Chapter 5 focuses on the availability of publicly-funded legal assistance for Refugee Family Reunion applications in England and Wales, and the impact which LASPO has had upon the immigration advice sector more generally. The chapter also assesses the Exceptional Case Funding (ECF) scheme as a means by which to manage the gap in the availability of legal aid for Refugee Family Reunion.

Chapter 6 examines the assistance available within the not-for-profit sector for refugees who seek to make an application for Family Reunion. The chapter identifies the major pro bono providers of RFR legal services, and also seeks to identify trends within the sector, instances of best practice, gaps in provision and potential solutions to the shortage of free qualified legal help.

Chapter 7 sets out the report’s conclusions and recommendations.

The report relies on desk-based research and empirical evidence resulting from surveys and interviews with refugees, practitioners, staff of refugee support charities and university law clinics. It also draws on interviews with the Independent Chief Inspector of Borders and Immigration (ICIBI), staff of the Office of the Immigration Services Commissioner (OISC), local government representatives, and representatives of the UK Office of the UN High Commissioner for Refugees (UNHCR).



Key Findings



1. Legal routes for refugee family reunification and the UK legal framework

- a. The provisions of the Immigration Rules governing how refugees can be reunited with family members are unnecessarily complex, difficult to navigate and at points internally inconsistent.
- b. Preventing refugee children from acting as sponsors for their immediate family members is inconsistent with the UK's international obligations and is not in line with the practice of other European States.
- c. The notion of family adopted for the purposes of RFR in the Immigration Rules is overly restrictive, insufficiently flexible and does not reflect the realities of many refugee families.
- d. The exceptional grant of leave "outside the Immigration Rules" to family members who do not fall within the narrow eligibility criteria for RFR is not a satisfactory solution for complex situations, such as those of de facto adopted children and post-flight family members.
- e. Until the end of 2020, asylum seekers who entered any EU country could make use of the procedure under the Dublin system in order to be reunited with their immediate family member(s) who were already in the United Kingdom. This safe and legal route for family reunification ceased to be available at the end of the Brexit transition period on 31 December 2020. There is thus an even more pressing need to ensure that the system for Refugee Family Reunion is fit for purpose and responds adequately to the needs of refugees and their family members.



2. The application procedure and the Home Office decision-making process

- a. The poor quality and inconsistency of decisions in respect of RFR applications has been consistently highlighted by independent observers and is a source of frustration and concern for many in the sector.
- b. Despite considerable improvements to the online application system following the migration to a new platform in 2019, independent observers and users report that there are still several issues which make the system difficult to use and unnecessarily time-consuming.
- c. A number of further issues have arisen as a result of the outsourcing of visa services to which run Visa Applications Centres overseas.
- d. Since 2018, some progress has been made in improving the decision-making process, in particular through the "onshoring" of decision-making and the transfer of RFR applications to a dedicated team within the Asylum Directorate.
- e. The way in which Home Office decision-makers approach evidence and evidentiary requirements appears often not to be in line with the Home Office's own guidance and fails to take into account the specificities of the situation of refugees.
- f. With regard to complex and non-standard applications, there is anecdotal evidence that Home Office decision-makers make limited and inconsistent use of the possibility of granting leave "outside the Immigration Rules" and do not always consider proprio motu the existence of exceptional circumstances or compassionate factors.
- g. The root cause of the issues with the quality of decisions is identified by many in the sector to be the persistence of a "culture of disbelief" within the Home Office, including amongst staff in the Asylum Directorate.



3. Qualified legal support

- a. RFR applications are complex and qualified legal support is necessary for the majority of refugees in order successfully to navigate the process.
- b. The withdrawal of legal aid for RFR as a result of LASPO has had a markedly detrimental impact on the immigration advice sector, both pro bono and for profit, creating “advice deserts” where no high-quality legal support (free or otherwise) is available for refugees wishing to make RFR applications.
- c. The ECF scheme does not adequately address the problems created by the withdrawal of legal aid for RFR. Although ECF is now easier to obtain than in the past, the sums available for initial applications are inadequate, meaning that many solicitors will not take on RFR cases even if ECF is obtained.
- d. The charity sector has responded to the cuts introduced by LASPO by developing a number of projects which provide legal assistance to refugees making RFR applications. However, the sector is presently unable to meet demand and there is scarcity and uneven geographical distribution of free legal support.
- e. There is general agreement within the refugee sector that, in light of the complexity of the application system, what is at stake for applicants and their sponsors, and the nature of refugee family reunification as a protection matter, RFR work should continue to be regulated by OISC as a Level 2 Asylum and Protection matter.
- f. The OISC has been proactive in supporting the voluntary sector since the entry into force of LASPO and aims to facilitate the registration of charities wishing to provide pro bono immigration services. However, the perceived difficulty of obtaining OISC Level 2 accreditation still acts as a deterrent for some charities and other not-for profit organisations wishing to provide free legal assistance for Refugee Family Reunion.





Key Recommendations

For the Home Office

- Recognise explicitly that RFR is a protection, rather than an immigration, matter and ensure that all processes relating to RFR reflect this.
- Simplify and rationalise the Immigration Rules governing RFR and Family Member visa applications to ensure that they are accessible and understandable.
- Give unaccompanied refugee children in the United Kingdom the right to sponsor their parents and minor siblings to join them in the UK, as required by the UK's international obligations.
- Expand the categories of who qualifies as a family member for the purpose of RFR to allow refugees in the UK to sponsor their adult children and siblings under the age of 25, and their dependent parents.
- Ensure that applications for dependent family members who are currently not expressly eligible for RFR are brought "within the Immigration Rules" by adding a flexible and open-ended category of eligible applicants, based on a broad notion of dependency.
- Resolve the remaining technical issues affecting the online application system and closely monitor the functioning of VACs operated by commercial companies, including ensuring the availability of free appointments for RFR applicants.
- Ensure that all information relevant to family reunion is accurately captured during the sponsor's asylum process.
- Take steps to ensure that the approach of decision-makers to evidentiary requirements is in line with the Home Office's own guidance and takes into account the difficulties which refugees may encounter in producing documentary evidence.
- Mandate decision-makers to make increased use of the possibility to interview sponsors and applicants whenever they consider that the evidence submitted with the application is not fully satisfactory.
- Commission and pay for DNA testing when, upon initial assessment, the documentary evidence supporting a RFR application appears to be insufficient to substantiate the existence of the relevant family relationship.
- Improve internal monitoring and reporting systems in order to ensure quality control and transparency of decision-making in respect of RFR applications, particularly those concerning complex, non-standard cases and grants of leave "outside the Immigration Rules".
- Engage fully with the recommendations of the Windrush Review and design and implement a meaningful and radical programme of "major cultural change" aimed at eradicating the "culture of disbelief" in all areas of the asylum and immigration system.

For the Ministry of Justice

- Reintroduce legal aid for all RFR applications.
- Pending the reintroduction of legal aid for RFR, increase the levels of fees and disbursements available through ECF so as to make it viable for practitioners to take on RFR cases.



For the Office of the Immigration Service Commissioner (OISC)

- Continue with ongoing initiatives aimed at promoting a better understanding of the role of OISC in relation to regulation of the voluntary sector.
- Standardise and simplify the process for registration of organisations and advisers wishing to undertake only RFR casework by creating a dedicated Level 2 registration for RFR work.

For the refugee sector/Families Together Coalition

- Broaden the partnerships built through the Families Together Programme and the Families Together Coalition, so as to include solicitors and barristers working on RFR, local authorities and international NGOs.
- Create a dedicated online community of practice for those involved in refugee family reunification, so as to facilitate the sharing of information, resources and discussion throughout the sector.
- Set up independent monitoring and evaluation of the impact of the onshoring process upon the quality of decisions on RFR, particularly those relating to complex, “outside the Rules” applications.





1 Introduction

“ The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”
Universal Declaration of Human Rights, 1948

1.1 The debate on refugee family reunification in the UK

Separation from family members during forced displacement and flight can have devastating consequences on the well-being of refugees and their ability to integrate within the new host community.¹ Unsurprisingly, when asked what their first priority is once they have reached safety, refugees almost without exception respond that their primary concern is to be reunited with the family members whom they had to leave behind.

Key Terms

Family reunification is the process by which family members living in different countries are reunited in the country in which one of them resides. In this process, the family member who is joined by the rest of the family is the **sponsor**, while the family members who are applying to join the sponsor are the **applicants**. In the specific case of **refugee family reunification**, the sponsor is a refugee, who is seeking to be joined in their country of asylum by their close family members.

While in international law the terms “refugee family reunification” and “refugee family reunion” can be used interchangeably, in the present report the term **Refugee**

Family Reunion (RFR) refers specifically to the principal legal route for reunification of refugee families in the UK legal system, i.e. the immigration route regulated by Part 11 of the UK Immigration Rules.

A **refugee** is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Recognition as a refugee is not constitutive of refugee status, but declaratory. Consequently, those seeking recognition as a refugee (**asylum seekers**) are to be considered as potential refugees even before the process of status determination comes to an end. This concept is of special importance in ensuring that asylum seekers are protected from the risk of being returned to their country of origin even if the existence of the risks this would entail has not yet been finally ascertained.

Unless otherwise specified, throughout this report the term “refugee” is to be understood as encompassing not only individuals who meet the requirements for refugee status under the 1951 Convention Relating to the Status of Refugees (**Refugee Convention**), but also beneficiaries of so-called **complementary protection**. An example of such complementary protection is the notion of **subsidiary protection** under EU law, which is granted to individuals who do not meet the definition in the Refugee Convention but would still be at risk of suffering “serious harm” if returned to their country of origin. In this regard, “serious harm” is defined as consisting of “death penalty or execution; or torture or inhuman or degrading treatment or punishment; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”. In the UK legal system, the same definition has been adopted and incorporated into domestic legislation and the Immigration Rules, but it is referred to as **“humanitarian protection”**.

In the United Kingdom, the principal mechanism for refugees to be reunited with their family members is through the Family Reunion route regulated by Part 11 of the Immigration Rules. Access to this immigration route is limited to the partner and dependent minor children of individuals who have been granted refugee status or humanitarian protection in the UK. Controversially, at present, unaccompanied refugee children are unable to act as sponsors for their parents, other responsible adult, or siblings. Whilst there exist other immigration routes within the UK legal system which refugees can pursue in order to be reunited with their family members in the UK, those routes are more onerous, more costly and subject to stringent financial and other eligibility requirements.

In 2013, with the entry into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), legal aid was withdrawn for RFR applications in England and Wales. Refugees were faced with the choice of either making applications themselves, paying for legal advice, or finding an immigration advice charity to help them navigate what is already a complex process. At the same time, the position of refugees seeking to bring their family to the UK was made more complicated by the “hostile environment” and a prevailing “culture of disbelief” within the Home Office.

Much has been written in recent years about the challenges faced by refugees attempting to be reunited with their families in the UK; campaigns have been mounted and alliances formed, including the Families Together Coalition.² Refugee support charities have vocally expressed their concerns about the current system, including through several comprehensive and well-documented reports published since the adoption of LASPO.³ International observers, including the UN High Commissioner for Refugees (UNHCR), have echoed the concerns identified by refugee support charities, and called on the UK government to do more to recognise the use of family reunification as a tool of international protection and to make the process easier, fairer and more inclusive.⁴ Similarly, the Independent Chief Inspector of Borders and Immigration (ICIBI), in a series of detailed and well-documented reports on the UK refugee family reunification system, has identified a number of serious flaws with the current rules and procedures, extending beyond the unavailability of legal aid.⁵

Despite this explicit criticism and intensive campaigning, relatively little has changed in

recent years. Two private members’ bills aiming at addressing some of the key flaws in the UK refugee family reunification system were introduced to Parliament in the 2017-19 session. Although there appeared to be sufficient cross-party support, the bills did not make it into law before the end of the Parliamentary session.⁶ A new private members’ bill is currently before the House of Lords and is, at the time of writing, awaiting the allocation of Parliamentary time for second reading.⁷ In the meantime, the much-awaited post-implementation review of LASPO, published by the Ministry of Justice in February 2019, concluded that no significant changes are needed in relation to the provision of legal aid for refugee family reunification cases.⁸



After fleeing her homeland, Princess feared she'd never get to see her family again. Fortunately the Red Cross was able to reunite them.



Against this background, the present report aims to contribute to the ongoing debate by exploring in a comprehensive manner the problems faced by refugees who wish to be reunited with their family members under the UK immigration system, with a view to proposing viable solutions for improving the current legal framework and practice.

The report does not purport to duplicate the excellent research work done by academics and organisations in the charity sector in recent years. Rather, it draws upon that research in relation to specific aspects of the family reunification process, together with new empirical research, in order to provide a holistic picture of the many challenges currently faced by refugees who wish to be reunited with their family members under the UK immigration system, and by the organisations which seek to support them.

1.2 Research approach

The research approach implemented within this report has been twofold. First, with a view to understanding the current legal framework and highlighting its flaws, a significant part of the research has been based on a desk-based review of primary and secondary legal sources and academic literature on refugee family reunification. To this end, the research undertook an exercise of mapping and analysing the relevant international instruments and UK domestic legislation and policy guidance.

In addition, with a view to illuminating further the policy environment, the team has reviewed the reports and other policy papers on refugee family reunification produced by international organisations (e.g. UNHCR and the Council of Europe) and UK refugee charities, including in particular those published under the auspices of the British Red Cross and the Families Together Programme.

An important source of insights have been the reports on RFR published by the Independent Chief Inspector of Borders and Immigration (ICIBI), which often contain data and information not available to the general public or to organisations in the sector. The desk-based research constituted the initial phase of the project; as well as constituting the overall framework for the research, it allowed the research team to identify and clarify the main issues to be investigated. Following the initial mapping exercise, it has remained a key component throughout the duration of the research:

this has enabled the research team to adjust the research and amend and update the research to reflect developments which have intervened over the course of the project, most notably those deriving from the process of so-called “onshoring” of visa applications and those resulting from Brexit and the end of the so-called Dublin system.

Second, the research also relied on primary empirical evidence, obtained through semi-structured interviews. The goal of the interviews was to gather evidence as to stakeholders’ experiences under the current system, and thereby to gain an improved understanding of the implementation and operation in practice of the existing normative framework and of the extent to which it provides protection for the fundamental rights of refugees, in particular their right to family unity.

The collection of evidence took place between January 2019 and December 2020 and consisted of two sets of semi-structured interviews. A first batch of semi-structured interviews was conducted, either in person or over the phone, with staff from a variety of organisations working with refugees and providing assistance with RFR applications across the UK. Solicitors practising in the field, and the staff of refugee support charities, law centres and university legal clinics were amongst those interviewed. Taking as a starting point the Register of Regulated Immigration Advisers maintained by the Office of the Immigration Services Commissioner (OISC), an attempt was made to contact all organisations registered at Level 2 or above in order to establish which among them offered legal services in respect of RFR. In addition, interviews were held with staff from all organisations who are members of the Families Together Programme. A total of 41 interviews took place with staff from 23 organisations.¹⁰ Subsequently, in order to gather views about the changes in the application system and decision-making process introduced in the preceding year and any impact that these developments had had on service provision and delivery, a selection of eight of the original interviewees from early 2019 were re-interviewed in March 2020. As part of this round of updating interviews, the ICIBI and the Head of Operational Regulation at OISC were also interviewed.



The second set of semi-structured interviews was conducted with 15 individuals who have had direct personal involvement with the RFR system in the UK insofar as they either (a) had successfully sponsored, (b) were in the process of sponsoring, or (c) had tried to sponsor family members through the RFR application process; or (d) were family members of refugees, who had come to the UK as the result of a successful RFR application. The interviewees were identified either relying on the network of contacts maintained by the University of Bedfordshire's Refugee Legal Assistance Project (RLAP), or through referrals made by some of the service providers interviewed. The case studies in this report are based on statements made by these individuals. Interviewees came from a range of countries, including Eritrea, Zimbabwe, Syria, Sudan, Afghanistan and Iran. All but three of the fifteen individuals interviewed were male. The majority of those interviewed had experienced a fairly straightforward family reunion process, which had taken less than six months; two had been embroiled in the process for over five years.

Ethical issues and clearance

Conducting interviews with refugees and their family members inevitably raises ethical issues, and a mitigation plan for minimising these risks when conducting interviews was submitted to and approved by the relevant research ethics structures within the University of Bedfordshire. Re-traumatisation of refugee interviewees was seen as a potential risk, particularly for those who had very difficult personal situations and those who had not been successful in their applications. In these cases, the sponsor was offered the opportunity to have a caseworker or friend to sit in on the interview with them. The research team also ensured that the caseworker followed up with the refugee one week after the interview. In addition, all sponsors were offered the option of having the assistance of a professionally trained interpreter. Interviews with all but three of the sponsors took place face-to-face. The risk of undue influence was also particularly relevant when interviewing refugees who had been assisted by the RLAP team at the University of Bedfordshire. As refugee interviewees had been assisted pro bono by the RLAP clinic, the project team was particularly careful to be sensitive to the fact that these individuals might feel under pressure to give positive responses. This risk was mitigated by using an interviewer whom the interviewees had not previously met and who had not been

involved in their application process. Informed consent was obtained from all interviewees. With the exception of interviewees from government institutions (e.g. OISC and the ICIBI), interviews were conducted on the basis that any quotations would be anonymised.

1.3 Structure

The first two chapters provide an overview of the legal framework applicable to refugee family reunification and applications for RFR in the UK legal system. Chapter 2 sets the scene for the analysis of the UK system by providing an overview of the international legal framework and practice relevant to family reunification for refugees. Chapter 3 then examines the legal framework for refugee family reunification in the UK, in particular the routes under Part 11 and Appendix FM of the Immigration Rules and the possibility for leave to be granted "outside the Rules" on the basis of exceptional circumstances or compassionate factors.

The focus of the report then shifts to the practical issues surrounding the application of the relevant law and an assessment of how easy it is in practice for refugees in the UK to access and enjoy the right to family reunification. Chapter 4 examines the application process through to decision-making from a number of points of view, with particular reference to problems identified both through interviews and in published material. Chapter 5 looks at the availability of legal assistance in England and Wales, in particular the impact of the entry into force of LASPO, and the possibility of using Exceptional Case Funding to manage the resulting gap in the availability of legal aid. Chapter 6 focuses on the organisations that provide services for refugee family reunification, the different ways of delivery of such services that have been adopted and how such organisations have managed the many challenges that they face. Finally, Chapter 7 sets out the report's conclusions and recommendations.



2 The international and European legal framework on refugee family reunification

This chapter provides an overview of the international legal framework relative to refugee family reunification.

Section 2.1 examines the principle of family unity under international law and the obligations upon States to allow refugees to access family reunification procedures. Section 2.2 looks at the practice under the European Convention on Human Rights. Section 2.3 then focuses on the way in which international human rights bodies have interpreted the notions of “family” and “family unit” for the purpose of protection and promotion of the right to family life. Section 2.4 takes a closer look at how international law regulates the situation of unaccompanied minors and their special need for protection in the context of immigration and family reunification. Finally, section 2.5 discusses the crucial role of refugee family reunification as a route to international protection.

Furthermore, it has been argued in the academic literature that a duty on States to take steps to facilitate the reunification of refugee families may be inferred from Article 12 of the Refugee Convention, which provides that

Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by the Contracting State, subject to compliance, if this be necessary, with the formalities required by the laws of that State, provided that the right in question is one which would have been recognized by the law of that State had [they] not become a refugee.

Although the norm likewise does not address family unity as such, nevertheless, the specific reference to rights related to marriage may be invoked as an argument in support of the existence of State duties to allow refugees to enjoy family unity by means of family reunification.¹³

Within the framework of international human rights law, both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) include provisions on the protection of the family from unlawful or arbitrary interference.¹⁴ In its General Comment No. 23 on the right to family life under the ICCPR, the Human Rights Committee highlighted that

[...] the possibility to live together implies the adoption of appropriate measures, both at the internal level and, as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.¹⁵

2.1 The right to family unity and family reunification in international law

International law recognises the crucial importance of the family as “the fundamental group unit of society”¹¹ and that, when families are separated due to circumstances beyond their control, access to effective family reunification procedures is vital in order for individuals to be able to enjoy their right to family unity.

Although the Refugee Convention does not expressly address the issue of family reunification, the Final Act of the 1951 diplomatic conference held in Geneva which resulted in its adoption expressly recognised the need to “ensure that the unity of the refugee’s family is maintained”.¹²



Such a requirement is of particular relevance in respect of refugees and other beneficiaries of international protection, who – by definition – are unable to return to their countries of origin, and for whom access to family reunification procedures in the country of asylum is often the only way to enjoy their right to family unity.¹⁶

Despite the absence of a treaty norm expressly imposing an obligation in respect of refugee family reunification, it is generally recognised that there exists a norm of customary international law which requires States to allow and facilitate the reunification of refugees with, at the very least, their spouse or partner, and any minor dependent children.¹⁷

The Executive Committee of the UNHCR Programme (ExCom) has addressed the issue of refugee family reunification on a number of occasions and in respect of several aspects, highlighting, *inter alia*, the fundamental role played by the families of refugees in fostering integration in the country of asylum.¹⁸ With a view to ensuring that the principle of family unity is respected, the ExCom has called on States “to ensure that the reunification of separated refugee families takes place with the least possible delay” and “in a positive and humanitarian spirit”.¹⁹ This encompasses duties not only upon countries of asylum, but also upon the country of origin, which should allow individuals to exit the country for the purpose of family reunification.²⁰ In addition, the ExCom has also emphasised that countries of asylum should ensure that the lack of means of subsistence or adequate accommodation do not constitute an obstacle to starting the process of family reunification, providing assistance in that regard if necessary.²¹

Furthermore, in order to provide effective access to family reunification procedures and given the normally high overall costs of the family reunification process, the UNHCR has specifically recommended that States should eliminate visa fees for refugees and beneficiaries of international protection and their family members, and encouraged the setting up of financial support schemes to help cover the expenses involved in bringing family members to the host country.²²

The ExCom has also called on States to be flexible with respect to the lack of documentary evidence of family ties, which should not per se constitute grounds for refusal.²³ In this respect, Article 25 of the Refugee Convention may be read as implying the duty for States to take positive steps

in gathering the evidence necessary to support family reunification applications, since it requires States to provide assistance to refugees when in need of documents that would normally be issued by the authorities of their country of origin.²⁴

2.2 Family reunification under the European Convention on Human Rights

Article 8 of the European Convention on Human Rights (ECHR) protects the right to family life. It provides:

“Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The general approach of the European Court of Human Rights (ECtHR) under Article 8 in the context of immigration is that the provision does not as such by default guarantee a right to family reunification.²⁵ Rather, once it has found that family life exists between the individuals who seek to be reunited, the ECtHR will consider whether the refusal to admit family members into the State territory constitutes a justifiable interference with the right to respect for family life.²⁶

In this respect, two of the criteria developed by the ECtHR in its case law on family reunification are especially relevant for refugees: whether the separation from family members was voluntary, and whether it is possible to develop family life elsewhere. In respect of the second, according to the so-called “elsewhere test”, the State’s refusal to allow entry for the purpose of family reunification will amount to an unlawful interference with the right to family life when allowing entry for the purposes of family reunification is in practice the only way to re-establish family life.²⁷ This will notably be the case where family life cannot be



established either in the country of origin, or in a third country. Since refugees are by definition unable to return to their country, the “elsewhere test” effectively creates a presumption of in favour of granting entry for family reunification where the family members have remained in the country of origin.²⁸

In the context of cases of family reunification involving children, the ECtHR has adopted a somewhat more robust approach, assessing whether family reunification constitutes the “most adequate” – rather than the only – way to develop family life.²⁹ This approach is of particular relevance in cases where the family members of a refugee have also had to abandon the country of habitual residence, and are in a third country. In such a case, under the “elsewhere test” there might not be an automatic presumption in favour of admission, since the refugee may not necessarily be at risk in the third country to the same extent as they would be in their country of origin, and therefore the re-establishment of family life in the third country may not per se be impossible. Where the living conditions of the refugee’s family members in the third country or the protection accorded to the refugee are less favourable to the full enjoyment of the right to family life, and therefore “less adequate”, however, the asylum State may nevertheless be required to grant admission to the family members.

With regard to the factors which are relevant in determining whether reunification in a Contracting State would be the “most adequate” way to ensure the enjoyment of family life, the ECtHR has placed particular emphasis on the age of the applicant,³⁰ combined with specific social and cultural elements of dependency related thereto,³¹ the situation in the country of origin of the family member, their linguistic and cultural ties with it³² and the ties with the Contracting State where it is suggested that reunification should be permitted.³³

The ECtHR acknowledges that the situation of refugees is markedly different from that of other migrants, and that refugee family reunification is not merely an immigration matter, as the possibility to be reunited with their family constitutes an “essential element in enabling persons who have fled persecution to resume a normal life.”³⁴ In light of their vulnerability, the ECtHR has indicated that it is necessary for States Parties to ensure that refugees have access to family reunification procedures that are more favourable than those available to other migrants, in particular by adopting a flexible approach in the assessment of the evidence required to substantiate the existence of family ties.³⁵



Walid Adenas (left, black top), 19, and his brother Ahmed Adenas (right, red top), 22, fled Sudan in 2011 along with their mother and sisters. They came to join their father Abdullah Adenas (centre) who had resettled in Portsmouth a year earlier.



2.3 The notion of family under international law

The international instruments which protect the right to family life do not provide a definition of the notion of “family”, nor an indication of the type of relationships which constitute “family ties” protected under international law.

This allows for a flexible understanding of the notion, in line with social and cultural developments, but at the same time leaves a wide margin of discretion to States, including with regard to who is entitled to family reunification.

State practice in this respect is still not entirely consistent, especially when it comes to granting access to family reunification procedures to members of the extended family.³⁶ In general, however, most States tend to circumscribe access to family reunification to members of the nuclear family: such an approach, however, fails to give adequate consideration to both the evolution of the concept of family worldwide and the exceptionality of the predicament of refugees, which often results in the creation of “families of choice or circumstances” as opposed to traditional families based on blood ties or formalised relationships.³⁷

With regard to family reunification, the practice of international monitoring bodies provides clear indications as to which family members of a refugee should, as a minimum, be entitled to family reunification. Already in 1983, the UNHCR noted that there existed “a virtually universal consensus in the international community” concerning the need to reunite members of the “nuclear family”.³⁸ According to the UNHCR, spouses, engaged couples or partners who have lived together as if married, minor or adult unmarried dependent children, and unaccompanied minors and their parents and/or siblings all form part of the nuclear family, and are therefore entitled to family reunification.³⁹ The UNHCR also recommends that other family members – whether the parents of adult refugees, other relatives, or non-blood family members – should be regarded as eligible for family reunification if they are dependent on a refugee.⁴⁰

In light of the exceptional circumstances of the refugee predicament and of the consequences that the refugee experience may have on refugee families, the UNHCR has urged States to apply “liberal criteria” when determining the reach of the family for the purposes of family reunification.⁴¹

The standard suggested is that of de facto family life based on the existence of dependency, which “requires that economic and emotional relationships between refugee family members be given equal weight and importance in the criteria for reunion as relationships based on blood lineage or legally sanctioned unions”.⁴²

Under the ICCPR, the position of the Human Rights Committee is that the domestic legislation and practice of the host State should serve as a benchmark.⁴³ For instance, in its General Comment on the right to privacy under Article 17 ICCPR, the Committee noted that the term “family” “[should] be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned”.⁴⁴ Such an approach should be applied equally in determining which family ties are relevant in an immigration context for family reunification purposes. Given the increasing recognition in the domestic laws of many States of familial relationships between members of the extended family, it seems difficult to accept the limitation of access to family reunification to members of the nuclear family, strictly defined.⁴⁵

Under the European Convention on Human Rights, the ECtHR has developed a considerable body of case law setting out the criteria relevant to determining what constitutes “family life” for the purpose of Article 8 ECHR, including in the context of immigration.⁴⁶ The ECtHR adopts an approach based on the existence of de facto family ties and has recognised relationships constituting family life on the basis of substantive rather than formal links between family members – with no necessity for blood ties or even cohabitation.⁴⁷

In this regard, the ECtHR has recognised the relationship between both married and unmarried couples as amounting to family life.⁴⁸ Although the mere fact of engagement on its own cannot be said to amount to family life, the ECtHR has conceded that family life can be said to exist where there was an intention on the part of the fiancées to live together which could not be put into practice for reasons beyond their control.⁴⁹ No differentiation is made under the ECtHR’s case law between heterosexual or same-sex relationships for the purpose of recognising family ties.⁵⁰

With regard to minor children, family life has been determined to exist when a legally valid marriage exists between their parents, even in the case of no cohabitation of the child with the parents.⁵¹ If the child was born out of wedlock, the relationship

will amount to family life if the existence of family ties can be proven in light of cohabitation or, when this is not the case, in light of the existence of meaningful contact with the parent(s).⁵²

With regard to adopted children, the case law indicates that for family life to be established there is no need for formal adoption to have occurred: again, the existence of family ties is determined on a de facto basis, considering the nature of the relationship between the parent(s) and the adopted or fostered children.⁵³ In the case of adult children, the ECtHR has recognised the existence of family life between young adults and their parents when the adult children have not founded their own family and still live with their parents.⁵⁴ For family life to exist between married adult children and their parents or adult siblings there must be elements of dependence such as

serious health conditions requiring assistance that nobody else can provide.⁵⁵ With specific regard to siblings, the ECtHR has established that family life unquestionably exists when siblings live together,⁵⁶ or the relationship between them was never interrupted – even when adult siblings are involved.⁵⁷

The ECtHR has also recognised that family life for the purpose of Article 8 ECHR may also exist beyond the strict boundaries of the nuclear family, including between grandparents and grandchildren, or nephews and nieces and their aunt or uncle.⁵⁸ Although the relevant decisions concern non-immigration cases, the same approach to the determination of what constitutes a “family” for the purposes of application of Article 8 should apply in an immigration context.⁵⁹



**Table 1: The scope of family reunification in Europe: Eligible family members**

	Partner				Unmarried minor children			For unaccompanied minor sponsors				Other dependent family members		
	Spouse	Reg. partner	De facto partner	Incl. same-sex	Sponsor's	Partner's	Incl. adopted	Parent	Legal guardian	Other resp. adult	Minor siblings	Adult children	Parents	Siblings
Austria*	✓;3	✓;3	—	✓;3	✓3	✓3	✓3	✓	✓	—	—	✓	✓	—
Belgium	✓3	✓3	—	✓3	✓3	✓3	✓3	✓	—	—	✓8	✓	✓	—
Bulgaria	✓	✓	✓	—	✓	✓	✓	✓	✓	✓	—	✓	✓	—
Croatia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓5	✓5	✓	✓6	—
Cyprus*	✓;3	—	—	✓;3	✓;3	✓;3	✓;3	✓3	—	—	—	—	—	—
Czech Republic*	✓;3	✓;3	—	✓;3	✓;3	✓;3	✓;3	✓3	✓3	✓3	—	✓2	✓2	—
Denmark*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓6	✓	✓	✓
Estonia	✓;3	—	—	—	✓;3	✓;3	✓;3	✓	✓	✓	—	✓;3	✓;3	—
Finland*	✓;3	✓;3	✓;3	✓;3	✓3	✓3	✓3	✓	✓	✓	✓5	✓2	✓2	✓2
France	✓1	✓1	✓1	✓1	✓	✓	✓	✓	—	—	✓8	—	—	—
Germany*	✓3	✓3	—	✓3	✓3	✓3	✓3	✓	✓	✓5	✓2;5	✓2	✓2	✓2
Greece*	✓3	✓3	✓3	✓3	✓3	✓3	✓3	✓	✓	✓	✓9	✓2	✓2;6	—
Hungary*	✓;3	—	—	—	✓;3	✓;3	✓;3	✓3	✓3	✓3	✓5	✓	✓2	✓
Ireland	✓;3	✓;3	✓2	✓;3	✓3	3	3	✓3	—	—	✓8	✓2;4	✓2;4	✓2;4
Italy	✓	✓	—	✓	✓	✓	✓	✓	✓	✓5	✓5	✓	✓	—
Latvia*	✓1	—	—	—	✓1	✓1	✓1	✓	✓	—	—	—	—	—
Lithuania	✓3	✓3	✓3	—	✓3	✓3	✓3	✓3	—	—	—	✓3	✓3	—
Luxembourg	✓3	✓3	—	✓3	✓3	✓3	✓3	✓	✓	✓	✓9	✓3	✓3	—
Malta*	✓;3	—	—	—	✓;3	✓;3	✓;3	✓	✓	✓	—	—	—	—
Netherlands	✓;3	✓;3	✓;3	✓;3	✓;3	✓;3	✓;3	✓3	—	—	✓3;5	✓3;7;6	✓2	✓2
Norway	✓;3	✓;3	✓;3	✓;3	✓3	—	✓	✓	—	—	✓	✓2	✓2	✓2
Poland	✓3	—	—	—	✓3	✓3	✓3	✓3	✓3	✓3	—	—	—	—
Portugal	✓	✓	✓	✓	✓	✓	✓	—	✓	✓	✓	✓5;9	✓	✓2
Romania	✓1	—	—	—	✓1	✓1	✓1	✓	✓	✓	✓9	✓4	✓4	—
Slovakia*	✓;3	—	—	—	✓3	✓3	✓3	✓	✓	—	—	✓	✓	—
Slovenia*	✓;3	✓;3	✓;3	✓;3	✓;3	✓;3	✓;3	✓	—	✓	✓5	✓	✓	✓
Spain	✓	✓	✓	✓	✓	✓	✓5;6	✓	✓	✓	✓8	✓6	✓6	✓6
Sweden	✓;3	✓;3	✓;3	✓;3	✓;3	—	—	✓	—	—	✓2;5;6	✓2;6	✓2;6	✓2;6
Switzerland*	✓1	✓1	—	✓1	✓1	✓1	✓1	—	—	—	—	✓6	✓6	✓6
UK	✓1	✓1	✓1	✓1	✓1	✓5	✓1	—	—	—	—	✓2	✓2	✓2

✓ = Permitted — = Not permitted

* Less favourable treatment for beneficiaries of subsidiary protection

- Only pre-flight relationships are exempted from financial and/or accommodation requirements
- Financial and/or accommodation requirements apply
- Financial and/or accommodation requirements apply after specified time
- Minimum residence period requirements for sponsors
- Discretionary/Exceptional grounds/Conditions of dependency

- Only if members of the same household back in the country of origin
- Maximum age limit (25) applies
- Siblings must be minor, unmarried, dependent on parents joining sponsor
- If parents deceased/untraceable



2.4 Additional safeguards for unaccompanied refugee children

The possibility of being reunited with family members is of the utmost importance for unaccompanied refugee and asylum seeking children.

“ In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 3(1), Convention on the Rights of the Child

Article 3 of the UN Convention on the Rights of the Child establishes that the fundamental principle to be considered in all matters related to children is that of the best interests of the child, and that States must take all appropriate measures as necessary in order to guarantee that a child is protected. In addition to being “an interpretative principle and procedural guarantee”, the best interests of the child principle gives rise to substantive rights, albeit of a qualified nature.⁶⁰ As such, it plays a crucial role in securing the rights of children in a wide variety of situations, including in the context of family reunification.⁶¹

The right of a child to be with his or her parents is recognised by Article 9 of the Convention on the Rights of the Child, according to which

“ States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]”

The Convention makes express mention of family reunification in Article 10, which specifies that States Parties are under an obligation to ensure that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with [...] in a

positive, humane and expeditious manner”.⁶²

Article 22 of the Convention provides that States Parties have an obligation to ensure that refugee and asylum-seeking children “receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties”, and that, for such purpose, “States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family”.⁶³

As may be readily understood, in the case of child refugees, reunification in the country of origin is not a viable option, and reunification in the country of asylum is the only solution which ensures respect for the best interests of the child principle. This has been emphasised, *inter alia*, by the monitoring body of the Convention on the Rights of the Child, the Committee on the Rights of the Child, according to which:

Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a “reasonable risk” that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented in the granting of refugee status or in a decision of the competent authorities on the applicability of non-refoulement obligations [...]. Accordingly, the granting of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Whenever family reunification in the country of origin is not possible [...], the obligations under article 9 and 10 of the Convention come into effect and should govern the host country’s decisions on family reunification.⁶⁴



With regard to the categories of family members who should be granted permission to enter for the purpose of reunification with an unaccompanied refugee child, the Committee on the Rights of the Child has taken the view that “[t]he term ‘family’ must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom”.⁶⁵ The Committee has further referred “to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship”.⁶⁶

The importance of family reunification for unaccompanied refugee children has also been highlighted by the Executive Committee of the UNHCR Programme⁶⁷ and by the UNHCR, which, in its guidance on Reunification of Refugee Families, notes that:

An unaccompanied minor child should be reunited as promptly as possible with his or her parents or guardians as well as with siblings. If the minor has arrived first in a country of asylum, the principle of family unity requires that the minor’s next-of-kin be allowed to join the minor in that country unless it is reasonable under the circumstances for the minor to join them in another country. Because of the special needs of children for a stable family environment, the reunification of unaccompanied minors with their families, whenever this is possible, should be treated as a matter of urgency.⁶⁸

At the European level, the ECtHR’s case law clearly indicates that, in case of unaccompanied foreign minors, States are “under an obligation to facilitate the family’s reunification”,⁶⁹ and that a failure to do so constitutes a breach of Article 8 of the ECHR. The ECtHR has also underlined the relevance of the best interests of the child principle in cases concerning family reunification for minors, emphasising that States must take it into account as a primary consideration in deciding on family reunification applications.⁷⁰

2.5 Refugee family reunification as a route to international protection

Family reunification stands at the crossroads

between two competing interests: the right of individuals to family unity and family life, and the sovereign prerogative of States to control immigration. However, as discussed in the previous sections, in the case of refugee family reunification, the discretion of States is limited by the unique circumstances of the refugee predicament, which will normally strongly point in the direction of reunification in the State of asylum.

In addition to representing often the only avenue for refugees to effectively exercise their right to family unity, the process of family reunification plays an important – and at times crucial – role in addressing the protection needs of the family members whom the refugee had to leave behind when fleeing persecution.

Given the risk faced by refugees in their countries of origin, it will often be the case that their family members may equally be at risk of suffering persecution or other threats to their freedom and safety, either because of their own activities or personal characteristics or simply due to their close association/family relationship with a refugee. This is recognised, *inter alia*, by the UNCHR, according to which “family members/dependants will often have the same international protection needs as the recognized refugee due to similarities in profile, personal circumstances and the conditions in the country of origin”.⁷¹

Family members may thus be so similarly situated to their refugee sponsor as to be eligible for protection in their own right on one of the grounds provided by the Convention. Several considerations weigh in favour of a “presumption of persecution” in the case of the family members of refugees, potentially making them *prima facie* refugees.⁷² In this regard, it must be emphasised that, for the purposes of being granted international protection, refugees need not necessarily have already suffered persecution; what is necessary is that their fear of persecution is “well-founded”, meaning that it is objectively likely that they may risk persecution in their country of origin.⁷³

Under the Refugee Convention, it is not necessary that the reason(s) why persecution occurs reflect the real condition of the individuals concerned. Conducts or thoughts attributed to them by their persecutors are sufficient to substantiate a claim for protection.⁷⁴ This may be the case with the family members of a refugee, who may *ipso facto* be accused of sharing their (actual or imputed) views, and consequently be persecuted –



especially in the case of women or children.⁷⁵

As also noted by the UNHCR, “[f]amily members/dependants, regardless of age, may also have a well-founded fear of persecution in their own right as a result of their family link or association with the recognized refugee”.⁷⁶ Thus, family members may have a *prima facie* need for protection as a result of the very fact of being family members of a refugee. As such, they may fall within the Convention definition because they fear persecution as “members of a particular social group” – i.e. the refugee’s family. Indeed, “[i]t is not uncommon that persecution is inflicted on the family group because of the particular position or actions of a family member” – whether they are the head of the family or a dependent family member.⁷⁷ Wider state practice also reflects a recognition of the family as a particular social group for protection purposes.⁷⁸ This principle has found application several times in judicial decisions in both Canada and the United States.⁷⁹ Similarly, the Danish Refugee Appeals Board has granted international protection to a Kurdish Muslim from Aleppo on grounds of her family ties. Her mother had been recognised as a refugee as she had worked as a nurse treating combatants from the Free Syrian Army and was thus at risk of persecution by the Syrian government. Consequently, a risk for the applicant was also found to exist, based on the risks for family members of individuals targeted as political opponents by the Syrian government.⁸⁰ In the UK, the House of Lords has held that “[a]s a social group the family falls naturally into the category of cases to which the Refugee Convention extends its protection”.⁸¹

Moreover, and independently, family members of refugees left behind may be in need of protection due to the deteriorating security situation in their country of origin. The subjective character of the Refugee Convention definition requires that the assessment of a claim for protection be conducted in respect of the *individual* situation of the applicant. This apparently excludes so-called war-refugees from protection. However, their manifest need for protection has led the UNHCR to clarify that no discrimination should be made between refugees fleeing in peacetime or wartime, adding that armed conflicts can reach such a degree of violence to amount to persecution. The fact that such violence has a collective rather than individual target does not set a higher threshold for protection to be granted.⁸²

Nevertheless, a number of States consider that the Refugee Convention is not applicable in situations of generalised violence, and have therefore developed complementary protection instruments to fill the potential void in protection.⁸³ Within the European Union legal framework, for instance, subsidiary protection may be granted where there is a real risk of the applicant suffering “serious harm” in the country of origin, which includes “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”.⁸⁴ As clarified by the Court of Justice of the European Union (CJEU),

[t]he word ‘individual’ must be understood as covering harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place [...] reaches such a level that substantial grounds are shown for believing that a civilian [...] would, solely on account of [their] presence on the territory of that country or region, face a real risk of being subjected to the serious threat referred in Article 15(c) of the Directive.⁸⁵

Given the above, there are a variety of reasons to believe that the family members of refugees left behind in their countries of origin may be equally at risk of suffering persecution or similar threats for their safety, and thus would in principle be eligible for international protection.⁸⁶ In many cases, the only aspect which differentiates them from their refugee family member is that they have not yet left their country of origin – a fundamental condition for the grant of refugee status.⁸⁷ Still, the manifest need for protection of family members in many cases is a further reason why family reunification should happen in a prompt and effective manner. Where family reunification procedures are not prompt, effective and sufficiently flexible so as to be able to adapt to the specific needs of the family members of refugees, the consequences can be irremediable.⁸⁸

As a consequence, in the context of forced displacement, family reunification constitutes a fundamental complementary pathway for admission to a safe country and as such the relevant domestic procedures should be made more accessible, should be “tailored to the refugee context”, and “viewed through a protection lens as opposed to solely an immigration control mechanism”.⁸⁹

3 The legal framework for refugee family reunification in the UK

The present chapter assesses the current legal framework for refugee family reunification in the UK, including against the relevant international standards as outlined in chapter 2.

Section 3.1 provides an overview of the principal legal routes through which refugees and other beneficiaries of international protection can be reunited with their family members in the UK. For each legal route the following elements are investigated: relevant rules, eligibility criteria and other requirements imposed on sponsors/applicants. Section 3.2 goes on to discuss some of the problems and limitations deriving from the current framework. Section 3.3 then examines options for reform.



Mada's husband was forced on a treacherous journey to safety after their home country of Syria was engulfed in conflict. Mada and her two young children stayed behind and faced three dangerous, traumatic years alone.

3.1 Legal routes for refugee family reunification

Family reunification for refugees and other beneficiaries of international protection in the UK can be pursued through several legal routes. The most straightforward route is the Family Reunion (RFR) route under Part 11 of the Immigration Rules, which is available to close family members of both refugees and beneficiaries of humanitarian protection.

The ability to apply for RFR depends on whether both the refugee in the UK (the sponsor) and their family member abroad (the applicant) meet the strict eligibility criteria and requirements established by Part 11. Where some of the requirements are not met, the Home Office decision-makers are required to consider whether there are any exceptional circumstances or compassionate factors which justify a grant of leave "outside the Rules" (LOTR).

For family members who do not meet the eligibility criteria for RFR, and where no exceptional circumstances or compassionate factors exist which may warrant the grant of LOTR, family reunification may be obtained through the "Family Member" route which is currently regulated by Appendix FM to the Immigration Rules. Additional routes for refugees to be reunited with their families exist under the resettlement programmes coordinated by the UNHCR in which the UK participates.⁹⁰

Until the end of the Brexit transition period on 31 December 2020, the so-called Dublin system represented an important alternative legal route for reuniting separated asylum-seeking family members in the UK. The UK rejected the option of remaining within the Dublin system and therefore this route is no longer available to family members of refugees in the UK.⁹¹



A lost safe and legal route to family reunification: the Dublin system

The so-called Dublin system, centred around the Dublin III Regulation,⁹² aims to establish clear and fair criteria for the allocation of responsibility among EU Member States for the processing of asylum applications. Whilst the system does not as such deal with refugee family reunification,⁹³ in practice it plays an important role in reuniting refugee families throughout Europe.

Under the Dublin III Regulation, family ties are the primary criteria to be taken into account when determining which country has responsibility for processing an asylum application. Where a family member of an applicant for asylum is present in another EU State, the Regulation provides that the applicant should be transferred to the State where their family members are located, so that their claim for protection will be determined there. Under Articles 9 to 11 of the Regulation, adult applicants can join their spouse or partner and/or their unmarried minor children. In the case of applicants who are unaccompanied minors, Article 8 (1)-(2) provides that, whenever a minor applying for international protection has a relevant family member (parent, guardian, sibling, adult aunt or uncle, or grandparent)⁹⁴ residing in an EU country, the State where those family members are found shall be responsible for deciding upon the minors' asylum claim. It is only where there are no such family members, or it is not deemed to be in the best interest of a minor to be reunited with the family member in question, that the application will be processed by the State in which it was originally submitted.

The fact of being transferred under the Dublin procedure does not grant an automatic right to remain in the country, which still depends upon the outcome of the applicant's claim for international protection. However, the very fact that the asylum application is considered in a country where other family members are located constitutes an important step towards family reunification.

After a relatively timid start, the number of individuals transferred to the UK under the Dublin process rose significantly in the years prior to Brexit and the end of the transition period. This was at least in part likely to have been the result of wider awareness of the

process – especially following the transfer of unaccompanied asylum seeking children following the dismantling of the infamous Calais "Jungle".

The disappearance of the Dublin route as a consequence of the exit of the UK from the EU is especially regrettable for a variety of reasons. First, in contrast to the RFR route under the Immigration Rules, the Dublin system allowed transfer of asylum applicants to the UK even when their family member there was still awaiting determination of their asylum claim (Articles 9-11). Second, the definition of the family unit adopted in the Dublin system is in certain respects broader than that applicable for the purpose of RFR under the Immigration Rules, and thus provided an alternative means for reunification of dependent family members who were not eligible for RFR. Finally, and most importantly, the closure of the Dublin route marks the end of the only possibility for unaccompanied refugee or asylum seeking children to bring to the UK their immediate family members located elsewhere in Europe.

Transfers to the UK under Articles 8 to 11 of the Dublin Regulation (2015-2019)⁹⁵

Year	Take charge requests	Transfers
2015	78	31
2016	685	330
2017	1095	295
2018	710	1028
2019	1050	529

In addition to the misery the loss of the Dublin route will cause to refugees desperate to bring their family members to the UK, it is also likely to add significant pressure on those organisations which provide support with RFR applications, as the significant number of asylum-seekers with family members scattered throughout Europe who might previously have used the Dublin process will inevitably turn to those organisations to navigate the complexities of the RFR application process once they gain refugee status.



3.1.1 Refugee Family Reunion under Part 11 of the Immigration Rules

The Family Reunion route under Part 11 of the Immigration Rules (RFR) is the most favourable procedure for family reunification under UK law. In contrast to all other routes through which family reunification may be achieved, RFR does not require the sponsor to meet any kind of financial or accommodation requirements or to prove that they are in a position to provide for the needs of their family members without recourse to public funds once they arrive in the UK. Further, applicants are exempted from requirements concerning knowledge of the English language. The application is free of charge, and family members of refugees coming to the UK through this route are exempt from the Immigration Health Surcharge (IHS), a healthcare fee which is levied on most immigration applications.

Family members of a refugee or beneficiary of humanitarian protection who are granted permission to enter the UK through RFR are given leave “in line with their sponsor”; they are, therefore, not refugees in their own right and their leave to remain in the UK is for the duration and with the same conditions and entitlements as that of their sponsor.⁹⁶ Nevertheless, family members

who have a protection claim in their own right are entitled to apply for asylum once they are present in the UK.

The requirements to be met in order to be able to sponsor RFR are relatively straightforward: all individuals who have either refugee status or humanitarian protection in the UK and who are over 18 years old are eligible to sponsor RFR.⁹⁷ The relevant status can have been obtained either by means of an application for international protection submitted in the UK, or having entered the UK as a beneficiary of a resettlement programme.⁹⁸

The following individuals are not eligible to sponsor:

- i. former refugees or former beneficiaries of humanitarian protection who have naturalised as British citizens;⁹⁹
- ii. family members of a refugee or a beneficiary of humanitarian protection who have not been granted refugee status or humanitarian protection in their own right, including individuals who themselves came to the UK through RFR;¹⁰⁰
- iii. minors (under 18 years of age);¹⁰¹
- iv. asylum seekers

Table 2: Requirements for family members applying for RFR under Part 11

	Children	Spouse / Civil partner	De facto partner
Marriage/civil partnership/relationship is subsisting		✓	✓
Applicant and sponsor intend to live permanently with each other as spouses/partners		✓	✓
Marriage/civil partnership took place before the sponsor fled country of former habitual residence		✓	✓
Applicant and sponsor have been living together in a relationship akin to marriage/civil partnership for at least two years before sponsor fled country of former habitual residence			✓
Applicant must be under 18	✓		
Applicant must have been born, conceived (or formally adopted) before the sponsor fled country of former habitual residence	✓		
Applicant is not leading an independent life and is unmarried/not in a civil partnership	✓		
No reasonable grounds for regarding applicant as a danger to the UK; applicant would not be excluded from protection by Article 1F of the Refugee Convention if applying for refugee status in their own right	✓	✓	✓



As regards the family members of a refugee who are eligible to apply through the RFR route, the Immigration Rules are particularly restrictive. RFR is only available to the spouse, civil partner, or unmarried or same-sex partner of a refugee,¹⁰² and to their minor dependent children.¹⁰³ In both cases, the family member needs to have been part of the sponsor's family unit before the sponsor fled their country of habitual residence (so-called "pre-flight family members").

Partners

In order to be successful in their application for RFR, the partner of a refugee needs to demonstrate that their relationship with the sponsor pre-dates the moment in which the sponsor left their country to seek asylum, and that it is "genuine and subsisting" at the time of the application. The applicant and sponsor must also demonstrate that they intend to live permanently together once the applicant arrives in the UK.¹⁰⁴

For married couples or civil partners, the pre-flight requirement means that the marriage or civil partnership must have been celebrated before the applicant left their country of origin or former habitual residence to seek asylum.¹⁰⁵ For unmarried partners (including same-sex partners), the pre-flight requirement means that they must show that they had been living with the sponsor "in a relationship akin to marriage or a civil partnership" for two years or more before the sponsor fled their country in order to seek asylum.¹⁰⁶ If this requirement is not met, an application for RFR will not be granted under Part 11 of the Immigration Rules. The Home Office Guidance, however, expressly requires caseworkers to give consideration to any exceptional circumstances or compassionate factors which may warrant a grant of LOTR, "including whether the requirement to live together would have put a same-sex or unmarried couple in danger".¹⁰⁷

Children

In order to be eligible for RFR, the child of a refugee in the UK must be under 18 years of age and be dependent upon the sponsor.¹⁰⁸ With regard to the age requirement, the relevant date is the time when the application is lodged; if a child turns 18 after that date, and whilst the application is still being processed, they are to be treated as minors for the purpose of the application.¹⁰⁹

The requirement that the child be dependent upon the sponsor means that children who are not yet 18, but lead an independent life, are married

or have entered into a civil partnership and have formed an independent family unit are not eligible.¹¹⁰

Adult children, even if dependent on the sponsor, are not eligible for RFR, although dependent adult children can apply through the more onerous procedure for family reunification under Appendix FM. However, the Home Office Guidance indicates that LOTR may be granted in cases concerning adult children when

[...] their immediate family, including siblings under 18, qualify for Family Reunion and intend to travel, or have already travelled, to the UK; [and] they would be left alone in a conflict zone or dangerous situation; [and] they are dependent on immediate family in the country of origin and are not leading an independent life; [and] there are no other relatives to turn to and would therefore have no means of support and would likely become destitute on their own.¹¹¹

The pre-flight requirement also applies to children. Accordingly, only children who were born, or had been conceived, before the sponsor left their country of former habitual residence in order to seek asylum are eligible to apply for RFR.¹¹² The requirement that the child be conceived before the applicant left their country means that any children who were conceived in a country of transit (for instance in a refugee camp) are currently prevented from benefitting from the simplified RFR procedure under Part 11 of the Immigration Rules.

Adopted children of a refugee in the UK are eligible to apply for RFR, provided that they were formally adopted before the sponsor left their country of origin or habitual residence in order to seek asylum. The sponsor is required to provide documentary evidence to establish that the adoption was formalised through the relevant legal procedures in the third country.¹¹³ The requirements relating to age and dependent status also apply to adopted children. De facto adoption, defined as the situation in which "a child has been incorporated into another family than the one into which they were born, and has been cared for in that family",¹¹⁴ is not a relevant relationship for the purpose of RFR.¹¹⁵ Again, however, the Home Office Guidance requires caseworkers to consider whether there are exceptional circumstances or compassionate factors in light of which a de facto adopted child may be granted LOTR.¹¹⁶



3.1.2 Family visa applications for “other family members” – Appendix FM and Part 8 of the Immigration Rules

Family members of refugees and beneficiaries of humanitarian protection who are not eligible to apply for RFR using the simplified route under Part 11 can apply to join their relative in the UK through the routes regulated by Appendix FM (“Family Members”). As explained in the relevant Home Office guidance, “[t]his route is for those seeking to enter or remain in the UK on the basis of their family life with a person who is a British Citizen, is settled in the UK, or is in the UK with limited leave as a refugee or person granted humanitarian protection (and the applicant cannot seek leave to enter or remain in the UK as their family member under Part 11 of these rules).”¹¹⁷

Prior to the introduction of Appendix FM in 2012, visa applications by family members, including family members of refugees or beneficiaries of humanitarian protection who were not eligible for RFR under Part 11, were regulated by Part 8 of the Immigration Rules.¹¹⁸ For applications submitted after 9 July 2012, most of these provisions have been replaced tout court by Appendix FM; nevertheless, as discussed below, some of the provisions of Part 8 remain relevant and applicable.¹¹⁹

Family members who are eligible to apply for a family visa under Appendix FM include post-flight partners and other “adult dependent relatives” (i.e., adult dependent children, siblings, parents, and grandparents). By contrast, applications by post-flight minor dependent children and minors sponsored by a relative other than a parent in the UK are still covered by Part 8 of the Immigration Rules.¹²⁰

The process of family reunification through the routes set out in Appendix FM is more onerous than that under Part 11. Applications under Appendix FM are subject to an administrative fee and family members are not exempt from the Immigration Health Surcharge.¹²¹ Most importantly, sponsors must demonstrate that they will be able to provide adequate financial support and accommodation for their family members and any dependants once they arrive in the UK, without receiving support from the public purse. In addition, applicant partners and adult dependent family members are required to meet a minimum language requirement.¹²²





Applications by post-flight partners of refugees and beneficiaries of humanitarian protection are regulated by section E-ECP of Appendix FM (“Eligibility for entry clearance as a partner”).¹²³ The category covers spouses, civil partners, unmarried partners (including fiancé(e)s or proposed civil partners) and same-sex partners.¹²⁴ In order to be eligible, both the sponsor and the applicant must be over 18 years old, have met, and intend to live together permanently in the UK; their relationship must not be consanguineous, and needs to be genuine and subsisting, with applicant and sponsor not being involved in a relationship with other persons.¹²⁵ Both the applicant partner and the sponsor must meet specific financial and accommodation requirements.¹²⁶ If the relevant financial requirements are not met, an applicant will only be eligible if their sponsor is in receipt of strictly specified categories of public funds, and it can be demonstrated that the sponsor will be able to adequately maintain and accommodate themselves, the applicant(s) and any dependants.¹²⁷

As regards post-flight minor children, the framework is particularly complex, as different norms apply depending on the status of the child’s parent in the UK.¹²⁸ In most cases, the rules contained in Part 8 are still applicable, albeit almost always supplemented or modified by Appendix FM.

The situation of post-flight biological children of a sponsor with indefinite leave to remain (ILR) (including as a refugee or a beneficiary of international protection) is regulated by paragraph 297 of Part 8, which requires the sponsor to demonstrate that they can provide for adequate maintenance and accommodation for the child without recourse to public funds.¹²⁹

The situation of post-flight biological children of individuals with limited leave to remain (LLR) is regulated by section E-ECC of Appendix FM (“Eligibility for entry clearance as a child”). The relevant rules set out the usual requirements as to the child being a minor, unmarried, and not leading an independent life, accompanied by the requirement that the sponsor be able to adequately maintain and accommodate the child without recourse to public funds.¹³⁰ However, as also indicated by its heading, this section only covers the situation of a child “whose parent is applying under this Appendix for entry clearance or leave, or who has limited leave, as a partner or parent”. As such, on its face, the section only covers the case of post-flight children whose sponsor has applied for or obtained LLR as a partner or parent – not as a refugee. As a consequence, it is therefore

not applicable to the post-flight minor children of a refugee who seek to join their parent in the UK on their own. The introductory text prior to the heading of section E-ECC indicates that “further provision” in respect of a child seeking to enter or remain in the UK for the purpose of their family life may be found in Part 8. The relevant provision under Part 8 would have been paragraph 319R, which explicitly addressed the case of the post-flight child of a refugee with LLR in the UK. That provision, however, does not apply to applications submitted after 9 July 2012.¹³¹ Indeed, the Home Office Statement of Intent that accompanied the entry into force of Appendix FM explicitly addressed this issue, indicating that “the provision that was previously relevant to this case was paragraph 319R, [whilst applicants] now must apply under Appendix FM” and subject to new financial requirements.¹³²

As such, the only provision concerning applications by children under Appendix FM is that indicated above, which explicitly does not cover the case where a child born post-flight is applying to join their parent with LLR in the UK on their own – for instance because their other parent has passed away. For children in this situation, the best available route to family reunification appears to be an application under Part 11 of the Immigration Rules, requesting that they be granted LOTR in light of the exceptional circumstances of their case, which is not addressed under any other provision of the Immigration Rules.¹³³

With regard to adopted children, if the adoptive parent in the UK has ILR, their situation is regulated by paragraphs 309A-316A of Part 8.¹³⁴ The child must be a minor, unmarried and not leading an independent life, and it must be shown that he or she will be adequately maintained and accommodated by the adoptive parent(s).¹³⁵ For legally adopted children, the adoption must have occurred when both adoptive parents were resident together abroad or either or both of them were present and settled in the UK.¹³⁶

The situation of post-flight legally adopted children of a refugee with LLR is not expressly addressed by any of the provisions in the Immigration Rules. Given that provisions concerning family reunification for adopted children only address the case where the parent in the UK has ILR, in order not to leave sponsors with LLR in a legal vacuum, the Home Office Guidance states that “if an individual who has been granted refugee status or humanitarian protection in the UK does not have [ILR] and wishes to sponsor an adopted child, the application will be considered



under paragraph 319X".¹³⁷ As discussed below, that provision in fact regulates the situation in which a child can be reunited with a relative who has LLR as a refugee or beneficiary of humanitarian protection in the UK.

The route under Part 8 is expressly stated to be applicable to both legally adopted children and de facto adopted children.¹³⁸ However, the formulation of paragraph 309A, which defines de facto adoption for the purpose of application of the relevant rules, poses some issues. In particular, the requirement that, at the time immediately preceding the application, the adoptive parents must have been living abroad together for at least 18 months and have cared for the child for at least 12 months,¹³⁹ will almost by definition never be met when an adoptive parent is a refugee in the UK. This gap is acknowledged by the Home Office Guidance, which expressly indicates that cases involving de facto adopted children of refugees must, again, be considered under paragraph 319X.¹⁴⁰

As mentioned above, applications by children who seek to join a relative (other than a parent) who has LLR as a refugee in the UK are regulated by paragraph 319X of Part 8.¹⁴¹ In this context, no distinction is drawn as to whether the relationship between the applicant child and the sponsor is pre- or post-flight. For leave to be granted under this route, there must be "serious and compelling family or other considerations which make exclusion of the child undesirable" and "suitable arrangements" must have been made for the child's care.¹⁴² In addition, the sponsor must demonstrate that they have the means to

provide for the child's adequate maintenance and accommodation without recourse to public funds.¹⁴³

Appendix FM allows adult dependent relatives of adult refugees or individuals granted humanitarian protection to apply for a family visa.¹⁴⁴ Eligible applicants are the adult parents, grandparents, siblings, or adult children of the refugee or beneficiary of international protection.¹⁴⁵ In order to qualify, the applicant must be in need of long-term personal care to perform everyday tasks "as a result of age, illness or disability" and must be "unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because (a) it is not available and there is no person in that country who can reasonably provide it; or (b) it is not affordable".¹⁴⁶ The sponsor should be able to adequately maintain and accommodate the applicant without recourse to public funds.¹⁴⁷

As with RFR under Part 11, likewise under Appendix FM refugee children are unable to sponsor family visa applications for their parents or other responsible adults. Although Appendix FM allows parents to apply for a family visa to be reunited with their minor child in the UK, that possibility is only available if the child is a British citizen or has settled status.¹⁴⁸ Since refugee minors can only apply for settled status/ILR five years after they have obtained LLR as refugees under paragraph 339R, in most cases it is unlikely that they will still be minors at that point. As a consequence, that route for family reunification is de facto precluded to the parents of an unaccompanied refugee child.

Table 3: Requirements for adult dependent family members applying under Appendix FM

Parents and grandparents	Must, as a result of age, illness or disability, require long-term personal care to perform everyday tasks.
Children (18 years and older)	Must be unable, even with practical and financial help of the sponsor, to obtain the required level of care in the country where they are living
Siblings (18 years and older)	Must not be in subsisting relationship with a partner unless the partner is also the sponsor's parent or grandparent and is also applying

Parents and grandparents	Must, as a result of age, illness or disability, require long-term personal care to perform everyday tasks.
Children (18 years and older)	Must be unable, even with practical and financial help of the sponsor, to obtain the required level of care in the country where they are living
Siblings (18 years and older)	Must not be in subsisting relationship with a partner unless the partner is also the sponsor's parent or grandparent and is also applying

Parents and grandparents	Must, as a result of age, illness or disability, require long-term personal care to perform everyday tasks.
Children (18 years and older)	Must be unable, even with practical and financial help of the sponsor, to obtain the required level of care in the country where they are living
Siblings (18 years and older)	Must provide evidence that they can be adequately maintained, accommodated and cared for without recourse to public funds



Financial and accommodation requirements under Appendix FM: A closer look

Access to family reunification through the route provided by Appendix FM may pose particular problems to refugees due to the onerous financial and accommodation requirements which the sponsor must be able to satisfy.

The financial requirements are particularly strict for applications submitted by post-flight partners. At present, the sponsor and the applicant partner must demonstrate that they have a minimum (cumulative) gross annual income of at least £18,600, plus an additional £3,800 for the first dependent child and £2,400 for each additional dependent child.¹⁴⁹

For cases for which the rules do not establish a fixed income threshold, such as those concerning children, the sponsor is required to prove that they will be able to provide adequate maintenance and accommodation for the applicant without recourse to public funds.

The requirement concerning “adequate maintenance” is interpreted by the Home Office to mean that “after income tax, National Insurance contributions and housing costs have been deducted, there must be available to the family the level of income that would be available to them if the family was in receipt of Income Support.”¹⁵⁰ Although the Home Office Guidance has not yet been amended to reflect this, starting from 2013, Income Support was replaced by Universal Credit, with all applicants being transferred to the new system by 2017.

The requirement concerning the sponsor’s ability to provide adequate accommodation for the applicant applies equally to applications under Appendix FM and Part 8. In order for accommodation to be considered adequate, it must be owned or lawfully occupied by the family. If the family live in a shared household, at least the bedrooms must be for the exclusive use of the family.¹⁵¹ In order to establish whether

the situation in the household amounts to being overcrowded, for England and Wales reference is made to the Housing Act 1985, according to which there must be a sufficient number of rooms to ensure that two persons aged over 10 years old, of opposite sex, and not being a couple do not sleep in the same room; and on a calculation of the ratio between the number of rooms in the house and the number of people living there.¹⁵²

Some flexibility in relation to financial requirements has been inserted by the introduction of paragraphs GEN.3.1 to 3.3 of Appendix FM, following the judgement of the Supreme Court in MM (Lebanon).¹⁵³ In response to the decision, changes were made in July 2017 to introduce an “exceptional circumstances” clause allowing consideration of issues under Article 8 ECHR and the best interests of the child principle.¹⁵⁴

Where the financial requirement is not met and the refusal could result in a breach of the applicant’s, or their partner’s or child’s Article 8 right, paragraph GEN.3.1 requires that sources of income other than those listed under Appendix FM be taken into account.¹⁵⁵

3.1.3 Leave “outside the Rules”: exceptional circumstances and compassionate factors

Where an application for RFR or under Appendix FM does not meet the requirements of the Immigration Rules, caseworkers are required to consider whether there are any “exceptional circumstances or compassionate factors” which may justify a grant of LOTR.

The rationale for the possibility of granting LOTR is the need to avoid breaches of Article 8 ECHR in cases where refusal to allow family reunion will result in a breach of the sponsor’s right to family life. Exceptional circumstances are defined by the Home Office as those in which the refusal of entry clearance would result in “unjustifiably harsh consequences for the applicant or their family” such as to amount to a breach of the right to respect for family life under Article 8 ECHR.¹⁵⁶ Compassionate factors exist where refusal would still cause “unjustifiably harsh consequences,” but would not constitute a breach of Article 8.¹⁵⁷



The Home Office Guidance on RFR provides a few examples of exceptional circumstances and compassionate factors which would justify a grant of LOTR. These include, for instance, the case in which a young adult child would be left alone in an unsafe situation in the country of origin as all their immediate family is in the UK and other relatives are unable to take care of them, or the case of unmarried or same-sex partners who have been unable to live together prior to one of them fleeing their country of residence as this would have put their lives at risk.¹⁵⁸ Specific reference is also made to the case of unaccompanied refugee children, whose parents are not entitled to apply for family reunification under any of the routes set out in the Immigration Rules.¹⁵⁹

When considering whether exceptional circumstances and compassionate factors exist in a RFR case, Home Office caseworkers are required to follow the dedicated guidance on Family Policy.¹⁶⁰ The document in question states that in order to determine whether LOTR should be granted, consideration must be given as to whether refusal would result in “unjustifiably harsh consequences” – i.e. consequences which would be disproportionate with respect to considerations of public interest as per Article 8(2) ECHR.¹⁶¹

Several factors are relevant to this assessment. The most significant is the best interests of the child(ren) affected by the decision.¹⁶² Other relevant considerations concern the possibility for the sponsor and their family to stay lawfully in another country; the circumstances that caused separation and obstacles to the sponsor’s return to the country of origin; any health issues of any of the family members; the security situation in the country of origin; the sponsor’s status in the UK; and their attachment to any third country where the family could live together.¹⁶³ Also among the factors to be considered are the reasons why the sponsor cannot move overseas in order to be reunited with his or her family: since the option of returning to their country of origin or habitual residence is – by definition – precluded to refugees, in such a situation the presumption should be in favour of granting leave to enter to members of their family unit.

With regard to applications by family members otherwise than by way of RFR, Appendix FM was introduced with the stated purpose of, inter alia, bringing consideration of issues relating to Article 8 ECHR within the scope of the Immigration Rules.¹⁶⁴ Notwithstanding this, in response to the

2017 judgement of the Supreme Court in MM (Lebanon), the Rules were amended so as to add explicit references to Article 8 ECHR and the best interests of the child principle in sections GEN.3.2 and GEN.3.3.¹⁶⁵ As a consequence, where a refusal of entry clearance or leave would result in a breach of Article 8 ECHR, the decision-maker must now allow the application, and such a decision is one made within the Rules. As a result, those non-standard applications which would previously have fallen to be considered outside the Rules on Article 8 ECHR grounds, for instance applications by other dependent family members, now fall to be considered within the Rules.¹⁶⁶ The Home Office Guidance specifies that in cases where the applicant invokes the existence of compassionate factors not relating to Article 8 rights, the decision-maker still needs to consider whether exceptional circumstances exist for a grant of LOTR.¹⁶⁷

3.2 Issues with the current legal framework

3.2.1 The scope of the right to family reunification: what makes a family?

Unsurprisingly, one of the most problematic and contentious issues with the current RFR regime is that the only family members who are eligible to apply for RFR are the pre-flight spouse and dependent children under the age of eighteen of a refugee or beneficiary of international protection.

Both sponsors and advocates from the refugee sector argue that the narrow definition of family adopted by Part 11 of the Immigration Rules does not reflect the reality of life in other cultures, where the family unit is often intergenerational, and adoption of orphaned relatives is common and often informal, particularly in times of war.

“The biggest problem is that the notion of family is very much an Anglo-Saxon family model (husband, wife, minor children), with no recognition that children over 18 might be part of the family unit, grandparents might still be part of the family unit.”

(Solicitor, 19 January 2019)



“Often children are brought into families because of the death of a sibling or something – should you have to leave these children behind when you’ve been looking after them for years? It’s about relationships, it’s not necessarily about blood, but what the relationship between people is.”

(Immigration adviser, 28 April 2019)

“I haven’t seen my mother since I was a boy, and I will never see her again. It’s too dangerous for me to visit Iran, and she can’t come to visit me. It makes me very sad to think my children will never meet their grandmother.”

(Sponsor, May 2019)

Among both sponsors and caseworkers, there was broad consensus that a reasonable, appropriate and workable expansion of the criteria for access to the RFR route should include a number of specific additions to the list of eligible applicants, accompanied by a more flexible approach to the notion of family. In particular, there was agreement on the fact that the under-18 rule for dependent children should be changed, as it does not reflect the realities of family life, either in the UK or elsewhere. The hardship faced by a young adult left alone in a home country which the rest of his or her family has had to flee, is not, in most cases, different from that faced by a 17-year-old, and there appears to be no logical justification for the current rigid and drastic cut-off at 18. One adviser said that they had experience of situations where clients had not told them about children over the age of 18 because they did not think there was any chance of bringing them to the UK,¹⁶⁸ and numerous examples were given of families being divided because a parent (usually the mother) would not leave one child over the age of 18 in a refugee camp in order to join a partner (and possibly their other children) in the UK.¹⁶⁹



It’s worst for people who want to bring family members when a child is over 18. I know one man – he applied for his wife and daughter to come from Iran – she was 18 years. The wife was granted but the daughter was refused. But you can’t leave an 18-year-old girl alone in Iran – she can’t get a job, find a flat, it’s not like that. And the wife refused to leave her – so he appealed the daughter, but by the time that was overturned, the visa for the wife had run out.”

(Legal director, Refugee support charity, 2 July 2019)

The second category on which there was general agreement among sponsors and practitioners was that of siblings, either minor or adult dependent siblings under the age of 25.

A further concern related to the case of spouses under the age of 18, who, at present, do not fall within any of the eligible categories for RFR. The Home Office position on applications by minor spouses or civil partners is that

[...] the application will be refused under the Family Reunion Immigration Rules. Consideration will be given to whether there are exceptional circumstances that warrant a grant of Leave Outside of the Immigration Rules. Any grant of leave for a child who is in this situation, would be as a child and not as a spouse or civil partner and processed in line with the duty under section 55 [of the Borders, Citizenship and Immigration Act 2009] to consider the welfare and best interest of a child.¹⁷⁰

As noted by the ICIBI, the Home Office’s response is far from satisfactory, insofar as it unclear how a grant of LOTR “as a child and not a spouse” and the consideration of duties under section 55 would work in practice.¹⁷¹

In addition to these recurring concerns relating to specific categories of family members, those interviewed recognised that for many refugee families there is likely to be at least one element that does not fit within the current rules and that therefore any closed list approach is likely to be under-inclusive. In this regard, there was virtually unanimous consensus among those

interviewed that the notion of dependence, broadly understood, should play an important role in ensuring flexibility of the RFR system. Such an approach is advocated also by UNHCR which, in its 2016 comments on the RFR system in the UK, suggested that a more flexible understanding of the notion of family was needed, based on “strong and continuous social, emotional or economic dependence, though which does not require complete dependence”.¹⁷²

This is in line with UNHCR’s general understanding of the notion of “dependency” in the context of family reunification, which has been developed over many years of working in the field.

“ The principle of dependency entails flexible and expansive family reunification criteria that are culturally sensitive and situation specific. Given the disruptive and traumatic factors of the refugee experience, the impact of persecution and the stress factors associated with flight to safety, refugee families are often reconstructed out of the remnants of various households, who depend on each other for mutual support and survival. These families may not fit neatly into preconceived notions of a nuclear family (husband, wife and minor children). In some cases the difference in the composition and definition of the family is determined by cultural factors, in others it is a result of the refugee experience. A broad definition of a family unit – what may be termed an extended family – is necessary to accommodate the peculiarities in any given refugee situation, and helps minimize further disruption and potential separation of individual members during the resettlement process.”¹⁷³

UNHCR, Protecting the Family (June 2001)

This approach was reflected in a private members’ bill addressing RFR introduced before Parliament in 2017, which, although gaining bipartisan support, did not become law.¹⁷⁴ A new private members’ bill has been introduced in the House of Lords in the current Parliamentary session and adopts a similar approach.¹⁷⁵ The bill seeks to add two specified categories of eligible applicants to those listed in Part 11, namely the refugee’s parents and his or her dependent children under the age of 25.¹⁷⁶

In addition, the bill would introduce in Part 11 an additional flexible category of applicants whose entry to the UK to join a family member is justified on the basis of a range of considerations, including:

- the importance of maintaining family unity,
- the best interests of a child,
- the physical, emotional, psychological or financial dependency between a person granted refugee leave or humanitarian protection and another person,
- the circumstances in which a person is living in the UK or elsewhere and any risk to that person’s physical, emotional or psychological wellbeing arising from those circumstances,
- such other circumstances as the Secretary of State considers relevant.¹⁷⁷

Such proposals are to be welcomed, as they radically shift the emphasis from a particular genetic connection to the nature of the existing relationship between family members, essentially providing a clear route through which exceptional circumstances and compassionate factors can be considered within the Immigration Rules.





3.2.2 Inability of unaccompanied refugee children to act as sponsor for their immediate family members

The most striking aspect of the UK's current framework relating to RFR is that, under the Immigration Rules, unaccompanied refugee children are unable to act as sponsors for their parents, siblings or other responsible adult. This blanket prohibition clearly disregards the UK's international obligations, including in particular those arising under the Convention on the Rights of the Child.¹⁷⁸

“ It seems ... perverse that children who have been granted refugee status in the UK are not then allowed to bring their close family to join them in the same way as an adult would be able to do. The right to live safely with family should apply to child refugees just as it does to adults”

*House of Commons, Home Affairs Committee (2016)*¹⁷⁹

Although the UK's obligations under the Convention on the Rights of the Child have not been directly incorporated into UK law, s. 55 of the Borders, Citizenship and Immigration Act 2009 requires decision-makers in matters concerning immigration to have regard to “the need to safeguard and promote the welfare of children who are in the [UK]”. Further, the best interests of the child principle is explicitly described as being “the primary consideration” in immigration decisions concerning children in the relevant statutory guidance.¹⁸⁰

The best interests of the child principle has been considered in numerous decisions of the courts, especially in determining whether interference with the right to family life under Article 8 ECHR was proportionate in the face of competing public interest considerations. In particular, in *ZH (Tanzania)* (a case concerning a challenge to the deportation of a child's parent) the child's best interests in maintaining family life in the UK was held to constitute “a primary consideration” such that it had to be assessed before any other factors were considered.¹⁸¹ Subsequently, in *Zoumbas* (another case relating to the proposed deportation of a parent), the UK Supreme Court went further in delineating the role of the best interests of the child principle in Article 8 claims; it observed that although as recognized in *ZH (Tanzania)*, the best interests of a child can in principle be

outweighed by the cumulative effect of other considerations, no other consideration can be treated as being “inherently more significant”.¹⁸²

Specifically in the context of cases concerning applications for family reunion, in *AT and Another*, the Immigration and Asylum Chamber of the Upper Tribunal, having made reference to the case law of the ECtHR, concluded that, given the need to guarantee adequate protection to a child refugee, the best interests principle weighed heavily in favour of permitting family reunification in the UK.¹⁸³

Some of the views expressed in *AT and Another* were subsequently criticised by the same Chamber in the later decision in *KF and Others*.¹⁸⁴ Despite reaching a similar conclusion in favour of permitting family reunion in the UK in the particular case, a number of the statements of principle in *KF and Others* are disappointing. In particular, while in *AT and Another* reference was made to the right to family life of both the sponsor and the appellant family members,¹⁸⁵ in *KF and Others* the Upper Tribunal expressly held that the duty of the UK to respect the rights under Article 8 ECHR extends only to the sponsor, as they are the only person involved who falls within the UK's jurisdiction.¹⁸⁶ This was held to be the case even when the applicant family members are minors, as the Tribunal considered that their situation was “at best of attenuated relevance”.¹⁸⁷ This is regrettable, in particular given that the above-mentioned guidance to the UK Border Agency on section 55 of the Borders, Citizenship and Immigration Act 2009 recognizes that, although the statutory duty in section 55 of the 2009 Act does not apply in relation to children who are outside the United Kingdom,

UK Border Agency staff working overseas must adhere to the spirit of the duty and make enquiries when they have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention.¹⁸⁸



A further aspect of the decision that is worthy of mention is the fact that, in contrast to *AT and Another*, in *KF and Others* the sponsor had turned 18 before the appeal, although he had still been a minor at the time of the submission of the RFR applications. In the view of the sponsor, his “ageing out” had been due to delays in the determination of his asylum claim, which was also the reason for the submission of a formal complaint by his solicitor – a complaint which had been upheld by the Home Secretary.¹⁸⁹ The Upper Tribunal acknowledged that without such delays the sponsor might still have been a minor by the time of his appeal and hence could have relied on the best interests of the child principle and recognized that this was a potentially relevant factor.¹⁹⁰ Nevertheless, the decision is disappointing insofar as the impact of the delay, and the associated loss of the right to rely on the best interests principle, were to a large extent minimized, with the Upper Tribunal expressing the view that it was a matter which did not have a “significant impact” on its overall assessment.¹⁹¹ In this regard, the decision has been criticised on the basis that it “makes no criticism of the delay, offers no encouragement to the Home Office to

decide the claims of children seeking international protection before they turn 18, [and does not] incentivise the department to address factors contributing to the delay”.¹⁹² As such, “[t]he Home Office may well use it to downplay both the rights of the child and the effect of delay in reaching a conclusion under Article 8”.¹⁹³

One last point that is worth mentioning is that the Upper Tribunal, in assessing the proportionality of the interference with the right to family life under Article 8, considered that the very fact of not meeting the eligibility requirements for RFR under the Immigration Rules constituted an adverse factor to be taken into account in the assessment of whether there has been an infringement of the right to family life under Article 8.¹⁹⁴ Since not meeting the requirements of the Rules constitutes per se a reason for refusal of an entry visa under Part 11, it seems redundant – to say the least – to include this among the reasons relevant to whether to grant LOTR for the purposes of family reunion.¹⁹⁵ This latter aspect is all the more significant given that child refugees in the UK are prevented from sponsoring RFR, otherwise than through a grant of LOTR.

The “anchor child” myth

In its recent response to a request by the ICIIBI to clarify its position on the issue of child sponsors, the Home Office reiterated its concern that

“allowing children to sponsor parents would risk creating incentives for more children to be encouraged, or even forced, to leave their family and attempt hazardous journeys to the UK. This would play into the hands of criminal gangs, undermining our safeguarding responsibilities”.¹⁹⁶

This statement is illustrative of the so-called “anchor child” argument which has been consistently relied upon by the UK Government as the main justification for not allowing minors to act as sponsor for family reunification.

The issue of “anchor children” has also been the subject of debate in the EU, with a call for information issued by the EU Parliament in 2012,¹⁹⁷ and another, specifically as to the existence of the phenomenon within the Dublin system, in 2017.

Whilst some European countries claim to have noticed a certain trend in this sense, particularly at the peak of the refugee crisis in 2015-2017, the overwhelming majority have stated that they have not witnessed any consistent pattern.¹⁹⁸ Similarly, in 2016, a report by the European Committee of the House of Lords on the situation of unaccompanied asylum seeking children in Europe in the context of the refugee crisis categorically concluded that there was no evidence provided by other EU Member States that children had been exploited by being sent ahead to act as “anchors” for other family members.¹⁹⁹

In 2019, in an effort to counter the “anchor child” argument against allowing children to act as sponsors, the UNHCR conducted research into the reasons unaccompanied children came to the UK.²⁰⁰ The research examined the reasons why young people had left their countries of origin, as well as how they had ended up in their countries of final

destination, and concluded that many of the children did not set out with an idea of coming specifically to the UK, but rather of escaping their existing situation. The fact that they had eventually arrived in the UK was influenced by a variety of factors, including the presence of family members, peers, experiences along the route, and pressure from smugglers.²⁰¹ In addition, a significant number of the children interviewed had no desire for – or possibility of – family reunification, but for those who did, the possibility of being reunited with their family was very important for their well-being and integration into the UK.²⁰²

In the face of such overwhelming evidence as to the non-existence of the “anchor child” phenomenon, the Home Office’s continued position that the choice of not allowing children to sponsor their family members is “not designed to keep child refugees apart from their parents” and instead is dictated by considerations relating to the need “to avoid putting more people unnecessarily into harm’s way”²⁰³ appears increasingly weak and difficult to sustain.



Child sponsors: A comparative look at Europe



Across Europe, the overwhelming majority of States allow unaccompanied refugee children to sponsor family reunification with, at the very least, their parents, and, in most cases, certain other adult relatives.²⁰⁴

For most EU Member States, that approach is dictated by the Family Reunification Directive, which imposes obligations to “authorise the entry and residence for the purposes of family reunification of [...] first-degree relatives in the direct ascending line” of minor refugees who are found within the territory of the Member State in question.²⁰⁵ The Family Reunification Directive also requires that, in these cases, reunification has to operate with no consideration of whether the relatives are dependent on the unaccompanied minor and whether they enjoy proper family support in the country of origin.²⁰⁶ The same provision gives Member States the discretion to “authorise the entry and residence for the purposes of family reunification of [the unaccompanied minor’s] legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced”.²⁰⁷

Until recently, most EU States had implemented only the minimum requirements of the Family Reunification Directive and allowed unaccompanied minors to sponsor

only their parents.²⁰⁸ This trend has, however, changed somewhat in recent years in response to the refugee crisis and the large number of unaccompanied minors left alone in war zones or stranded in refugee camps: a number of States have gone beyond what is strictly required by the Directive and now allow refugee minors to act as sponsors for applications by their parents’ dependent children.²⁰⁹ This recent approach is a recognition of the fact that making no provision to permit applications for reunification with minor siblings whilst at the same time allowing applications in respect of parents may lead to incredibly distressing circumstances in which parents are faced with the decision of leaving some of their children in one country in order to join children in another.

Only two EU Member States, Ireland and Denmark, have opted out of the Family Reunification Directive. However, both of those States nevertheless allow unaccompanied children to sponsor family reunification with their parents. In Ireland, refugees who are under 18 and not married can sponsor both their parents and their parents’ children.²¹⁰ In Denmark, parents abroad can be reunited with their unmarried minor children if denying family reunification would constitute a breach of Denmark’s international obligations; admission is granted automatically to parents of unaccompanied minors who are younger than 15, and on a case-by-case basis to parents of minors aged between 15 and 18.²¹¹

Hence, even prior to Brexit, the UK was the only EU Member State in which unaccompanied refugee minors were prevented from sponsoring family reunification. The only other country in Europe which currently adopts a similar position is Switzerland.²¹²

3.2.3 Quality and accessibility of the law

[The Immigration Rules] impact on millions of people each year. Yet it is widely acknowledged that the Rules have become overly complex and unworkable. They have quadrupled in length in the last ten years. They have been comprehensively criticised for being poorly drafted, including by senior judges. Their structure is confusing and numbering inconsistent. Provisions overlap with identical or near identical wording. The drafting style, often including multiple cross-references, can be impenetrable. The frequency of change fuels complexity.²¹³

Law Commission, Simplification of the Immigration Rules (2019)

In its response to the scathing criticism by the Law Commission, the Government committed to a wholesale revision of the Immigration Rules in accordance with the principles identified in the

Law Commission's report, namely suitability for the non-expert user, comprehensiveness, accuracy, clarity and accessibility, consistency, durability (defined as "a resilient structure that accommodates amendments"), and capacity for presentation in a digital form.²¹⁴

The Government committed to the revised Immigration Rules being in force by early 2021 and, in line with the recommendation of the Law Commission, set up a dedicated committee, the Simplification of the Immigration Rules Review Committee, mandated to consider "the simplicity, accessibility and coherence of the Rules". The Committee is composed of representatives of interested government entities (notably, the Home Office), and several external stakeholders, including the Law Societies of England and Wales, Scotland, and Northern Ireland; the Bar Council of England and Wales, the Faculty of Advocates (Scotland), and the Bar of Northern Ireland, the Immigration Law Practitioners Association (ILPA), the UK Council for International Student Affairs, Coram Children's Legal Centre and the Citizens Advice Bureau.²¹⁵ At the time of writing, the review had not yet been completed.



3.3 A legal framework in need of reform

The preceding sections clearly illustrate that there is a strong need for a formal overhaul and rationalisation of the complex network of legal rules around refugee family reunification. This is acknowledged by a wide range of stakeholders, from the sponsors themselves, through legal practitioners, to the Law Commission, the ICIBI, and the Government. Nevertheless, the main issues that need addressing concern the substance of the regime, to ensure that it is in line with the UK's international obligations and international best practice.

The most striking flaw of the current system is that unaccompanied refugee children are not allowed to act as sponsors in the RFR process and that family reunification for unaccompanied minors is only possible through a grant of LOTR. In this regard, as also recommended by the UNHCR, it is essential that the Immigration Rules are amended to introduce "a routine rather than exceptional procedure" allowing children to act as sponsors for RFR.²¹⁶

Indeed, there is nothing "exceptional" or "compassionate" about the fact that a child who is alone in a foreign country should be allowed to be reunited with his or her parents or another adult who is able to care for them. The Government's argument that children risk being sent in advance as "anchors" for their family is not supported by the available evidence and the experience of other European countries. Quite apart from the obvious observation that it is vital for the well-being and integration of minor refugees that they be reunited with their family, the UK's approach to this matter is at odds with its international commitments and inconsistent with the approach of other European states.

A second major issue of the current legal framework is the restrictive approach to the notion of family adopted by Part 11 of the Immigration Rules. The category of family members who are eligible to apply for RFR should be expanded to include, as a minimum, adult dependent children and minor siblings of a refugee or beneficiary of international protection, as well as, ideally, their dependent parents.

Such additions, although necessary, would not however address the full range of situations which may arise in refugee families, or – indeed – any

family. Family life is a matter of fact, not law or biology, and a system which is genuinely focused on protecting and promoting human rights should take this into account. In that regard, the ideal course of action would be the addition to the list of eligible applicants in Part 11 of a flexible residual category, informed by a broad notion of dependence. By providing a clear route for application by dependent family members who do not fall within one of the named categories, the inclusion of such a residual category would address one of the main concerns of practitioners, who at present can only submit an application by "forcing" the boundaries of provisions or procedures designed for other situations. In addition, the new category should ideally clearly set out the criteria by which the merit of applications by dependent family members other than those expressly listed should be assessed, thereby providing clear standards, whilst at the same time allowing Home Office decision-makers to take into account the specific circumstances of individual cases. Those modifications to the Immigration Rules are much needed and should be implemented as a matter of priority, particularly in light of the withdrawal of the UK from the EU and the Dublin system and the closure of one important avenue for the reunification of refugee families.





3.4 Main findings and recommendations

Main findings

- The legal framework regulating RFR and other legal routes through which refugees can be reunited with family members in the UK is unnecessarily complex, difficult to navigate and at points internally inconsistent.
- The fact that unaccompanied refugee children are unable to act as sponsors for their immediate family members is inconsistent with the UK's international obligations, particularly those deriving from the Convention on the Rights of the Child, and is not in line with the practice of other European States.
- The list of family members of a refugee who are eligible to apply for RFR is overly restrictive and does not reflect the realities of many refugee families, nor non-Western, non-European models of the family.
- The residual possibility for those family members who do not fall within the narrow eligibility criteria for RFR of applying for leave "outside the Immigration Rules" is not a satisfactory solution for applications involving complex and non-standard situations.
- There is at present no clear route in the Immigration Rules for post-flight minor children who seek to come to the UK alone to be reunited with a refugee parent.
- The framework relating to family reunification for adopted children is particularly unclear and the different treatment of de facto and de jure adopted children does not take into account the realities of many refugee families.

Recommendations

- **Recognise explicitly that RFR is a protection rather than an immigration matter and ensure that all processes relating to RFR reflect this.**
- **Simplify and rationalise the Immigration Rules governing RFR and Family Member visa applications to ensure that they are accessible and understandable.**
- **Amend the Immigration Rules to give unaccompanied refugee children in the UK the right to sponsor their parents and minor siblings to join them, as required by the UK's international obligations.**
- **Expand the categories of who qualifies as a family member for the purpose of RFR to allow refugees in the UK to sponsor their adult children and siblings under the age of 25, and dependent parents.**
- **Ensure that applications for dependent family members who are currently not expressly eligible for RFR are brought "within the Immigration Rules" by adding a flexible and open-ended category based on a broad notion of dependency to the existing categories of family members eligible for RFR.**
- **Amend the Immigration Rules to create a clear route for post-flight minor children coming to the UK on their own to be reunited with a refugee parent.**
- **Amend the Immigration Rules to provide for a clear, consistent and fair route for applications by both de jure and de facto adopted children of a refugee.**



4 The application process and decision-making

This chapter examines the practicalities of making a RFR application and the decision-making process.

Section 4.1 sets out the main issues with the current application system and decision-making process which have been identified in the literature, by independent observers, and which have emerged from interviews with sponsors and service providers. Section 4.2 then examines recent changes and developments in the relevant Home Office structures and processes, including the so-called “onshoring” of decision-making on visa applications and the largely un-trumpeted shift to treating RFR applications as matters involving questions of protection, rather than a strictly immigration matter. Section 4.3 seeks to identify the root causes of many of the problems with the current RFR process and discusses the recent debate on the eradication of the “culture of disbelief” from the UK asylum system and other areas.

Entry application form, with no adaptation made for the fact that it would be used by refugees and with no adjustments for the peculiarities of RFR applications.²¹⁹ Much of the information requested was not set out in a way relevant for RFR applications and certain details such as dates of birth and addresses had to be inputted on multiple occasions at different points in the process. The Visa4UK website also contained a number of substantive errors which, despite the system being operational for several years, had not been addressed by the Home Office.²²⁰ The online application process was felt to be intimidating for sponsors who did not understand the system, and was a source of frustration for caseworkers and legal professionals.

In November 2018, the online application system for all visas started to migrate to a new portal on the UKVI website.²²¹ The Visa4UK portal remained open for certain countries, notably Cuba, Iran, the Occupied Palestinian Territories and Sudan, until late 2020. The migration process was completed by early 2021, and all visa applications, including applications for RFR, must now be submitted through the UKVI online visa application system.

4.1 Main issues with the application process and decision-making

4.1.1 Navigating the online application system

Since 2014, all applications for RFR must be submitted through an online application system. When the research for the present report began in late 2018, the online application system was hosted on the Visa4UK website.²¹⁷ During the initial interviews, that system came in for a huge amount of criticism from virtually every caseworker and sponsor interviewed, with one organisation going as far as to say that they had a standard complaint about the online system that they included at the beginning of every application they entered.²¹⁸ The main criticism concerned the fact that the online application form that refugees had to navigate when applying for RFR was a standard Family

Unfortunately, no prior announcements about the migration of the online application system to the new UKVI portal were made to those working in the sector. Several of the organisations interviewed stated that they had only found out about the move to the new system “by accident” or through word-of-mouth from other organisations or practitioners, sometimes several months after the new online system had become operational.²²²

Caseworkers agree that there are several benefits of the new online application system, first and most importantly the fact that there is now a dedicated form for RFR applications. The major advantage of the new RFR form is that information only needs to be entered once and it is then automatically duplicated in the relevant sections, thereby reducing the risk of errors/typos in entering dates and spellings of names, an issue that seems to increase the chances of rejection of the application.



A further feature of the new system is the “self-service” function which allows users to upload directly to the system electronic copies of documents and other supporting evidence, thus avoiding the expense and time needed to courier hard copy bundles of documents to the relevant Decision Making Centre (DMC) and the previous accompanying risk that original documents might be lost in transit.

In its report on the simplification of the Immigration Rules, the Law Commission noted that a number of respondents to the consultation had expressed the view that, where there are no technical issues and the system worked as intended, the new UKVI system offers a simpler and more efficient way to make applications compared with the previous Visa4UK system.²²³

Despite the fact that the new online application system is in many respects an improvement on the previous one, the caseworkers interviewed report that glitches in the programming of the website and navigation errors are still far too frequent and that the new system “isn’t as clever as it looks”. A number of interviewees noted that, whilst some of the problematic issues of the Visa4UK system have been addressed, it appears that new ones have been introduced.

Complaints around the new system include that the application form for RFR is not easy to locate, and that it still includes several questions which are not relevant to RFR cases. Other interviewees noted that the lack of integration of the process relating to the Immigration Health Surcharge (IHS) into the application system creates an additional, and unnecessary, layer of complication. Other practical problems identified by users include the need in certain circumstances to input dummy answers in order to move through the application form²²⁴ and the inability to print out the form before filling it in so as to discuss with and reassure the client before beginning the process.²²⁵

By far the most criticised features of the new system, however, are the poor functionality of the “self-service” document upload function and the system for booking appointments, both of which concern the websites of the private companies (“commercial partners”, in Home Office parlance) which now run Visa Application Centres (VACs) overseas.

Once the online RFR application form has been completed and submitted through the UKVI portal, users are re-directed to the website of the relevant

commercial partner, where they have the option to upload documentary evidence and through which they can book an appointment for the applicant to submit biometrics (and any further documents) at the VAC in the country where they live (or in a nearby country, if no VAC exists in the applicant’s country of residence).

With regard to the document upload function, in principle, the system gives the sponsor, their legal representative or caseworker more control over the condition and the order in which the documents are presented to the decision-maker. The system also gives instructions on what types of documents and supporting materials can be submitted as evidence and how. However, most users interviewed commented the document upload function is unnecessarily complex, not user-friendly and overly time-consuming. The fact that users are not able to review the content of what has been uploaded may result in the same piece of evidence being uploaded more than once, or incorrect documents being uploaded and then submitted in error. The frustration of caseworkers with the poor functioning of the document upload function was evident throughout the interviews, with interviewees commenting that the software “is not fit for purpose”, does not appear to be set up to take the high volume of documents that need to be uploaded and that dealing with the upload function has become a “major time waster” for caseworkers.

The second common complaint of those interviewed concerns the difficulties encountered by users in booking appointments for applicants at the relevant VAC. Caseworkers have been particularly critical of the way in which the websites of Home Office “commercial partners” are designed. In particular, users report that it is often very difficult, even for those with prior experience of similar systems, to work out how to book the free appointments to which RFR applicants are entitled, as the relevant webpages guide the users towards paying for premium services wherever possible.²²⁶



“Booking appointments, it’s like a lottery, you just have to sit there and wait for something to come up. I often ask clients to do it themselves, because it’s so laborious, but quite often they will pick a priority appointment and end up being asked to pay for it, and then you have to go back to the beginning to start again. I think the process has become a lot more time consuming.”

(Solicitor, Law Centre, 6 April 2020)

The fact that there is now a dedicated form for RFR applications undoubtedly constitutes a great improvement on the previous system. While the actual application form has been made simpler to complete and less prone to inducing errors, the online system remains virtually impossible for most refugees to navigate on their own, and the technical issues highlighted above take up much-needed time for caseworkers. Whilst none of the technical problems of the new online application system is insurmountable, the actual process of applying for RFR remains complex and time consuming.

On a more general level, the progressive digitalisation of the system raises serious questions about exclusion and accessibility. Quite apart from any specific technical issues, an online application system is – almost by definition – exclusionary of various groups, including those who have limited access to technology (particularly in countries where its use may not be as prevalent as it is in the UK), those with limited knowledge of the English language, and the elderly.²²⁷

4.1.2 Evidentiary matters

Although there is no requirement in Part 11 of the Immigration Rules as to specific evidence to be submitted in support of a RFR application, the applicant and their sponsor are required to provide sufficient evidence to establish that they are related or in a relationship as claimed and, in the case of spouses or partners, that their relationship is a genuine and subsisting one.

The standard of proof to be applied when assessing a RFR is the civil law “balance of probabilities” standard.²²⁸ The Home Office Guidance emphasises that caseworkers “must be mindful of the difficulties that people may face in providing documentary evidence of their relationship or the fact that it is subsisting”, as “[t]hose fleeing conflict

zones or dangerous situations may not have time to collect supporting documents and may not realise they would be required”.²²⁹

In contrast to the reasonable approach advocated in the guidance, however, both sponsors and service providers identified the unnecessarily stringent evidentiary requirements applied in practice by Home Office decision-makers as a major factor giving rise to difficulties with submission and leading to unjustified rejections of applications. An asserted lack or insufficiency of acceptable evidence was the most common reason for rejection mentioned by the practitioners and sponsors interviewed.

Practitioners and sponsors alike lament the UK-centric and culturally insensitive approach of caseworkers to evidentiary matters, whether that involves assuming a functioning level of bureaucracy in a country like Somalia or Syria, or completely ignoring the risks which may be involved in contacting relatives remaining behind, let alone the practicalities of fleeing a country in haste, and not stopping to collect the necessary documents.

“Evidence is the main problem – the Home Office expects you to have all the same things as though you were born here. They expect a birth certificate, passport, school records. Some people don’t know where they were born, or they just don’t go to school. They want proof of you sending money, but this is expensive and can be dangerous, so I send money with friends when I know they are travelling. Also, if you don’t have any documents you can’t pick up money from Western Union. You have to prove evidence of contact – Viber, WhatsApp – screenshots of all this and phone bills. I’ve seen lots of people doing family reunification and the main problem is always evidence. The Home Office asks you for evidence as if you were a European – they just don’t understand.”

(Sponsor, June 2019)

For some applicants, gathering evidence can be particularly hard. People who are already seen as stateless in the countries from which they are fleeing may not be in possession of any form of State-issued identification. For instance, Kurds who have fled the civil war in Syria often find themselves in this situation.²³⁰

The human cost of poor decision-making: BZ's story

BZ is a Kurd from Syria. He and his wife and three children were separated during fighting at the beginning of the Syrian war. In 2015, he fled to the UK. As soon as his refugee status was recognized, BZ travelled to Turkish Kurdistan to find his family, who were in a refugee camp. He hadn't seen them for three years, and when he had made sure that they were safe, and rented somewhere for them to live, he returned to the UK to begin the Family Reunion Process. After obtaining DNA test results for his children, BZ returned to Kurdistan to escort his wife and children to their appointment at the visa centre in Erbil, fearing it was not safe for them to travel alone. When they arrived at the visa centre, they were not allowed to enter because they had no



In the experience of both service providers and sponsors, birth certificates are a particularly problematic piece of evidence. In many cases, whether because of the security situation, because of State breakdown, or because of people living as unregistered refugees in other countries when they give birth, children are not issued with birth certificates. For instance, in the case of South Sudan, when the nation initially separated from Sudan in 2014 there was no national system in place for the free registration of births.²³¹ In addition, and quite apart from the situation of those living in war-torn areas, there are some countries where birth certificates are not routinely issued at birth, or are only issued if a child is delivered in a hospital. In these cases, birth certificates might only be issued on request when a child applies for school, needs a travel document, or, indeed, when the certificate is needed in order to support a family reunion application.

documents. As Kurds living in Syria, they had never been issued with identity documents.

BZ returned to the UK, where his solicitor told him he would have to find identity papers. Eventually, he paid a cousin to enter Syria on the family's behalf to try to obtain identity papers for them. Tragically, his cousin was captured and killed. BZ travelled again to Kurdistan, desperate to bring his family to the UK, and after several months he managed to obtain refugee documentation for them, and they were able to resubmit their RFR applications. Three months later the application was rejected because BZ on the basis that BZ did not earn enough to maintain his family. This was clearly the result of an error on the part of the decision-maker, and BZ's solicitor appealed the decision. On 29 May 2019, BZ travelled 200 miles to Newcastle for the appeal, sleeping in the bus station to be sure that he would be there on time in the morning. When he arrived at the court the following morning, he found out that the case had been rescheduled.

At the rescheduled hearing, which took place in August 2020, the appeal was allowed. BZ's wife and children arrived in the United Kingdom later that year, after a brutal separation which had lasted over five years.

In such cases, the Home Office Guidance expressly recommends that further guidance should be sought in the relevant Country of Origin Information report, which may contain an indication as to the practice in the relevant country in relation to registration of births.²³² However, the experience of both sponsors and service providers is that the relevant information in the Country of Origin Information report is only very rarely, if ever, taken into consideration by decision-makers when deciding whether the evidence provided is sufficient to support the application. In particular, post-dated birth certificates which are issued at the request of the parent in order to be submitted as evidence of relationship are very frequently rejected as being unreliable or even forged because they are of recent date.²³³

Supplying proof of a subsisting relationship with one's spouse can also be very difficult for refugees. When a family member has fled an immediate



threat to their life posed by the national authorities or private actors, it is likely that the rest of their family may have gone into hiding, such that it is simply not safe to communicate with them. By the time the sponsor has made their way to the UK, claimed and received a grant of asylum and started the process of family reunification, many months or possibly years may have passed from the last time they saw their spouse.

In addition, for many, the process of seeking asylum takes months or even years and is a painful and difficult experience, which leaves them emotionally scarred and mentally drained. As a consequence, the process may have an impact on the frequency and the manner in which asylum seekers maintain contact with their family members abroad. One of the interviewees, who had joined her husband as an applicant, described how she had lost touch with her husband for many months during the two years in which he was seeking asylum, how they had never spoken about that time, and how she worried that their relationship would never be the same.

Caseworkers and practitioners report that when refugees get in touch to ask for help with their RFR application, they generally have no idea of the type of evidence which they will be required to submit in order to prove that they have a genuine and subsisting relationship with their spouse or partner. This means that often there are huge gaps in the supporting evidence, with months, and at times years, without a single piece of evidence of communication.

“The real problem is the culture of disbelief. Refugees don't know about it so they don't understand that you need to put in records of your WhatsApp chats for the last six months. They don't understand why they have to obtain a document from what might be a corrupt, repressive regime, and then the Home Office won't even believe it's a genuine form.”

(Solicitor, 19 January 2019)

Despite the Home Office Guidance being relatively clear on this point, many of the interviews with sponsors and caseworkers point to instances where the guidance was ignored, and applications were rejected out of hand because of a lack of evidence of a subsisting relationship. This was the case even when the statements/representations accompanying the application explained at length the reasons why it had not been possible to

provide evidence of continued communications or explained the reasons why communication was interrupted during certain periods.

In addition to the issues encountered by refugees in producing evidence to substantiate those requirements which are expressly provided for under the Immigration Rules, another issue concerns the incorrect application of the Immigration Rules by Home Office caseworkers. One area in which this is evident is the insistence by caseworkers that the application needs to evidence an ongoing relationship between parent and child. Although this test is appropriate for a relationship between adult partners, there is no such requirement for the relationship between a parent and their minor child. Despite this, several of the service providers interviewed reported having applications rejected on that basis on numerous occasions.²³⁴

DNA Evidence

DNA evidence is a particularly controversial issue for both sponsors and service providers. Applicants are in principle not required to provide DNA evidence in support of their RFR application. The Home Office's DNA Policy Guidance states clearly that “where applicants choose not to volunteer DNA evidence, no negative inferences can be drawn from this”.²³⁵

In some circumstances, however, a DNA test may be the only way to prove the parental relationship between the sponsor and their child. This is particularly the case when an application is not accompanied by a birth certificate or the birth certificate has been issued several years after the birth of the child. DNA evidence proving their relation to a common child may be useful also to prove the existence of a family relationship between the sponsor and their partner when documentary evidence relating to their marriage has been lost, was never issued, or simply does not exist, as is the case for many customary marriages.

Up until 2014, the Home Office commissioned and funded DNA testing for those RFR cases in which doubts existed as to the parental relationship between the sponsor and the applicant. In June 2014, as



part of a more general cost-cutting exercise and with the stated aim of bringing RFR applications in line with other immigration applications, the Home Office stopped that funding.

The detrimental impact of these changes upon the family reunification process has been highlighted by the ICIBI, who noted that the effect of the change in question

[...] has been to delay issuing entry clearance to applicants who qualify for Family Reunion. Prior to June 2014, ECOs were able to commission DNA tests and did so routinely for applications, including minors, that did not provide sufficient documentary evidence in support of the claimed relationship. Testing was often used with Somali and Eritrean nationals, for example. Since 2013, refusal rates for Somali and Eritrean applicants have doubled, and while other factors may have played a part, it is reasonable to assume that the change to DNA testing has been a major cause.²³⁶

Service providers likewise report that refusals justified on the basis of a lack of evidence of parental relationship increased markedly since the responsibility for bearing the cost of DNA testing shifted from the Home Office to sponsors/applicants.

Admittedly, in accordance with the guidance, the failure to submit DNA evidence cannot as such be regarded as a ground for rejection of an application for RFR. Anecdotally at least, however, it remains the case that in cases where documentary evidence of familial relationship is lacking or weak, the approach of Home Office decision-makers is such that, without corroborating DNA evidence, such applications are likely to be rejected. Unfortunately, clear statistical evidence in this regard is lacking, as the incidence of submission of DNA evidence is not recorded by the Home Office in a way that makes it possible to assess how

relevant DNA evidence is to the rejection or acceptance of applications.

DNA tests usually cost in excess of £400 for the sponsor to prove a single relationship; the cost increases with each additional test required. Even when EFC is obtained, the sum allowed in respect of disbursements for an initial RFR application barely covers the cost of a DNA test in respect of one child. Following the change of the rules on the commissioning of DNA tests in 2014, some refugee charities have negotiated agreements with DNA testing providers which guarantee a significantly discounted rate for clients referred by the charity.²³⁷ For most refugees, however, even this discounted price constitutes a significant expense at a time of extreme financial vulnerability.

This leaves many refugees in a situation where they have to choose between paying for a DNA test up-front, in the hope of securing a quick and positive outcome for their application, or taking a gamble on the fact that the documentary evidence submitted will be adjudged to be sufficient, thereby risking delays in the arrival of their family and possibly having to pay a solicitor an additional fee for resubmission of the application.

There was unanimous consensus amongst the service providers and practitioners interviewed that the financial burden relating to DNA evidence should be borne by the Home Office, rather than by financially vulnerable applicants, or the charity sector. The ICIBI's opinion on this point remains resolute:



If there is one clinching piece of evidence that will decide whether or not that child is related to that adult, and the Home Office want that piece of evidence, then the Home Office should not only facilitate it, but pay for it."

(ICIBI, 24 July 2020)

At present, however, the burden of providing and paying for DNA evidence still remains



upon the sponsor and the applicant; the Home Office has recently reiterated its position that it “cannot mandate applicants to provide DNA evidence to prove a family relationship and is not responsible for meeting the costs of DNA tests”.²³⁸

A further challenge results from the introduction by the Home Office in March 2020 of a new requirement in its policy on DNA tests, according to which photographic identification must be produced and a copy taken during sample collection. If this is not done, there is a chance that the DNA evidence may be rejected.²³⁹ This potentially constitutes a significant obstacle, particularly for those applicants who do not possess passports or national ID cards, and are unable to obtain them.²⁴⁰

4.1.3 The quality of decisions

Concerns around the transparency, quality and predictability of the Home Office decision-making process have been raised by independent observers and emerge clearly from interviews with practitioners and service providers.

In his 2016 report, the ICIBI noted that

[...] a significant number [of refusal notices] did not use plain English, used irrelevant or incorrect ‘cut and paste’ paragraphs from other notices, or failed to acknowledge positive evidence provided by the applicant, and were therefore not balanced or helpful in terms of understanding why the application had been refused or what more evidence might be required to support any reapplication.²⁴¹

Inconsistency in decision-making and the poor quality of refusal decisions were regularly flagged as an issue by interviewees, with one solicitor commenting that sometimes reasons for rejection “verge on the absurd”. One organisation reported how the Home Office caseworker had photocopied the documents submitted in support of the application, returned the originals rather than the copies and then rejected the application because the evidence provided was insufficiently legible. Another organisation reported supporting

a family where the application for the refugee’s spouse had been granted, but those of their three children were rejected, as two of the children were adopted and one had been judged by the Home Office caseworker to be over eighteen. The partner had come over to the UK and the children had stayed behind whilst the refusal decision was appealed. Because the case had taken so long to come to court, upon appeal the Home Office tried to argue that the family had lost its cohesion due to the fact of having been split up. Both cases were subsequently overturned on appeal. A further organisation reported that a case had been refused because the decision-maker “did not appear to know the difference between Kenya and Sudan.”

“For the application, I had to pay £500 – by mistake the Home Office refused me because on “who are you going to live with” there is no option for “father”, so I put “other relative”. And then the Home Office said you’re not the father because you put “other”. So I am applying again – my solicitor says it’s quicker and cheaper [than appealing]. I have to pay the solicitor an extra £200 and we will send the DNA tests again and send them a screenshot of the website.”

(Sponsor, 14 June 2020)

All of the service providers interviewed had experience of similarly flawed decisions being overturned on appeal on a regular basis. Appealing a rejection can take between 9 and 12 months as well as incurring significant additional costs for sponsors, and leaving applicants living in situations which are often unsatisfactory and sometimes dangerous. In many cases, advisers stated that, if they disagree with a reason for rejection, they will often simply resubmit the same application based on the fact that the decision-making process is so arbitrary that an identical application may succeed if assessed by a different caseworker, or simply by the same caseworker on a different day. One sponsor explained how his legal adviser had re-submitted his application with a screenshot demonstrating the Home Office’s error at an additional cost to the sponsor of £200. The second application was successful, but this case was particularly



concerning as the sponsor's daughter was approaching eighteen at the time, at which point she would have been deemed ineligible and would have had to rely on the use of exceptional and compassionate circumstances. It is of course possible that caseworkers remember only the difficult cases, the ones that took most work or were most distressing, rather than the run-of-the-mill cases that were granted without incident. Nevertheless, there was a consistent number of stories of cases which had been refused for no apparent reason, most of which were then overturned, and leave granted, on appeal.

As discussed further below, one of the main obstacles when trying to provide an objective assessment of the quality of the Home Office decision-making relating to RFR is the lack of published data in respect of refusals of RFR applications, and numbers of grants of LOTR, re-submissions or appeals which is clearly disaggregated. Until the Home Office publishes such data, it will remain difficult to get a clear idea of the number of refusals of poor quality, which are either subsequently overturned on appeal, or are granted upon re-application.

4.1.4 Dealing with complex and non-standard applications

Whilst the issue of the poor quality of decisions on RFR applications appears to arise even with regard to relatively straightforward cases, the caseworkers and practitioners interviewed, as well as independent observers, are particularly critical of the poor quality of decisions concerning complex and non-standard applications.

As discussed in section 3.1.3, where an application for RFR does not meet the requirements of the Immigration Rules, the Home Office decision-maker should consider whether there are exceptional circumstances or compassionate factors which warrant a grant of LOTR. Such consideration should be undertaken by the decision-maker proprio motu on the basis of the evidence provided, without the need for the applicant to expressly request that leave be granted outside the Rules.

However, virtually all those interviewed have criticised the inconsistent approach of Home Office decision-makers to determination of the existence of exceptional circumstances or compassionate factors. Indeed, the default position of the practitioners and caseworkers interviewed appeared to be that they made initial

RFR applications in complex cases in the full expectation that they would need to take them to appeal.

This perception of those working in the sector is confirmed by the ICIBI. In his first inspection of the RFR system, the ICIBI was particularly critical of the way in which ECOs dealt with cases potentially implicating exceptional circumstances and compassionate factors²⁴² and recommended that the Home Office should issue "clear guidance and ensure consistent application by decision makers of 'exceptional circumstances' or 'compassionate factors'".²⁴³

In response to the criticism by the ICIBI, in July 2016 the Home Office updated the guidance on Family Reunion to clarify the required approach.²⁴⁴ In his reports on the 2017 and 2018 re-inspections of RFR, the ICIBI found that the updated guidance "had had some effect" and that caseworkers were "alive to and considering" exceptional circumstances and compassionate factors.²⁴⁵ However, he also noted that

Accepting that applying essentially subjective judgements to complicated family situations is an inherently difficult business, it is important that the Home Office does what it can, including perhaps seeking expert advice when assessing the vulnerability of applicants who fall outside the Immigration Rules, to ensure that its decisions are informed and sound.²⁴⁶

Despite that relatively positive assessment by the ICIBI, caseworkers and sponsors continue to experience real problems with complex and non-standard applications, particularly those involving dependent children over the age of 18, minor siblings and de facto adoptions.

"At ECO level, exceptional circumstances and compassionate factors are just ignored. Any form of human rights assessment is generally ignored – in an application where we were quoting that, [we] would ask that the case is reviewed by an Entry Clearance Manager before the decision is issued. Again, we haven't really seen a difference with onshoring."

(Solicitor, Law Centre, 12 March 2020)

In his most recent report on RFR, the ICIBI revisited the question of the use of exceptional



circumstances and compassionate factors by Home Office decision-makers.²⁴⁷ The ICIBI, whilst confirming the view expressed in his interim report that there appears to be a greater use and understanding of exceptional circumstances within the team of caseworkers based in Sheffield, found the updated guidance around the matter to be “dense and often opaque”²⁴⁸ and therefore inaccessible to sponsors and applicants. The report further commented that:

Stakeholders and others such as legal representatives, who regularly support family reunion sponsors and applicants may, through practice, be better able to navigate and interpret the guidance, and also to apply any learning from refusal notices, but without any sense of certainty.²⁴⁹

An example of inconsistency in the application of compassionate factors

MN fled from Syria leaving his wife, fifteen year-old son and twenty year-old daughter there.

As soon as he received refugee status, he started the Family Reunion process. On the first attempt his wife and son had their visas granted but his daughter’s application was rejected because she was over eighteen. MN and his wife were faced with a difficult decision about how to manage this situation. They were told that an appeal for his daughter would take up to nine months, but that his wife’s visa would expire in 28 days. They decided that his wife would remain in Syria with his daughter and his son would travel to the UK alone. They then re-submitted the application for his wife and daughter, which was accepted, and the family was reunited three months later. MN was astounded that the same application which had been rejected six months previously had been successful.

Several interviewees, both from organisations and sponsors, also mentioned the length of time that it took for applications to be decided. Several caseworkers have indicated that, as the onshoring process progressed, and more

applications were transferred to the team in Sheffield, the decision-making process was taking longer, and that “[i]t is very very common now for decisions to take longer than the published service standard of 12 weeks. Sometimes many months more”.²⁵⁰ If a refusal is appealed, the appeal decision can take up to twelve months. For this reason, and as a result of the additional costs involved in making an appeal, caseworkers often either resubmit the application without appealing the refusal decision, or in any case resubmit the application at the same time as appealing.

4.2 Positive developments and remaining issues

4.2.1 The onshoring of decision-making

As discussed in the previous sections, a common complaint from those working in the sector is that decisions on RFR applications are inconsistent and unpredictable and refusals are poorly motivated.

One obvious reason for this lack of consistency – albeit not a justification – was the fact that, until very recently, RFR applications were processed by entry clearance officers (ECOs) based at overseas visa centres (Decision Making Centres – “DMCs”). ECOs had little specialist training in asylum and protection matters and were expected to make decisions on a wide variety of visa applications, the vast majority of which were immigration decisions, with RFR being the only protection matter. In addition, ECOs were often not able to access the documentation relating to the sponsor’s asylum claim. Communication with overseas DMCs was extremely difficult, with sponsors and caseworkers in the UK reporting having serious difficulties trying to make contact with decision-makers.²⁵¹

Against this background, the “Network Consolidation Programme” undertaken by the Home Office in recent years appears to have resolved some of the issues with the efficiency of the decision-making process. The programme consists in the restructuring of the network of DMCs responsible for processing visa applications and the progressive transfer of most visa processing and decision-making activities to thematic teams in the UK (a process referred to as “onshoring” by the Home Office).²⁵² As already noted, the process also involved the outsourcing of the collection of biometric data of visa applicants and visa issuing to commercially-run Visa Applications Centres (VACs).



In the context of the onshoring process, starting from 2018, decision-making for RFR visa applications has been progressively transferred to a dedicated team of decision-makers within the Asylum Directorate, based in the DMC located in Sheffield.²⁵³ The onshoring process for RFR was completed in January 2021 and all applications are now processed by the Family Reunion team in Sheffield.²⁵⁴

In 2018, when the shift to Sheffield first began, the team of caseworkers dealing with RFR applications was relatively small, with only four posts at Executive Officer level, and a Senior Executive Office, with support from other specialist staff. As the workflow increased, the number of decision-makers rose to eight and, by June 2019, it was a 23-strong team. There is also an administrative team, based in Solihull, which support the work.²⁵⁵

The move of the decision-making process away from the hands of ECOs based at overseas DMCs was something that both campaigners and the ICIBI had long been asking for. The common view was that, although decision-makers located in the countries where the applicant family members live potentially have the advantage of local knowledge and, at least in theory, the possibility to interview applicants, it is preferable for decisions to be made by specialised decision-makers who have access to the sponsor's asylum interviews, and in a situation where there are quality assurance processes in place and the means to ensure uniformity of decision-making.²⁵⁶

Whilst the network consolidation programme has not been free from criticism,²⁵⁷ the onshoring of RFR applications has undoubtedly brought about significant practical improvements. However, as with any such complex mechanism, new problems have been thrown up by the process, in addition to some pre-existing issues which are yet to be successfully resolved.

An issue of primary and immediate concern for most of those interviewed is the operation of the commercially-run VACs which have replaced overseas visa sections. Although VACs do not undertake decision-making on visa applications, their staff still perform immigration functions, including collecting biometric data of applicants and issuing visas. VACs are all run by one of two commercial companies and are not present in all countries.²⁵⁸ This has led to problems for applicants in countries where there is no VAC, who have to make an expensive, and sometimes dangerous, international journey in order to attend

their appointment. For instance, for applicants in Somalia, attendance at the nearest VAC, which is located in Nairobi, involves a journey of hundreds of miles.

As noted above, an issue identified by both caseworkers and sponsors is the difficulty in booking free appointments (to which RFR applicants are entitled) through the website of the commercial partner operating the relevant VAC and inappropriate up-selling of services in relation to appointments. Other recurrent complaints relating to the websites of commercial partners concern the poor functionality of the system for uploading documents (which is different for each private provider), and the incorrect specification of the documents required for the appointment. Inappropriate provision of advice and biometrics not being taken properly are other complaints which have been raised by users.²⁵⁹

Applicants and caseworkers also report problems with accessing the VACs in order to attend their appointment. In particular, there have been cases in which VAC staff failed to understand that RFR applicants, who are often themselves refugees or internally displaced, may not possess travel documents and have denied access to the VAC on this basis. Further, refugees and case-workers reported cases where family members attending appointments at VACs have been incorrectly charged for services, either because VAC staff were unclear that RFR applications were free of charge, or because corrupt members of staff were asking for payment in order to expedite the process.²⁶⁰

A recent report published by the British Red Cross highlights the issues facing RFR applicants and looks at the journeys and experiences outside the UK.²⁶¹ Issues identified include the costs involved, and women and children having to travel alone, crossing borders and having to make multiple journeys to reach VACs. The report also identifies the scale of this problem, in that two thirds of the RFR applications made in 2019 came from four States (Eritrea, Sudan, Iran and Syria). There are no VACs in Syria and Eritrea so applicants need to cross international borders, whilst travel within much of Sudan can be extremely risky, including necessitating the use of smugglers. The report makes a series of recommendations to the Home Office including that there should be flexibility in acquiring biometrics from RFR applicants, and only asking family members to travel once their application has been granted. The report also emphasised the vulnerability of many of the



applicants, showing that eight out of ten of those making applications are women travelling alone, children travelling alone or women travelling with children, and that of those interviewed only 24% were living at home in a stable or non-conflict area.

The British Red Cross report has added weight to the evidence that the use of the VACs has significant drawbacks for RFR applicants (and quite possibly for other applicants). In its 2020 report on RFR, the ICIBI noted that there was “little sense that the Home Office regarded VACs as anything more than a conduit for applications rather than seeing them as a key actor in the family reunion process” and noted the need for a separate focused inspection of the functioning of the VACs and how their operation “affects the overall process of applying for a visa from overseas”.²⁶² In response, the Home Office has committed to additional training for staff at VACs and has stated that it would keep the “footprint” of the VACs under review, but also insisted that it had adequate monitoring and evaluation systems in place to ensure that the commercial partners were fulfilling their contractual obligations.²⁶³

4.2.2 The impact of the onshoring process on the quality of decisions

The move of decision-making activities relating to RFR to a dedicated team within the Asylum Directorate signals a welcome and much needed shift towards treating RFR as a protection matter rather than an immigration route. The members of the team now working on RFR applications are cross-trained to work in other areas of asylum and international protection – including initial screening and substantive asylum interviews – and are not involved in visa decision-making in any other part of UKVI. They attend thorough training on refugee family reunification, which includes modules on Part 11 and other relevant sections of the Immigration Rules, LOTR and supporting evidence, amongst other areas.²⁶⁴

Decision-making is likely to be more consistent if all decisions are taken in the same place by caseworkers who have received identical training. In addition, having the whole process under the leadership of one senior civil servant should facilitate monitoring and lead to better quality control.

Despite the potential of the onshoring of decision-making to improve the quality of decisions on RFR applications, as yet there appears to be limited evidence that the onshoring process has had any

concrete impact on the quality of RFR decisions. When asked about his assessment of the outcome of the process in July 2020, the ICIBI said that he was cautiously optimistic, and that he felt that decisions on RFR were now being taken by “the right people”. This positive assessment was confirmed in the ICIBI’s most recent report, where the ICIBI noted that

By comparison [to the team in Pretoria], Asylum Operations (Sheffield) showed more awareness of the nature of these applications and greater sensitivity. This was reflected not just in the grant rates (54% for Pretoria and 80% for Sheffield), but also in the quality of the decisions and how refusals were explained, and in the extent of stakeholder engagement.²⁶⁵

The views of the practitioners interviewed on whether the onshoring and the move to the asylum directorate have led to better quality decisions differ quite widely. Some service providers have indicated that there is some anecdotal evidence of better-quality decisions coming out of the new team in Sheffield, including, according to one of the interviewees, better consideration of exceptional circumstances and compassionate factors. Other practitioners and caseworkers, however, were adamant that there had been no improvement in the quality of decisions after RFR applications have been moved under the responsibility of the Asylum Directorate. Only one organisation said that they had seen a “dramatic improvement” since onshoring, and that further evidence and clarification was asked for more often than had happened previously.

In the initial round of interviews carried out shortly after the start of the onshoring process, several interviewees stated that it had become much easier to contact Home Office caseworkers about their client’s cases and that caseworkers were prepared to come back and ask for additional evidence or clarification, rather than simply rejecting cases out of hand. This initially positive assessment has, however, subsequently been caveated by some organisations, which indicated that frequent personnel changes, the growth in size of the Sheffield team and increased workload, together with the fact that the administrative team is based in Solihull, are increasingly resulting in miscommunication and delays.²⁶⁶

In addition, several organisations expressed their



disappointment about the fact that decision-makers were still not making use of the possibility to interview sponsors, something that they had hoped would become part of the process as a result of Network Consolidation. Concerns in this regard have also been expressed by the ICIBI, who in his most recent report on RFR indicates that, out of 176 applications reviewed, in only one instance had there been an interview conducted.²⁶⁷

"It's a real struggle with the data – the Home Office – their systems are pretty hopeless and antiquated, and need replacing, but the training and expectations for quality and recording are not good enough. Even if you get good IT that is suited to the task, if the people you're relying on to input don't have an appreciation of the need for accuracy and good reporting then you're not going to get good data out."

(ICIBI, 30 March 2020)

The fact that RFR applications are now processed by caseworkers who are trained in asylum and protection matters, whilst a marked improvement on having applications processed by non-specialist ECOs at overseas locations, is not in itself a guarantee of good quality decisions. Indeed, the Home Office's own quality assurance process found 24% of the asylum decisions sampled for 2016-17 to be below "satisfactory", and one in three of the decisions sampled by the ICIBI inspectors during the most recent inspection of the asylum casework in 2017 were classed as "needing improvement", with errors identified including failure to adequately consider material facts and/or the credibility of the applicant.

Having to rely upon anecdotal evidence in order to assess whether, and to what extent, the recent changes to the Home Office decision-making processes have had an impact on the quality of RFR decision is admittedly far from satisfactory. Unfortunately, however, as already noted, there is currently no publicly available data about the number of applications made for RFR, as opposed to the number of visas granted (in contrast to the statistics for asylum applications, for example), no means of ascertaining how

many applications are granted LOTR, and how many refusal decisions are overturned on appeal or are successful on re-submission. The ICIBI has repeatedly criticised the absence of a meaningful culture of monitoring, evaluation and learning within the Home Office,²⁶⁸ including in his most recent report on RFR, where he again recommended that the Home Office should

[e]nsure that Management Information [...] in respect of family reunion applications is sufficient not just to support the efficient processing of applications and to assure decision quality, but also to provide insights into the profiles and circumstances of applicants, the reasons why applications succeed or are refused, and any trends, in order to check that both the operational response and the underpinning policies are fit for purpose.²⁶⁹

4.2.3 Formalising the link between the asylum process and Refugee Family Reunion

A further issue highlighted by practitioners as one of the causes of the poor quality of decisions in respect of RFR is the disconnect between the sponsor's initial asylum process and the subsequent processing of applications for RFR.

The lack of inter-connection between the asylum process and that for RFR has important and negative consequences upon the latter, first and foremost with regard to evidence gathering and its availability to decision-makers.

In theory, the records of the sponsor's screening and substantive interview during the asylum process should contain information which is relevant for any subsequent RFR application,

"What really struck me in 2016 was that the RFR cases were being managed by the visa section like any other visa application and were being rejected for the sort of reasons that you might reject a visit visa. It seems to me that the whole process has been put in the wrong place – it shouldn't be a visa decision; it should be an extension of the asylum process."

(ICIBI, 24 July 2019)



such as the names and dates of birth of the sponsor's spouse and children and other close family members. However, one of the issues highlighted by the ICIBI in his first inspection of the RFR system was that Home Office caseworkers did not systematically capture relevant information concerning family members during either the initial or substantive asylum interview, with the consequence that those details were not then available to the decision-maker responsible for the RFR application.²⁷⁰

A further related problem identified by practitioners is that the documentation relating to the sponsor's asylum interviews was in the past not easily or quickly available to the decision-maker responsible for the refugee's RFR application. In that regard, one of the obvious advantages of the onshoring of RFR applications and the transfer of the decision-making process under the Asylum Directorate is that it should now be simpler, and, more importantly, quicker for the caseworkers responsible for processing RFR applications to access the documentation relating to the sponsor's asylum claim as needed.

With regard to the accuracy and level of detail of the information captured during the sponsor's asylum interviews, the Home Office Guidance on Substantive Asylum Interviews was amended shortly after the publication of the ICIBI report in 2016 to include a section on Family Reunion which, *inter alia*, reminds the caseworker of the importance of "obtain[ing] full details of the claimant's partner and children during the asylum process so that well informed and prompt decisions can be made on any subsequent family reunion applications under Paragraph 352A of the Immigration Rules".²⁷¹ The guidance further notes that the caseworker "must also be aware that there may be other family members who were dependent and living as part of the family unit before the claimant left and where this is the case details should be recorded".²⁷²

"It seems to me that while someone is going through the asylum process ... there is an obligation there to ensure that all the information that will be needed at any later stage should be recorded during that process, not just for the claimant but also for dependents."

(ICIBI, 24 July 2020)

The practice of asylum caseworkers with regard to the gathering of information which may potentially be relevant for a claimant's subsequent RFR application appears to have improved, and both the ICIBI and service providers confirm that, in most cases, details of the sponsor's family members are now appropriately captured and recorded during interviews.²⁷³

Whilst this may be the case, none of the refugees interviewed recalled having been told at the time of their substantive asylum interview that they would have been able to sponsor family reunification once they had obtained refugee status. Similarly, none recalled the Home Office caseworker explaining to them that details of their family provided during the asylum interview might be relevant and have an impact upon future family reunification applications. Many sponsors stated that they believed that the family reunification process would be instituted in parallel with the asylum process and that they were shocked when they discovered that there was a separate application process which they themselves would have to institute once they had obtained refugee status. Many had heard about the possibility of applying for family reunion through community contacts, rather than through official channels.

Since the omission of the name of a family member from the records of asylum interviews may be seized upon by those deciding upon a subsequent RFR application as a reason for refusal, accurate recording of such information at the stage of consideration of the asylum application is crucially important. Accordingly, asylum caseworkers should be required to provide asylum seekers with all relevant information as a matter of course during the substantive interview. In addition, asylum seekers should be given information about the RFR process at the time of the asylum interview, and they should be clearly informed of the reasons why it is important to name every dependent family member they may later try to bring over by way of RFR. They should also be made aware of the importance of collecting and/or retaining evidence in order to support their RFR application, together with clear guidance of what will constitute acceptable evidence. Ensuring that the asylum process is closely aligned with and anticipates the RFR process is a relatively simple measure which could bring about significant improvements with a minimal outlay of resources.

“Ghosting” of RFR applications: A simple solution for a complex problem?

Several of the practitioners interviewed suggested that the legal process leading to family reunification should be initiated at the same time as the asylum process, in a process which is sometimes referred to as the “ghosting” of RFR application.²⁷⁴

Through the “ghosting” process, Home Office caseworkers would collect all relevant details about the refugee’s family members overseas during the initial and substantive asylum interviews. In the same context, the individual claiming asylum should also receive clear information on the family reunification process. This would include advice about the evidence which is required to support a RFR application and the importance of collecting and retaining such evidence. Wherever possible, the initial draft of the application for RFR should be prepared at the same time as the application for asylum. If the application for refugee status is successful, the RFR process would then proceed as a further stage, without the need to initiate a completely different process. Some organisations go as far as to advocate that, once refugee status is obtained, the family members of the asylum applicant could then, subject to a DNA test commissioned by the Home Office, automatically be granted entry clearance.²⁷⁵

Although this appears to be a simple answer to a complex problem, it is not without its drawbacks. As one RFR clinic supervisor, who had been involved in discussions with various prominent organisations in the sector around this idea, noted,

“*the sticking point was – and I guess still is – how do you ask a newly arrived, possibly ill, bewildered and confused asylum seeker intimate details about their family members, especially when they may have had no proper pre-interview legal advice, there is no statement prep and they are (quite legitimately, given some of the countries they travelled from and through) frightened to give any details away, unsure of who to trust and even who is*

asking the questions and where the information may go. [...] The idea of “ghosting” is easy to model, but hard to implement”.²⁷⁶

The refugee status determination process has been complicated somewhat by the recent introduction of the Preliminary Interview Questionnaire (PIQ). The questionnaire has to be completed within 20 days of making a claim for asylum – a point at which many asylum seekers do not yet have a solicitor, or know anyone who might be able to help them. The 13-page form asks detailed questions about an applicant’s spouse, including when and where they were married, the date on which they were last seen by the applicant in person, and the date on which the applicant was last in contact with them. In addition, it asks an applicant to provide details about their children. These details can of course be used to validate both the substantive asylum interview and any subsequent RFR application.²⁷⁷

Currently, as a new asylum seeker in the UK, in order to ensure that they have the best possible chance of in due course being reunited with their family members, an individual will have to mention his or her family members and their details in a consistent manner at three different formal, and possibly intimidating, processes during the period immediately after their arrival. Many caseworkers have experienced the difficulty of trying to explain on an application for RFR why a sponsor did not mention their spouse in an initial asylum interview which took place immediately after arriving in the country. Reasons could include a lack of understanding of the process, fear for family members’ safety, poor communication or simply exhaustion. The implications of such situations would have to be carefully thought through in the case of introduction of “ghosting” for RFR applications.





4.3 Tackling the problem at its roots: the need for a paradigm shift in the approach to Refugee Family Reunion

Formally, the Home Office has been responsive to the criticisms and recommendations made by the ICIBI and by organisations in the sector, including by revising its guidance to decision-makers so as to take account of the concerns expressed by stakeholders.²⁷⁸ However, as noted by the ICIBI, “[a]ssuring the guidance is correct is only a part of the solution.”²⁷⁹ In this regard, interviewees were virtually unanimous in noting that the fact that the relevant Home Office Guidance appears to reflect good practice is in no way a guarantee of the quality of actual decisions.

“You can find all these lovely things in the guidance about “we understand that refugees may not have documents, we can take other evidence like if it’s mentioned in the screening interview”, but at the end of the day it’s not the guidance it’s the people.”

(Solicitor, 19 January 2019)

[...] in terms of fairness and efficiency, it’s the training and application of the law. It’s not the rules and the guidance, it’s people enforcing the rules. Over and over again – they don’t have to pay fines or get punished, they just ignore the rules over and over again.”

(Caseworker, 2 July 2019)

The general sense amongst those working in the sector is that, regardless of any formal guidance and official statements, the decision-making process is inherently flawed due to the Home

Office being pervaded by a culture which views visa applicants in general, and asylum seekers in particular, as untruthful. Most of those interviewed were adamant that the “culture of disbelief” within the Home Office is among the deep-seated causes – if not the principal cause – of much of the misery experienced by refugees during the family reunification process.

“The culture of disbelief is even more important because the Home Office don’t even follow their own guidance. If they did, it would be quicker and easier and you wouldn’t have to appeal.”

(Solicitor, 19 January 2019)

“The whole system is just so hostile – there is so much uncertainty and lack of clarity. It’s really damaging to the family.”

(Caseworker, 19 September 2019)

“It’s really easy to say “bring back legal aid”, but that wouldn’t make much difference – it’s such a small amount of money, there wouldn’t be enough people doing the work – these firms need to make a profit and for me it’s about much more than that – it’s about the whole system, it’s just fundamental – a part of how we treat refugees. I would go so far as to say that it’s part of the hostile environment. It should be treated the same as resettlement, the family arrive and there’s a house for them and their BRP card is ready – it should be a welcome.”

(Caseworker, 28 April 2019)



The expressions “hostile environment” and “culture of disbelief” came up regularly during interviews with practitioners and service providers and are instantly recognisable to anyone working in the asylum sector.²⁸⁰

The existence of a “culture of disbelief” within the UK asylum system is well documented.²⁸¹ A 2019 study by Freedom from Torture, analysing fifty reports by refugee organisations about the decision-making process in the asylum system over the last fifteen years, identified

[...] a convergence of views on the fundamental causes of poor decision-making, including the unrealistic and unlawful evidential burden placed on applicants and a starting point of disbelief, with a devastating impact on the individuals involved.²⁸²

The “culture of disbelief” is however not limited to the asylum system, but permeates all areas of immigration decision-making. In her review of the Windrush scandal, published in March 2020, Wendy Williams identified the “culture of disbelief and carelessness” as one of the “organisational factors” in the Home Office which created the operating environment in which the mistakes which led to the Windrush scandal could be made.²⁸³

It is difficult to imagine that this pervasive culture of disbelief does not also have an impact upon, and affected the atmosphere in which, decision-making around RFR applications takes place.

The main recommendation from the Freedom from Torture report is a radical overhaul of the entire Home Office asylum system, including a change of culture to one that takes pride in the importance of the work of refugee status determination.²⁸⁴ Similar recommendations appear prominently in Wendy Williams’ review of the Windrush scandal, which required the Home Secretary to “set a clear purpose, mission and values statement [for the Home Office] which has at its heart fairness, humanity, openness, diversity and inclusion” and called upon the Home Office to devise a programme of “major cultural change” for the whole department and staff at all levels.²⁸⁵

In its response to the Windrush Lessons Learned Review, published in September 2020, the Home Office grouped Wendy Williams’ recommendations relating to the need for

a “major cultural change” around a theme labelled “a more compassionate approach” and proclaimed its ambition to “create a fundamental shift in the culture of the department”.²⁸⁶ As part of this cultural change, the Home Office acknowledged the need “to understand the diverse parts of our community, including the most vulnerable in society, to ensure that we take proper account of the complexity of people’s lives and make sure that we make the right decisions”.²⁸⁷

Refugees who have been forcibly separated from their families are undoubtedly amongst the most vulnerable in society, and there is little doubt about the complexity of their lives and those of their family members overseas. Whilst it is true that, as remarked by the Home Office, “[f]undamental cultural change takes time and there is no quick fix”,²⁸⁸ radical systemic measure aimed at eradicating the “culture of disbelief” within the UK asylum and immigration system are long overdue and should be implemented as a matter of priority.

The Home Office itself is more than capable of running successful immigration projects, as the implementation of the EU Settlement Scheme (EUSS) shows.²⁸⁹ Launched in 2019, after a pilot project, in order to ensure that some 3.5 million EU citizens could enjoy the continuation of their rights following Britain’s departure from the EU, the EUSS is, relatively speaking, a model of simplicity and good practice, at least for those with straightforward applications. A combination of a simple on-line application form, minimal requirements as to evidence, a limited need to send documents to the Home Office, a dedicated call centre with responsive staff to deal with queries, and perhaps most importantly a dedicated, resourced, network of immigration advisers providing help for vulnerable clients, makes the system easy to use and approachable.²⁹⁰ Prior to serious delays caused by the pandemic, most decisions are made within days and the refusal rate is minimal. The majority of staff on the project are new and, as also noted by the ICIBI, they “have understood the clear message that they should be ‘looking to grant, not for reasons to refuse’”.²⁹¹

The scheme has been criticised for not providing a physical visa, residence card or vignette to applicants, who can only prove their status online. It has also been severely affected by the fact that embassies and the Home Office have been operating remotely, or not at all, for periods

of time since the start of the COVID-19 pandemic. In this regard, the fact that the Home Office has decided not to extend the deadline for applications to take account of the disruptions caused by the pandemic has been met with dismay by organisations that serve vulnerable clients. However, the fact that financial resources have been allocated to these organisations at all, as well as many other positive features of the EUSS scheme, illustrates what a properly funded Home Office initiative can achieve when supported with adequate resources and political will.

Another successful Home Office project which should be mentioned in the context of refugee family reunification is the Vulnerable Persons Resettlement Scheme (originally the Syrian Vulnerable Persons Resettlement Scheme) introduced in 2015 as a reaction to the European refugee crisis.²⁹² The scheme provided a “gold-plated” service, working with Local Authorities to find suitable accommodation, school and medical provision for vulnerable families. With generous resources provided by the Home Office, local authorities could then sub-contract ESOL, integration, and settlement services or provide them in-house as required.²⁹³ Although not without its critics (most notably in respect of integration and monitoring),²⁹⁴ the scheme is another example of what can be done by the Home Office. From its inception to May 2020, 20,007 people have been resettled under the scheme.²⁹⁵

Where the political will exists, it is possible for the Home Office to find the resources and set up systems to support genuinely compassionate and humane processes which support vulnerable people in accessing their rights, rather than actively seeking reasons for them not to do so. There is no good reason why the same cannot be done for a matter as important for the well-being and integration of refugees as the family reunification process.



4.4 Main findings and recommendations

Main findings

There have been some considerable improvements in the RFR application process and Home Office decision-making process since 2018:

- The new UKVI online application system represents a marked improvement upon the previous. The system is easier to navigate, contains a RFR application form and allows users to upload electronic copies of documents and evidence.
- The move of decision-making to a UK-based team of caseworkers trained in asylum and RFR matters is an important step towards recognising that RFR is a protection issue rather than an immigration matter and has the potential to result in better decisions.

Nevertheless, some issues remain:

- Despite the recent improvements in the online application system, the process of applying for RFR is still far from being straightforward and the application system remains difficult to navigate without qualified legal support.
- The approach of decision-makers to matters of evidence, including the possible reasons underlying a lack of documentary evidence, often does not take into account the specificities of the refugee condition.
- With regard to complex, non-standard applications, the possibility of granting LOTR appears to be under-utilised by decision-makers, who do not regularly consider *proprio motu* the existence of exceptional circumstances or compassionate factors.
- Despite some indications that the overall quality of decisions has improved as a result of the onshoring of RFR applications to a specialised team within the Asylum Directorate, the poor quality of decisions continues to be a source of concern for many in the refugee sector, with the “culture of disbelief” being identified as the root cause of non-compassionate, inconsistent and poorly motivated decisions.





Recommendations

For the Home Office

- Monitor the functioning of the new online application system and address any remaining technical issues, including those relating to the functionality of the document upload system.
- Monitor the functioning of VACs operated by commercial partners, including the availability of free appointments for RFR applicants.
- Take steps to ensure that the approach of decision-makers to evidence and evidentiary requirements is in line with the Home Office's own guidance and takes into account the difficulties which refugees may encounter in producing documentary evidence.
- Mandate decision-makers to make increased use of the possibility to interview sponsors and applicants whenever they consider that the evidence submitted with the application is not fully satisfactory.
- Commission and pay for DNA testing when, upon initial assessment, the documentary evidence supporting a RFR application appears to be insufficient to substantiate the existence of the relevant family relationship.
- Ensure that all information relevant to RFR is accurately captured during the sponsor's asylum process and mandate asylum caseworkers to provide information about the family reunification process to all asylum seekers during their asylum interviews.
- In consultation with relevant stakeholders, explore the possibility of further strengthening the link between the sponsor's asylum process and the subsequent family reunification process by introducing the “ghosting” of RFR applications during the refugee status determination process.
- Improve internal monitoring and reporting systems in order to ensure quality control and transparency of decision-making in respect of RFR applications, particularly those concerning complex, non-standard cases and grants of LOTR.
- Engage fully with the recommendations of the Windrush Review and design and implement a meaningful and radical programme of “major cultural change” aimed at eradicating the “culture of disbelief” in all areas of the asylum and immigration system.



5 Legal assistance for Refugee Family Reunion

This chapter explores the availability of legal support for refugee family reunification. It provides an overview of the challenges influencing the delivery of support, and particularly legal assistance, on the frontline.

By way of background, section 5.1 outlines the regulation of the provision of legal advice and services on immigration and asylum. Section 5.2 takes as its starting point the withdrawal of legal aid for RFR following the entry into force of LASPO and the introduction and development of the use of exceptional case funding (ECF) as the only form of legal aid still available and the outcome of the 2019 LASPO Review. Section 5.3 concludes that, in light of the specificities of refugee family reunification as a protection, rather than immigration, matter, RFR applications should be subject to the same legal aid considerations which apply to asylum cases.

5.1 The regulatory framework for immigration advice and services

The provision of legal advice and services in the area of asylum and immigration is regulated by the Immigration and Asylum Act 1999 (IAA 1999).²⁹⁶ The IAA 1999 makes it a criminal offence to give unregulated legal advice or to provide unregulated services in respect of immigration matters; it establishes the Office for the Immigration Services Commissioner (OISC) as the body with general responsibility for the regulation of immigration advice and services.²⁹⁷

Immigration advice is defined in the IAA 1999 as “advice relating to a particular individual given in connection with one or more relevant matters by a person who knows that he is giving such advice”.²⁹⁸

Any immigration adviser who is not regulated as a lawyer must be regulated by OISC. The IAA 1999 specifies that services are subject to regulation when provided in the course of business, whether pro bono or for profit, and the relevant OISC Guidance specifies that “this includes occasional help offered to members of a community”. As a consequence, organisations which undertake any immigration advice activities “as an ancillary service to their main business” are still subject to regulation by OISC.²⁹⁹





Section 84(1) of the IAA 1999 provides that “no person may provide immigration advice or immigration services unless he is a qualified person”. Under section 84(2), the following main categories of persons are entitled to provide immigration advice and services:

- advisers registered with OISC
- persons authorised by a designated professional body to practice as a member of the profession regulated by that namely:
 - Solicitors, regulated by the Solicitors Regulation Authority (SRA)
 - Barristers, regulated by the Bar Standards Board (BSB)
 - Chartered Legal Executives, regulated by CILEX
- a person permitted through exemption from prohibition to provide immigration services e.g., Citizens Advice Bureaux), or
- someone working (paid or otherwise) under the supervision of any of the above.

However, individual solicitors who are regulated by the SRA may or may not be required also to be regulated by OISC depending on the structure of the institution within which they are providing advice. For example, solicitors who work in organisations which do not meet the SRA Practice Framework Rules (which is the case for many charities), would need to seek registration with OISC as the SRA prohibits delivering legal advice to the public unless working in an SRA-regulated body (subject to certain exemptions).³⁰⁰

In addition, solicitors who undertake asylum and immigration work under a legal aid contract are required to be a member of the Immigration and Asylum Accreditation Scheme run by the Law Society “which aims to ensure a minimum standard of competency for practitioners advising on immigration and asylum law”.³⁰¹

With the exception of Law Centres, the majority of charities giving immigration advice are registered with and regulated by the OISC.

The OISC accreditation scheme for immigration advisers is currently articulated over three levels, depending on the category of advice provided and the complexity of the work to be undertaken.

Level 1	Basic immigration advice within the Immigration Rules
Level 2	More complex casework, including: <ul style="list-style-type: none">- applications outside the Rules- all asylum matters- RFR applications
Level 3	Appeals and representation

There are two pathways to OISC registration, namely “Asylum and Protection” and “Immigration”. RFR is classified as an OISC Level 2 matter within the Asylum and Protection category. The syllabus for qualification covers assisting individuals with asylum claims, fresh claims, family reunion applications and applications for indefinite leave to remain on protection grounds. Advisers do not need to have passed an assessment or be registered with OISC at Level 1 in the Immigration category before applying for registration at Level 2 in the Asylum and Protection category. However, it is recommended that applicants have an understanding of immigration advice at Level 1 so that they are able to identify cases which might fall within different routes and to signpost clients accordingly. As there is no examination at Level 1 in the Asylum and Protection category, an organisation, and an individual can in practice register directly at Level 2.

A distinction is also drawn between registration of an individual and registration of an organisation. An organisation cannot be registered without linking that registration to a registered individual; conversely, a registered individual cannot maintain his registration for longer than six months, unless working for a registered organisation.³⁰² In addition, an organisation cannot be registered at a level higher than the registration of the most highly registered adviser who works for it (whether or not that it is in a paid capacity).



5.2 Publicly-funded legal assistance for refugee family reunification

Glossary

Legal aid: Legal aid is the umbrella term for legal assistance granted by the State to individuals who cannot afford to pay for their own legal assistance. This may take the form of legal help and/or legal representation.

Legal help: Legal help is the term the Legal Aid Agency use to refer to legal advice and assistance, but not representation, in respect of a legal problem.

Legal representation: the term legal representation refers to the work undertaken by legal practitioners to represent their clients in court.

Legal assistance: the term legal assistance is used in the present report to refer to the full spectrum of advice, legal help and representation.

5.2.1 Legal aid for Refugee Family Reunion after LASPO

The family reunification process is costly, and legal costs are a particularly relevant component. Private solicitors generally charge between £300 and £1200 per application.

Until April 2013, refugees and other beneficiaries of international protection were entitled to publicly-funded legal assistance in relation to RFR applications. This helped to fund crucial steps in the family reunification process by providing for a legally qualified practitioner to help with assessing the case, taking instructions, completing the applications and taking witness statements where needed. Other costs connected to the application were also covered, including translation costs, DNA testing, qualified interpreters, as well as representation on appeal.

The situation changed with the entry into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which introduced substantial changes to the legal aid system in

England and Wales. Coming on the back of a series of reviews and assessments, and designed both to reduce pressure on the public purse, and produce efficiencies within the legal profession, LASPO was driven by four objectives:

- To discourage unnecessary and adversarial litigation at public expense;
- To target legal aid to those who need it most;
- To make significant savings to the cost of the scheme; and
- To deliver better overall value for money for the taxpayer.³¹⁰

Immigration cases, with the exception of those where the individual is detained, were one of the categories of cases for which legal aid became unavailable following the entry into force of LASPO in April 2013.³¹¹ Whilst asylum applications and other protection claims remained within the scope of legal aid,³¹² RFR applications were regarded as an immigration rather than an asylum / protection matter and therefore excluded and funding discontinued.

In the 2010 consultation document which preceded the adoption of LASPO, the Government put forward three main justifications for removing most immigration cases from the scope of legal aid. The first justification was that, although some immigration cases could raise important issues concerning family or private life, even in those cases, “individuals are not at immediate risk as a result of decisions, in contrast to asylum applications”.³¹³ Following on from this, the Government argued that individuals involved in immigration cases “will usually have made a free and personal choice to come to or remain in the United Kingdom, for example, where they wish to visit a family member [...] or to fulfil their desire to work or study here” and that “the individuals concerned are not likely to be particularly vulnerable (in contrast to asylum seekers)”.³¹⁴ The final justification put forward was that immigration cases are straightforward and that, “as tribunals are designed to be user-friendly, and interpreters are provided free of charge, individuals should be capable of navigating their way through the system and representing themselves”.³¹⁵ As discussed below, even if it were to be accepted that the premises underlying those justifications were true in respect of most immigration matters, none is applicable to refugee family reunification.



The cost of family reunification

I have spent over £5000, and my wife and I have nowhere to live. I have borrowed all this money from my friends. We should be very happy because finally she is here with me, but our child is in Sudan, and we don't know when we will see him again. We are living on the floor staying with friends. We have no home because the council says we are not vulnerable because we don't have a child. We do have a child, but he is not allowed to be with us."

(Sponsor, 19 July 2019)

I don't think anyone understands the huge costs associated with family reunion. [...] the cost of family reunification, including the solicitors' costs, are between £2500 and £6000 per family. There is also the huge cost for people when their families arrive. There is no wonder that the stress this puts on families causes all sorts of problems, including family breakdown."

(Financial Inclusion caseworker, Refugee support charity, 24 June 2019)

The real financial cost of family reunification for refugees is poorly understood and under-researched.³⁰³ Several organisations interviewed were particularly interested in looking more closely at the costs associated with the process. It is beyond the scope of this report to conduct a full analysis of the costs incurred by refugees during the family reunification process; however, it is important to highlight that those costs go well beyond the costs of paying for legal advice for the application, putting extreme mental strain on refugees seeking to be reunited with their families.

A recently published report on the impact of LASPO on refugees seeking to be reunited with their families in the UK details the lengths

to which sponsors will go to in order to find the money to cover the costs associated with the family reunification process.

Many interviewees had resorted to extreme measures to save money. This included going without food, not having their own place to live, managing with insufficient clothing and walking everywhere instead of taking public transport (sometimes taking several hours to reach a destination). These cost-cutting measures had profound, negative health effects. Participants reported weight loss, illness, anxiety and depression.³⁰⁴

Pre-arrival costs start with paying an adviser for help with the visa application. This can cost anything from £300 to over £1200, depending on the size of the family and the quality of the immigration adviser. This is not the only cost associated with the application however, as in some circumstances a sponsor may have to pay for an interpreter, certified translations, expert witnesses, or a social worker or doctor's report.

In addition, there may be a need for DNA tests, costing around £400, and TB tests for each travelling family member, costing upwards of £50 per individual, and only remaining valid for six months. Again, TB tests are only valid if they are done at a UK government-recognised clinic, which may be hundreds of miles away from the place where the family members live, with associated travel costs.

In order for the application to be completed, all of the applicants must attend an appointment at the nearest VAC in order to have their biometric data taken. In many countries there is only one VAC, normally located in the capital city; in some countries there is none, and families will have to travel to a neighbouring country. This results in costs for travel, accommodation and subsistence, not to mention the associated dangers of travelling. A recent British Red Cross report details the often overlooked costs incurred



by applicants who have to travel to VACs, often in other countries, paying for transportation, and sometimes to be smuggled, subsistence and accommodation. Such costs may sometimes be incurred more than once, and can amount to thousands of pounds.³⁰⁵

Whilst some of the costs associated with the application can be covered by disbursements from ECF, including DNA testing, interpreting and translation, there is no government funding available to pay for the costs incurred by family members abroad.

The financial costs involved in the family reunion process increase dramatically when an application is rejected. If an appeal is required, this will result in the incurring of additional costs, including court fees and the costs of legal representation.

Assuming that all family members successfully get their visas, the next cost is that of travel to the UK. Visas issued to successful RFR applicants expire after only 30 days,³⁰⁶ and this will often place an additional financial strain on the family, who are rarely able to buy the cheaper flights which would be available with more notice. UNHCR has highlighted there is a need for travel assistance schemes to be implemented by UK authorities in order to cover the actual financial needs of refugees and their families travelling to the UK.³⁰⁷

Following arrival, the costs continue to mount up. Often sponsors have only just received their own status and are living in shared accommodation or hostels, and are thus unable to receive their families. Universal credit stops at the time when the family arrives and has to be reapplied for, often leaving the family for several weeks with no income. Where there are children in the family, housing will be found by the Local Authority, but a couple without children will receive no such help.

The only help available financially for a newly recognised refugee is a government integration loan of up to £1000. With very strict eligibility criteria (the applicant must not have more than £1000 in savings or be earning more than £15,000 – significantly less than the national living wage) the loan specifically excludes “air fares for dependants to join an applicant, including those granted entry clearance under

Family Reunion provisions”³⁰⁸ However, the loan can still provide some much needed financial support for refugees preparing for the arrival of their families, as it can be used to put a deposit on private rented housing, or to pay for essential furnishings.

Some financial assistance is also available from the charity sector. RefuAid, a charity which supports refugees with interest-free loans for, inter alia, education and re-accreditation, can lend approximately £1200 for a family reunification case. Other charities make applications on behalf of sponsors/families to national foundations such as the Zakat Foundation to cover some of the costs connected with the family reunification process. The British Red Cross Travel Assistance programme seeks to support families who cannot afford the cost of flights.³⁰⁹ Since October 2019, due to funding limitations, the programme has only been able to accept applications for reunion with unaccompanied children and families larger than three people, meaning that many families now face additional costs.

Even if sponsors are able to access the full range of assistance which is available, it is still unlikely that they will manage to cover all of the costs. For most, covering those costs means borrowing from community members, often leaving individuals in long-term and crippling debt, and open to exploitation. The burden of debt, added to a host of other psycho-social issues, has the potential to wreck the family’s chances of successful integration, hinting at the real cost of the failure of the refugee family reunion system.

The impact of the withdrawal of legal aid for RFR applications is well-documented. Since the first comprehensive report on the impact of legal aid cuts published by the British Red Cross in 2015, many organisations have also written about the detrimental impact of the withdrawal of legal aid on this specific area of work and access to justice more generally.³¹⁶

LASPO has led directly to a drop in the number of firms prepared to take on cases in the field of immigration. Since 2015 there has been a 56% drop in the number of providers offering legal aid representation for Immigration and Asylum law. The number of not fee-charging providers saw an even more significant reduction, with only 36% remaining in 2018 when compared with 2005 levels.³¹⁷

According to a study on the impact of LASPO on

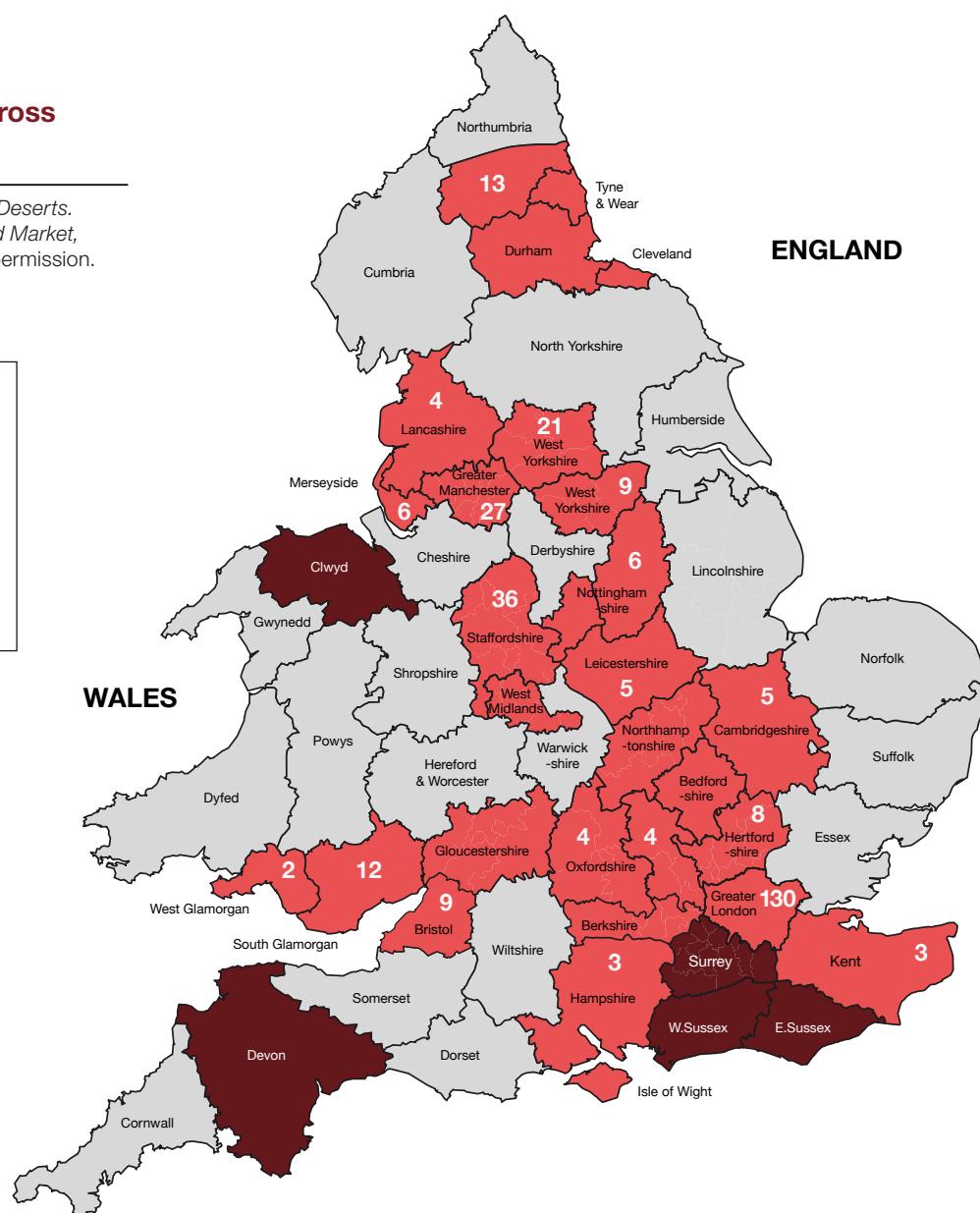
the legal aid immigration advice sector published in 2019, the reasons for this drop include:

- the fact that certain areas of legal work feed off each other, e.g., housing, immigration and welfare benefits, leading to the sharing of resources;
- consistent under-funding of work, leading to solicitors not being able to put in the amount of work they feel is appropriate into their cases;
- an imbalance between the supply of matter starts and the demand of the asylum-seeking populations who need to access them.³¹⁸

The study mapped the availability of legal aid immigration advice and identified several “desert” areas where no legal aid immigration advice is available, and others where only one legal aid provider is available.³¹⁹

Distribution of legal aid immigration providers across England and Wales

Figure from J. Wilding, *Droughts and Deserts. A Report on the Immigration Legal Aid Market*, 2019. Reproduced with the author's permission.





The fact the RFR is no longer within the scope of legal aid does not mean that the decline in numbers of legal aid solicitors is of limited relevance for refugees seeking to bring their family to the UK. As noted above, the scarcity (or total absence) of legal aid immigration solicitors in some areas makes it particularly challenging to find someone who is willing to take on RFR cases even if they come with ECF.

5.2.2 The LASPO Review

In early 2019, the Government published the outcomes of the long-awaited post-implementation review of LASPO.³²⁰ Despite submissions from multiple stakeholders providing evidence of the suffering and hardship caused by the cuts,³²¹ to the distress of bodies representing the immigration sector, the review did not suggest any changes in respect of legal aid for RFR applications.³²²

LASPO Review: Summary of findings on immigration advice

Government goals for LASPO	Government response in the review
To discourage unnecessary and adversarial litigation at public expense	Whilst the scope changes were focused on reducing the remit of legal aid, the decisions as to what was a sufficient priority to remain in scope were based on factors such as the ability of the individual to self-represent, the likelihood of breach of international obligations in the area of law, and the availability of alternative sources of advice and funding. Therefore, the impact of the scope changes on the volumes of legal aid has been largely considered on the next objective – whether LASPO has been successful at targeting legal aid at those who need it most.
To target legal aid to those who need it most	Another aim was to better target legal aid at those who need it most which, in this case, was deemed to be asylum seeking applicants. As such, this policy has been broadly effective, although volumes of asylum cases have dropped slightly.
To make significant savings to the cost of the scheme	Data limitations prevent us from properly assessing the efficiency and equity effects of these scope changes, nor can we robustly address whether the savings represent savings to the government as a whole or the LAA alone. Consequentially, it is not possible to make a firm conclusion regarding the extent to which these policies represent better overall value for money for the taxpayer.
To deliver better overall value for money for the taxpayer.	To assess overall value for money it is necessary to consider the extent to which costs have been shifted away from the legal aid fund and towards other parts of government. Due to data limitations, it is not possible to assess the extent to which this cost shifting has taken place.

Notwithstanding the equivocations in the overall conclusions set out above, the statistics relating to the changes in the volume of cases and in overall spending by the LAA in the sector of immigration legal aid presented in the LASPO Review indicate that the cuts introduced by LASPO have achieved the aim of drastically reducing public spending in this sector, in line with what had been the Government's expectations at the time LASPO was introduced.

**Table 4: Decrease in spending on immigration legal aid since LASPO (2012-13 to 2017-18)**³²³

Level of service	Volume change			Spend Change		
	Impact Assessment %	Actual %	Actual change (Number of cases)	Impact Assessment %	Actual %	Actual change
Legal Help (Asylum)	0%	-9%	-3,500	0%	0%	0m
Legal Help (non-Asylum)	-92%	-85%	-20,100	-89%	-80%	-9m
Civil Representation	N/A	-62%	-19,000	N/A	-64%	-7m

Table 5: Estimated Spend: 2012-13 baseline year and 2017-18 estimates³²⁴

Level of service	Baseline 2012-13	Current 2017-18	% Change
Legal Help (Asylum)	£30m	£30m	0%
Legal Help (non-Asylum)	£10m	£2m	-80%
Civil Representation	£10m	£4m	-64%

There is, however, some evidence that cutting legal aid at the point of initial access simply moves the costs along the process. Individuals who might make their own applications could easily overlook more complex matters at the beginning of the process, leading to appeals and further use of court time and the need for ECF.

Further, the costs to individuals and families who experience delays of months and even years of failing to be reunited with family members are incalculable, and the delays and their detrimental consequences on the mental and sometimes physical health of refugees is likely to impact heavily on public health and social services.³²⁵ There is a huge weight of evidence as to damage to the prospects for integration of individuals granted asylum in the UK but who are without their family members, and the fact that delays in their arrival make the integration process more difficult.³²⁶

In this context, it is also worth noting that, even if one assumes that each of the 7,083 RFR visas issued to family members in the 2019 calendar year involved a separate sponsor, if each sponsor had been granted ECF at the standard rate, and the full amount of disbursements for the application, the maximum cost would have been less than £4.5 million. Given that ECF is granted per sponsor, rather than per application, and

as most cases involving families involve multiple applications in respect of a single sponsor, it is likely that the total cost of funding RFR applications at ECF levels would have been very substantially lower.





5.2.3 Exceptional Case Funding

In an attempt to ensure that the drastic cuts to legal aid did not put the UK in breach of its international obligations, LASPO introduced the Exceptional Case Funding (ECF) scheme as a safety net for those cases where an individual's rights under the ECHR or EU law would be breached should they not be able to access justice due to the lack of publicly-funded legal assistance.³²⁷

Section 10 of LASPO provides for funding to be made available for those cases that are outside the scope of legal aid, but in which a failure to provide publicly-funded legal support would breach, or would risk breaching, "the individual's Convention rights (within the meaning of the Human Rights Act 1998), or any rights of the individual to the provision of legal services that are enforceable EU rights".³²⁸ For ECF to be granted, the case must also satisfy the same merits and means-testing criteria, as well as any other regulations made under LASPO, which apply generally to in-scope cases.³²⁹

Unlike applications for legal aid in immigration matters, ECF applications do not require OISC regulation, so they can be completed also by individuals who are not registered with OISC.³³⁰

When an ECF determination is made, the funding covers both legal fees and disbursements.³³¹ With regard to fees, initial RFR applications (stage 1) fall under the Immigration Graduated Fixed Fee scheme and are paid a fixed fee of £234 per sponsor, regardless of the number of applicants.³³² The upper limit for disbursements is currently set at £400, although this can be extended with prior approval.³³³ All work must be itemised, and if it reaches three times the standardized amount, it becomes payable at a standard hourly rate.

The fees allowable for making an appeal are £227 for the so-called stage 2a (up to the hearing but excluding the hearing itself) and £454 for stage 2b, which includes preparation for the hearing. A further fee of £237 is paid for attendance at the hearing if it takes place (£161 is payable if the hearing is adjourned). Usually the sum available in respect of a hearing is used to instruct a barrister to attend the hearing. The amount for disbursements in respect of appeals starts at £600, and the rules around the escape fee are the same as at stage 1.³³⁴

The ECF scheme came in for heavy criticism in the years immediately following the entry into force

of LASPO, because of both the unexpectedly low number of individuals who attempted to make use of the scheme and the tiny proportion of cases in which ECF was granted.³³⁵ Notoriously, during the first year of operation of the scheme, out of 234 applications for ECF relating to immigration cases, only 4 (1.7%) were successful.³³⁶

In 2014, in *Gudanaviciene v. Director of Legal Aid Casework*, the Court of Appeal found that the Lord Chancellor's guidance on ECF was not compatible with the right of access to justice forming part of the right to a fair trial under Article 6 ECHR and Article 47 of the EU Charter. With regard to immigration cases, the court also found that the Lord Chancellor's guidance was also incompatible with Article 8 of the ECHR, as legal aid should in principle be available when applicants for entry to the UK seek to argue that a refusal of entry would interfere with their right to respect for private and family life.³³⁷

The changes to the Lord Chancellor's ECF guidance introduced as a result of the Court of Appeal's decision, together with practical improvements in respect of the manner in which the scheme operates, and considerable investment by some organisations in capacity-building around the ECF application process,³³⁸ have led to a significant increase in both the numbers of ECF applications being made, and in the grant rate in recent years.³³⁹

Table 6: ECF for immigration cases: applications and grant rates³⁴⁰

Financial Year	Applications	Grants
2013–14	234	4 (1.7%)
2014–15	334	57 (17.1%)
2015–16	493	326 (66.1%)
2016–17	1,008	693 (68.8%)
2017–18	1,556	1,086 (69.8%)
2018–19	1,950	1,537 (78.8%)
2019–20	2,525	2,033 (80.5%)

The Government has indicated that the increase in the overall number of ECF applications over the last few years is largely driven by an increase in applications in relation to immigration matters.³⁴¹



Despite the marked increase in the percentage of successful ECF applications since 2015, the ECF scheme remains extremely controversial. Some of the most common grievances put forward by the practitioners and service providers interviewed are that:

- the level of funding available, particularly for the initial RFR application, is inadequate and insufficient to pay for the work needed to complete the application;
- the time required to make the ECF application itself is such that any solicitor wishing to make a profit may as well do the case pro bono, at least as regards the initial RFR application;
- even when ECF has been obtained, it can be very difficult to find a solicitor to take on the case, due to the decrease in immigration solicitors across all areas of the country (and the fact that funding is, again, inadequate).

With regard to the complexity of and the time required to apply for ECF, views amongst the practitioners and service providers interviewed varied.

Whilst solicitors will generally apply for ECF if a RFR case has to go to appeal, many stated that it was not worth their time to apply for ECF for the initial RFR application because of the low level of funding that is available. The fact that the LAA does not cover the costs of preparing ECF applications which are refused was mentioned as a further disincentive. Several of the solicitors interviewed said that they would rather take on pro bono the RFR applications of clients whose asylum cases they had handled, as much of the work necessary to prepare the RFR application had already been done as part of the asylum case. This, however, was not possible in cases which were new to the solicitor.

“ We have such limited resources; we have to be really brutal about what we do and what we don’t do. We used to appeal merits refusals [relating to legal aid], but we don’t have time to do that either. We just take on the appeals. We should do it because it’s so scandalous that we’re just plugging this massive gap, but we have to prioritise our work.”

(Caseworker, Refugee support charity,
2 July 2019)

Whilst some charities felt that it was a poor use of their scarce resources to be applying for ECF, other organisations stated that they automatically, at the first meeting with the sponsor, apply for ECF – this is particularly helpful where a charity already has a legal aid contract and can do the work in house, because this ensures that they will generate some income from the cases they undertake. Some organisations commented that they felt they had found the perfect formula for making ECF applications, and two who regularly submitted ECF applications said that they had success rates.

Regardless of their views as to the complexity of the ECF application, the consensus among the service providers interviewed is that finding a solicitor to take on the case once ECF has been secured is not easy. Whilst this is particularly the case for initial RFR applications, in some areas, service providers struggle to find solicitors who would take on appeals even if they come with ECF. The latter cases are particularly problematic, as appeals are time-sensitive and being able to find a solicitor to take on the case in a timely fashion may have an irreparable impact on the family reunification process.

The first obvious reason for this situation is that the current levels of ECF are deeply unattractive. As noted above, private solicitors generally charge between £300 and £1200 per RFR application. Even at these rates, the solicitors interviewed stated that the fees charged often do not cover the work they in fact do. The current ECF fee of £234 per sponsor, regardless of the number of applications, is evidently insufficient to cover the work involved in even a relatively simple RFR application. In this context, an additional challenge underlined by several of the interviewees is that the maximum limit on disbursements does not cover the costs involved in gathering supporting evidence for the initial application, without the additional work of applying for an extension.

“We don’t apply for ECF because it genuinely isn’t worth our time at the initial stage, we might as well do the case, but we always apply for it if we have to go to appeal”

(Solicitor, 19 January 2019)



“People just don’t have the cash to pay a lawyer so either they’d have to scrape up the money or wait for a year. I felt like I couldn’t put people in that position. So, I just used to do it pro bono”.

(Caseworker, 19 September 2019)

“We have three solicitors in [our local area] and two of them won’t take the appeals, even though they come with ECF. They are always working to capacity”.

(Caseworker, 19 September 2019)

“Our problem is with the disbursements. There is only £400 available for a case when it is first taken on, which wouldn’t cover an expert witness or a medical report, and possibly wouldn’t even cover the necessary costs of translations. Essentially, we will submit the first case, get a refusal, then we’ll apply for ECF to challenge it. Solicitors will take it at this point, because they will get more funding, the case is already pretty much prepared and they can get the information they need. There are literally no solicitors in Edinburgh for example, who will take on a Family Reunion case from the start”

(Operations Manager, British Red Cross Refugee Family Reunion Project, 27 July 2019)

The other limitation of the ECF scheme is that cases which are successful in obtaining ECF can only be taken on by an immigration solicitor with a legal aid contract. Unfortunately, as discussed in the next section, one of the many negative effects of LASPO has been the drop in the number of immigration solicitors with legal aid contracts, and there are several areas in England and Wales where either no legal aid solicitors are available for immigration work, or the few legal aid solicitors present do not have sufficient capacity.

The difficulties associated with finding a solicitor willing to take on a family reunion case appear to indicate that the re-introduction of legal aid for RFR would not be a simple quick-fix solution, and there is a need for much wider reform of the legal aid system. The infrastructure of legal aid solicitors is simply no longer there, leaving clients vulnerable to exploitation from unscrupulous independent immigration advisers.

5.3 Recognising Refugee Family Reunion as a route to protection

Quite apart from the question of the real amount of financial savings in fact obtained as a result of the withdrawal of legal aid for RFR, the main justification for reintroducing publicly-funded legal assistance for all RFR applications is one of principle. The logic of grouping RFR together with other immigration applications for the purpose of legal aid is inherently flawed and does not reflect reality. As the recent move of the processing of RFR applications to a specialist team within the Asylum Directorate implicitly recognizes, RFR is a protection, rather than immigration, matter. The fact that the LASPO Review did not engage with this issue makes its assessment of the fairness and adequacy of the current legal aid system little more than a box-ticking exercise as far as RFR is concerned.

In light of its inherent nature as an important route to protection, RFR should never have been removed from the scope of legal aid. Even accepting that the reasons which the Government presented in support of the decision to withdraw legal aid for most immigration matters at the time of LASPO are well-founded in respect of other immigration cases, they clearly do not apply to RFR applications.

As noted above, the first justification was that decisions on immigration cases did not have the potential to put the lives of individuals at immediate risk. Such consideration clearly does not hold true for decisions involving the right of a refugee to be reunited in the UK with members of his or her family who may themselves be in need of international protection in their own right.³⁴² Indeed, the risks faced by family members of refugees who are left behind are well documented.³⁴³ Several of the sponsors interviewed for the present research reported that their relatives were living in refugee camps in areas that were unsafe, or that they had been forced to leave children in unstable situations and in the care of distant relatives or friends.

The second justification for the cuts to legal aid put forward by the Government was that individuals involved in immigration cases are unlikely to be vulnerable and will have made a “free and personal” choice to come to, or remain in, the UK. Again, such justification is also clearly not applicable to the RFR context. The move from being an asylum seeker to a refugee does not automatically confer resilience, emotional strength and financial stability (or indeed the ability to speak English or to secure a job) on the holder of refugee status. Many refugees find the journey towards integration that begins with the acquisition of refugee status at least as challenging as their journey through the asylum system. Additionally, many refugees start the RFR application process as soon as they are able to do so – often whilst they are still in temporary accommodation, and before they are in receipt of benefits.³⁴⁴

The final justification identified in the LASPO consultation was that immigration cases are straightforward and that individuals should be capable of navigating the system on their own and representing themselves.³⁴⁵ The characterisation of the RFR application process as a straightforward one is contradicted by a number of authoritative reports released since the entry into force of LASPO.³⁴⁶ Criticism of the idea that RFR applications are straightforward has also come from the UNHCR, which has pointed to “a whole range of complexities” faced by refugees and their families during the family reunification process and noted that expert and experienced legal advice is absolutely necessary in order to deal with such difficulties and prepare strong and successful applications.³⁴⁷



“Taking [RFR] out of legal aid funding because it was a straightforward application was never going to work [...] if you’ve ever looked at one, you’ll know that it’s not.”

(Solicitor, 19 January 2019)

“There are a lot of barriers: knowledge, language, computers. Even my solicitor can’t do it successfully. I can’t do it myself. The whole thing is complicated, all of it. I can’t do it myself.”

(Sponsor, June 2019)

“Look, I am a smart guy, I taught before in a university, but I knew I wouldn’t be able to do it correctly. I think maybe now, after going through it and watching the solicitor, I might be able to do it but the evidence [...] it’s crazy. It’s a crazy system.”

(Sponsor, June 2019)

The idea that the RFR process is in any way straightforward was also vehemently challenged by all the practitioners and caseworkers we interviewed and sponsors rejected any suggestion that the RFR process was easy to navigate. None of the sponsors interviewed had attempted the application by themselves. When asked why they did not think of undertaking an application on their own, all of the sponsors interviewed reported that the application process was complex and the application was too important for them to try and risk getting it wrong. Language barriers were frequently mentioned, together with lack of understanding of what the relevant forms required. Further, none of the sponsors interviewed were aware of anyone in their communities who had made the application on their own and they reported that friends and other members of their community who had advised them about family reunification in the first place had told them not to try to complete the application on their own, because “it was impossible without a solicitor”.

At present, sponsors are faced with a difficult choice: preparing the applications on their own



is not an option for most refugees and the pro bono provision for legal assistance is grossly insufficient to meet demand, which leaves many sponsors faced with having to pay a solicitor to help them complete their applications, adding to an often overwhelming burden of debt.

Publicly-funded legal assistance, provided by those with appropriate expertise and experience is therefore necessary for refugees to be able to successfully navigate the RFR process.³⁴⁸ The reintroduction of legal aid for RFR remains therefore absolutely crucial. However, the outcome of the LASPO Review leaves little hope that the cuts to legal aid for immigration will be reversed in the foreseeable future. This is even more unlikely now,

in light of the economic crises over the last 15 years and given the economic downturn resulting from the COVID-19 pandemic.

As an immediate, although decidedly makeshift solution, it is essential that the level of funding available through the ECF scheme is reviewed so as to make it worthwhile for practitioners to apply for ECF and to take on cases once ECF is obtained. This would, at least in the short term, address some of the issues created by LASPO and ensure that the ECF scheme fulfils its original state aim of ensuring effective access to justice to some of the most vulnerable people in society.





5.4 Main findings and recommendations

Main findings

- The cuts to legal aid introduced by LASPO have had an extremely detrimental impact on the entire immigration advice sector in England and Wales, resulting in fewer legal aid solicitors and the closure of many pro bono advisers.
- Given the considerable costs involved in obtaining private professional assistance, the option of paying a solicitor to assist with RFR applications is not available to a significant number of prospective sponsors.
- Obtaining ECF for RFR cases is now not as difficult as was previously the case and the process of applying for ECF is not as complicated and time-consuming as commonly perceived. However, the current levels of fees and disbursements available under the ECF scheme remain deeply unattractive to solicitors and objectively inadequate to cover the full cost of the RFR application process.

Recommendations

For the Home Office

- **Given the complexity of the RFR application process, what is at stake for applicants and sponsors and the nature of refugee family reunification as an instrument of protection, legal aid should be reinstated for all RFR applications.**
- **Pending the reintroduction of legal aid for RFR, the levels of fees and disbursements available through ECF should be increased so as to make it viable for practitioners to take on RFR cases.**





6 The role of the charitable and pro bono sector

This chapter examines the assistance available within the not-for-profit sector for refugees who seek to make an application for RFR. The chapter seeks not only to identify major providers of legal services, but also to identify trends within the sector, instances of best practice, gaps in provision and potential solutions.

Section 6.1 starts with an overview of the services currently available through refugee support charities and then examines other providers of pro bono legal assistance, including Law Centres and Citizens Advice Bureaux, and law clinics run by universities. Section 6.2 then moves on to look at the main challenges facing the sector; section 6.3 concludes by looking at some of the advantages enjoyed by organisations working in the area of refugee family reunification and at possible ways of increasing capacity.

6.1 Mapping the availability of free legal support

6.1.1 Refugee support charities

What is often called in shorthand “the refugee sector” in the UK is in fact composed of a wide variety of different types of charities and differently constituted organisations, including:

- national or international organisation of broad remit, with specific work streams related to refugees (e.g. Children’s Society, British Red Cross);
- national refugee charities (e.g. Refugee Action, Refugee Council);
- specialist charities which work with refugees in respect of a particular issue (e.g., Helen Bamber Foundation; Freedom from Torture);
- local and regional charities working partially or exclusively with refugees and asylum seekers.

Until 2010, there were two organisations with national coverage, Refugee and Migrant Justice (RMJ) and the Immigration Advisory Service, which provided immigration advice free of charge. Both these organisations went into administration following changes to the way in which legal aid was paid, leaving tens of thousands of asylum seekers and vulnerable immigrants without representation.³⁴⁹ These two organisations were the backbone of legal aid provision to this group of people and would have provided much of refugee family reunification work that was ongoing at the time. The collapse of these two charities preceded LASPO by a couple of years but was prescient of a crumbling legal aid system within the immigration sector.

These days, most organisations working with refugees provide at least some form of support in respect of family reunification, given that family separation is an integral part of the refugee experience for so many. When it comes to providing legal assistance, however, there are only a handful of charities and projects which provide support with RFR applications.

With the exception of organisations which are regulated by the Solicitors Regulation Authority (SRA), such as Law Centres and a handful of specialist legal charities, such as GMIAU, organisations which give advice on RFR must be registered with OISC at Level 2 or above. As can be seen from Table 7 below, there are few enough of these organisations and the pattern of distribution mirrors to some extent that of legal aid providers, adding to the problem of advice deserts. It should be noted however, that many of the organisations registered at Level 2 or above do not in fact provide support for RFR. There are many specialist organisations which work only with individuals of certain nationalities, or belonging to particularly vulnerable groups – for example, those with no recourse to public funds. Many more organisations take on a wide variety of legal work, of which RFR normally forms only a tiny proportion. For example, although there are three organisations in the East Midlands registered at Level 2 or above, none provide assistance with RFR.

**Table 7: Organisations providing legal advice for RFR in England and Wales (January 2021)**

	Registered at Level 2 or above	Fewer than 5 RFR cases annually	More than 5 RFR cases annually
Yorkshire and the Humber	19	1	4
West Midlands	10	1	1
Wales	1	1	0
South West	6	1	2
South East	14	1	0
North West	7	1	2
North East	2	0	0
London	61	7	3
East of England	6	0	1
East Midlands	3	0	0
Total	129	13	13

The information set out in Table 7 above was compiled from the register of registered immigration advisers maintained by OISC as at 4 January 2021 and desk-based research. There were a number of organisations on the register for whom it was not possible to obtain information (32 out of a total of 145), mainly due to the COVID-19 lockdown. However the websites of such organisations did not indicate that they gave immigration advice in this area, so it appears unlikely that it constitutes a significant area of work. It should be noted that there also exist refugee family reunion projects, such as the North of England Law Centre, which are not regulated by OISC. Whilst the data presented in Table 7 is therefore not necessarily complete, it is still clear that the number of organisations offering significant family reunion projects is relatively small. It is also highly significant that most of the larger projects are funded by the Families Together Programme, which is scheduled to end in 2021.

The main national organisations working solely with refugees and asylum seekers in England and Wales, the Refugee Council, Refugee Action and the Welsh Refugee Council, whilst supporting advocacy and campaigning in the area of family reunification, do not offer legal assistance for RFR applications.³⁵⁰

The British Red Cross is a major provider of support for refugees and asylum seekers in the UK and offers a variety of different forms of assistance, including in relation to family reunification.

Alongside its long-running Family Tracing service and Travel Assistance programme (now brought together under the Restoring Family Links Programme), since 2015 the British Red Cross has been running a legal project aimed at providing legal assistance with RFR visa applications.³⁵¹ The national British Red Cross Refugee Family Reunion Project currently offers assistance to refugees wishing to make RFR applications in five main locations throughout the UK (London, North West England, Plymouth, Leeds and Glasgow).³⁵² The project currently employs five full time members of staff and in each area is supported by volunteers. In Plymouth, the British Red Cross works in partnership with a legal clinic based within the University of Plymouth, supervised by a solicitor who is the Law Clinic Director.³⁵³ In Leeds and London, the project is run by and from the local British Red Cross office, with supervision provided by a local solicitor. Staff members are all OISC-registered advisers. In Scotland, the model is slightly different and the caseworker from the British Red Cross does not make the applications, but supports the refugee family reunification work of Just Right Scotland.³⁵⁴ In the North West, the British Red Cross Family Reunion Project currently has a caseworker based in – and jointly supervised by – Greater Manchester Immigration Aid Unit (GMAIU); the caseworker also runs a clinic in conjunction with Asylum Link in Liverpool.³⁵⁵ As discussed below, the British Red Cross runs a further project in partnership with the Central England Law Centre.



In 2019, the British Red Cross Family Reunion Project worked with 119 sponsors across the five core locations.³⁵⁶ The previous year the project had worked with 88 sponsors.³⁵⁷ Capacity at each of the locations varies greatly depending on staff turnover and the availability of suitably qualified replacements. Due to its location and visibility, the London office of the project receives a much higher level of referrals and direct enquiries than it is able to handle. In order to make the best use of the resources available, the legal team in London tends to focus on particularly complex, “outside the Rules” cases which are likely to go to appeal, and applications raising Article 8 ECHR issues. For non-complex cases, the project refers refugees to other organisations or projects, including the RLAP run by the University of Bedfordshire at its Luton campus. However, even with this additional capacity, at times there is insufficient within the project to even screen cases and waiting lists are frequently closed.³⁵⁸

Some local refugee charities provide legal assistance with RFR applications as part of a broader range of legal services offered to refugees and asylum seekers. One of the largest immigration advice charities in the country, the Greater Manchester Immigration Aid Unit (GMIAU), plays a major role in providing free legal assistance to refugees in the North West of England, including in relation to family reunification matters.³⁵⁹ Prior to the entry into force of LASPO, GMIAU already provided legal assistance with RFR applications as part of the work covered by its contract with the Legal Aid Agency. In 2012, as a response to the legal aid cuts and the anticipated impact of those cuts on refugees seeking to bring their family to the UK, GMIAU started running a free legal service for RFR applications. Since then, the service has worked with over 350 families.³⁶⁰ In the model used by GMIAU, a legal adviser will see the sponsor for an initial interview to assess the complexity and viability of their case, before passing it on to the family reunion team, staffed by volunteers who collect and prepare the evidence. Once evidence gathering is completed, the client is moved back to the legal adviser for review/preparation of the application and submission. In the assessment of the project manager, about 60% of the work is done by volunteers, significantly increasing the amount of work that can be undertaken with limited resources.³⁶¹

Immigration advice charities are rare and GMIAU is the only one which undertakes a significant amount of refugee family reunification work. Asylum Justice, which is based in Wales, is another such

organisation, but being the only organisation providing pro bono immigration advice in that country, it focuses principally on asylum appeals and fresh claims for asylum seekers.³⁶²

The Refugee and Migrant Centre (RMC), based in Wolverhampton and with offices in Walsall and Birmingham, is one of the major providers of RFR legal assistance in the West Midlands.³⁶³ This local charity works with between 150 and 200 sponsors annually on straightforward and more complex cases. One of the largest local charities providing services to migrants and refugees, the RMC has around twenty advisers registered at OISC Level 1, ten at Level 2, and one Level 3 adviser, along with a regulated solicitor. These staff members are able to undertake a wide variety of work, including RFR cases. Since RFR work is part of a larger work package, the ability to provide advice in this area is less affected by fluctuations in specific funding, and cases of different levels of complexity, as well as appeals, can be undertaken by advisers qualified at the appropriate level.³⁶⁴

Some smaller refugee charities also employ an immigration adviser (either as a paid staff member or as a volunteer) who is able to undertake a range of legal work; however, their capacity to take on RFR cases would normally be very limited. It is important to note however that charities which are unable to provide legal assistance do still play an important role in supporting refugees through the family reunification process.

At the very least, refugee charities will provide psycho-social support to individuals going through the family reunification process, directing them to solicitors or pro bono legal advisers and helping them prepare for their family's arrival. Pre-arrival support may include helping with evidence gathering, preparing ECF applications, and finding small grants to help with paying solicitors. For instance, the British Red Cross Refugee support service, which currently operates from over fifty locations in England and Wales, offers pre- and post-arrival support for refugees and asylum seekers, including in relation to family reunification.³⁶⁵ The British Red Cross local branch in the South West has tried to standardise the support they give – gathering evidence, making referrals to solicitors, providing help with DNA tests and identifying sources for financial help for the associated costs, as well as for legal costs. They have also started preparing ECF applications, and say that they are trying to provide all the wrap-around support they can, short of making the applications themselves.³⁶⁶



Many more refugee charities are involved in post-arrival work, helping families find accommodation, welfare benefits, registering with a doctor, ESOL classes. The organisations which provide this kind of wrap-around support usually not only help the sponsor during the application and pre-arrival phase of the family reunification process, but also work with the family after arrival to help with access to accommodation and benefits, and other integration support. In some organisations, caseworkers monitor new arrivals for up to six months after their arrival, recognising that this time of integration can be extremely stressful.³⁶⁷ This is not an area of support that is provided by most legal services providers, nor by solicitors, but is often necessary to ensure that reunification goes well and is sustainable in the long term.³⁶⁸ The UNHCR has also stressed the importance of monitoring the integration of reunited refugee families in the UK, calling for the formulation of plans to foster integration by assisting families in dealing with the obstacles they may encounter in the process.³⁶⁹

6.1.2 Law Centres Network and Citizens Advice Bureaux

Assistance with RFR cases is sometimes also available from not-for-profit organisations providing general legal advice, including Law Centres and Citizens Advice Bureaux.

Law Centres are local, independent, not-for-profit organisations which provide legal assistance (advice, casework and representation) to individuals who would not otherwise be able to afford it. The assistance provided by Law Centres covers a variety of areas, usually including housing, welfare, employment, and, in some cases, immigration. Solicitors working in Law Centres are regulated by the SRA as individuals and therefore do not need to apply to OISC for registration. However, the Law Centre itself needs to be regulated as an organisation by either OISC or the SRA.³⁷⁰

The services offered by different Law Centres are dictated – as they are in most voluntary sector organisations – by what funding is available. Historically, Law Centres were funded by a combination of local authority funding, legal aid, grants and trusts. Over the last decade, the combined effect of the legal aid cuts introduced by LASPO and cuts to local authority funding have severely weakened the pro bono legal advice sector and, according to figures obtained through parliamentary questions, have resulted in the

closure of half of all Law Centres and not-for-profit legal advice services in England and Wales.³⁷¹

Of the 41 Law Centres listed on the Law Centres Network website as of June 2020,³⁷² 26 continue to provide some form of immigration advice, with most of these having legal aid contracts to work on asylum cases and the limited amount of immigration work still within the scope of legal aid.³⁷³ Immigration is not one of the areas covered by the only Law Centre still operational in Wales.

Within those Law Centres which still provide immigration advice and services, capacity is severely limited and demand ever-increasing, and few have capacity to deal with RFR applications.³⁷⁴ Many Law Centres only work on cases which attract legal aid funding. Those which do provide support for RFR cases tend to focus on complex cases which could not be supported by other pro bono providers, such as local charities or the British Red Cross.³⁷⁵

The two Law Centres which have specialist projects for RFR are the Central England Law Centre and North East Law Centre. The North East Law Centre currently employs two members of staff (one OISC Level 2 adviser and one solicitor) on its Family Reunion project, which is partially funded by the Family Together Programme. The project worked with 94 sponsors during its first eight months of operation. Whilst the North East Law Centre did undertake work on RFR even before setting up this new dedicated project, it had only had capacity to work with two sponsors a year.³⁷⁶

The lack of capacity for RFR applications is not only an issue in areas where few refugee charities operate. In London, caseworkers at the Islington Law Centre, like most other Law Centre staff interviewed, stated that the Law Centre manages to take on only a very small proportion of the clients who contact them for help with RFR applications.³⁷⁷

In mid-2018, the Law Centres Network commissioned a review of their models to try to prevent further closures and develop the organisations for the future.³⁷⁸ This includes finding more sustainable ways of funding their core services; some Law Centres (for example North East Law Centre) have set up chargeable immigration services, the idea being that chargeable services will help support the provision of free services, including assistance for RFR applications.³⁷⁹

In a similar category to the Law Centres Network, the Citizens Advice UK network is also founded



16 were registered at Level 2 or above with OISC.³⁸⁰ What makes the Citizens Advice UK network particularly remarkable (and particularly promising as a partner in any national venture supporting RFR) is that it has such a large number of members, and that all are exempt from OISC registration at Level 1.³⁸¹

6.1.3 University law clinics

A further avenue through which refugees are able to obtain qualified legal assistance in relation to their family reunion applications are university law clinics and clinical legal education projects.

Law clinics are a way for universities to expand and increase their offerings to students in an ever-more competitive higher education sector, whilst at the same time providing services to the local community. Over the last decades, law clinics have become increasingly popular in UK universities. Traditionally, immigration law has not been a popular choice with university law clinics, which tend to focus on other areas such as welfare benefits and housing. However, since LASPO and in particular since the upsurge in interest in refugee issues following the refugee crisis in 2015-16, several law clinics in UK universities have expanded the scope of their work to cover immigration matters, and three universities have set up projects focusing exclusively on RFR.

University legal clinics providing support for RFR	Model
Refugee Legal Assistance Project, University of Bedfordshire	<ul style="list-style-type: none">- Dedicated RFR clinic- Run in partnership with an OISC-registered local charity- Receives referrals from BRC FR Project (London)
Refugee Family Reunion Clinic, Sheffield Hallam University	<ul style="list-style-type: none">- Dedicated RFR clinic- Registered with OISC- Only university to run a dedicated RFR module- Has developed a complex partnership model across Yorkshire, funded by AMIF
Refugee Family Reunion Project, University of Plymouth	<ul style="list-style-type: none">- Dedicated RFR clinic- Run in partnership with BRC- Jointly supervised by BRC caseworker and Law Clinic Director
Liverpool Law Clinic, University of Liverpool	<ul style="list-style-type: none">- Provides advice in a range of areas, including immigration and asylum- Runs a Family Reunion project- Run as a module on the LLB
Queen Mary Legal Advice Centre, Queen Mary University of London	<ul style="list-style-type: none">- One-off written advice on RFR (included amongst a range of other immigration applications)
Immigration Advice Clinic, University of Exeter	<ul style="list-style-type: none">- RFR advice included among a range of other immigration applications
Law Clinic, University of Kent	<ul style="list-style-type: none">- Advice on a variety of topics, including immigration- Some RFR applications made as part of a range of immigration advice
Student Legal Advice Centre, University of Derby	<ul style="list-style-type: none">- Work in partnership with Paragon Law and BRC- Makes applications for RFR for straightforward cases- Apply for ECF in more complex cases before referring to solicitors



When compared to other pro bono providers, universities have the added benefit of access to legally-minded, enthusiastic volunteers. The main drawback to the university clinic model is year-round capacity. Most of the clinics cannot operate during the long summer vacation, and capacity almost inevitably decreases during exam periods. This requires very careful planning in relation to workload and when cases are taken on. One of the university clinics has taken on exchange students from US universities as volunteers over the summer vacation to ensure that they could continue their services on an ongoing basis, but this is not necessarily a viable option for all institutions.

For the majority of university law clinics which provide immigration advice, RFR, when it is covered at all, is only one of a range of immigration services offered, meaning that it is unlikely that more than a handful of cases will be completed in a year.³⁸² Projects working exclusively on RFR applications, however, are able to work with much higher numbers of applicants and to develop specific skills and expertise, as well as contacts, around their specialism. For example, the Refugee Legal Assistance Project at the University of Bedfordshire, which runs only one evening per week during term time, has assisted with over 150 family reunion applications since its establishment in 2014; the Family Reunion Clinic at Sheffield Hallam University, established in 2018, worked with over 200 applicants in the eighteen months before the COVID-19 pandemic forced it to move online.³⁸³

The issue of regulation and registration with OISC can be problematic for university law clinics, because of perceived reputational risks associated with immigration advice. OISC is very aware of the situation and eager to help university clinics

regularise their status. In this regard, the experience of the Queen Mary Legal Advice Centre is illustrative of the positive attitude of OISC to the regulation of university clinics:

There is no doubt that the regulatory position of university law clinics has been a confused picture for some time. It was summer 2017 when the [Queen Mary Legal Advice Centre] approached OISC to try and resolve the issue of compliance. Far from the reprimanding that the QMLAC expected, OISC praised the clinic and took a flexible approach to regulation to allow the Centre to continue operating in this area. This type of hybrid organisation (not a law centre or a firm) was new to OISC, and quite early on in the discussions it became apparent that a flexible approach was most suitable.³⁸⁴

The university law clinic model can be incredibly successful whether stand-alone (like Sheffield Hallam) or as a partnership with refugee charities (University of Plymouth/British Red Cross, and University of Bedfordshire/BRASS). In addition to providing much needed free legal assistance to refugees trying to bring their families to the UK, university legal clinics serve the additional purpose of exposing future legal practitioners to the realities of the immigration and asylum sector, increasing their awareness of the issues faced by refugees and vulnerable migrants and educating the next generation of decision and policy makers.³⁸⁵ However, in common with the rest of the sector, funding is an issue and there are serious concerns in the sector that legal clinics will be increasingly difficult to justify as a financially viable teaching tool in the current climate.³⁸⁶



6.2 Challenges for the pro bono sector

6.2.1 Capacity

According to the most recent data published by the Home Office, 7,482 RFR visas were granted in the year ending March 2020.³⁸⁷ During the same period, only 2,525 ECF applications were granted for all immigration matters (see Table 6 above). Some sponsors would have submitted their family's applications by themselves or with the help of friends, and some others had access to free legal advice from the pro bono sector. Still, when the two figures are compared, it is clear that there is a gaping disparity between the legal assistance needed and that currently available without cost to the sponsor. This implies that thousands of refugees each year have to find hundreds, or even thousands of pounds to pay for legal advice and that those who cannot find such sums may simply be unable to bring their families to the UK.

With regard to their capacity to offer free legal assistance for RFR, the organisations interviewed reported a vast degree of variation in the number of cases they are able to take on. Some of the largest providers work with up to one hundred sponsors annually, whilst others only manage to take on a couple of cases a year as part of a range of legal assistance services. Some organisations run waiting lists, but many more do not, for the simple reason that they know that they cannot manage a waiting list and that refugees are better off trying to find alternative solutions. For those that do run them, waiting lists are usually about three months long. All of the organisations that have waiting lists stated that they give sponsors a list of the evidence required when they take them on in an attempt to ensure that they are as prepared as possible when the time comes for them to prepare the application. Applicants are normally only prioritised in very particular circumstances, such as cases of serious illness, pregnancy or where an applicant is about to turn eighteen.

What is not in doubt is the overall lack of capacity in the UK charitable sector for provision of assistance without cost to the sponsor. All organisations interviewed said that they felt that, since LASPO, the pressure and demand for assistance was increasing, as more service providers close. Many service providers expressed distress in respect of the situation, with several interviewees mentioning feeling guilty about not being able to help more clients.

Table 8: RFR visas granted (2018-19 and 2019-20)

	Year Ending March 2019	Year Ending March 2020	% change
Total grants	5478	7482	+37%
Under 18	2579	3779	+47%
Over 18	2899	3703	+28%

Source: Immigration statistics, year ending June 2020, available at <https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-march-2020#asylum-and-resettlement>

“We always have a waiting list – about twenty people at the moment, we try not to keep people on it for more than three months.”

(Supervisor, University law clinic, 11 May 2019)

“We have an informal waiting list but we’re always closing it. In ten months, last year we got 250 referrals and took on maybe 20 cases.”

(Operations Manager BRC, Refugee Family Reunion Project, 27 July 2019)

“There are far more refugees seeking legal assistance than there is legal assistance available, because of the cuts to legal aid, some firms going out of business, charities going out of business. We are all representing as many refugees as we possibly can to the point that, if the number of refugees drops, the number of refugees that we represent for family reunion will not change because the provision of legal services has crashed, so the number will remain constant.”

(Supervisor, University law clinic, 11 May 2019)



6.2.2 Regulation

As discussed in chapter 5, organisations and individuals providing legal assistance with RFR applications must be regulated by the SRA or OISC. The majority of charities which provide legal assistance (with the exception of Law Centres and specialist immigration advice charities such as GMIAU, who are registered with the SRA) are registered with and regulated by OISC.

Interviewees both from the charitable sector and from private solicitor firms were asked about their views on the level of qualification needed for RFR work (currently Level 2), and whether this affected the ability of their organisation to carry out the work. A number of interviewees noted that there is a clear inconsistency between the fact that RFR under Part 11 of the Immigration Rules is regarded as a straightforward immigration matter for the purpose of determining whether it is a matter requiring legal aid, whilst at the same time being regarded as a complex legal area which requires Level 2 OISC accreditation. However, none of the interviewees suggested that advice for RFR should be unregulated, and only one suggested that it could be regulated at Level 1. The consensus was that, given the complexity of RFR application and what is a stake for sponsors and applicants, family reunion work should be regulated at least at Level 2, with some arguing that it should be regulated at Level 3. In that latter regard, there was some discussion as to whether Level 2 OISC regulation was in fact sufficient to guarantee that the advisers had the skills needed, or whether some form of ad hoc accreditation would be more suitable. Several advisers noted that the fact of having passed the OISC Level 2 examination does not guarantee that the individual in question is well equipped to deal with family reunification cases. One noted that, at the most, in order to qualify at Level 2, advisers would normally receive five days of training, and it was unlikely that there would be a question concerning RFR in the Level 2 examination.

Regulation by OISC is often seen by those working in the sector as onerous and time-consuming. However, several interviewees stated that they felt that in the last few years the regulator had moved towards a more enabling approach for the charity sector. Those interviewees who had registered or been audited by OISC more recently said that they had found the process helpful and empowering.

Indeed, OISC staff emphasise that the regulator is keen to work with the pro bono and charity

sector and that, following the cuts to legal aid in 2012, the regulator became concerned about the drop in numbers of OISC-registered not fee-charging organisations and decided to focus on building up the sector.³⁸⁸ To this end, a dedicated Community and Voluntary Sector Support Group has been set up to facilitate registration of pro bono organisations, and the OISC website now contains a separate section for Community and Voluntary Sector (CVS) organisations.

Registration is free for pro bono organisations and their caseworkers, and individual caseworkers are exempted from examination fees.

Table 9: Number of OISC-registered organisations in the UK³⁸⁹

	March 2018	March 2019	March 2020
Fee-charging	996	918	912
Not fee-charging	215	236	313
Total	1567	1510	1615

Table 10: Number of OISC-regulated organisations by Level as of March 2020³⁹⁰

	Fee-charging	Not fee-charging	Total
Level 1	505	531	1036
Level 2	92	56	148
Level 3	353	78	431

As illustrated by Table 9, in line with OISC's stated aims, the number of non-profit organisations registered with the regulator has been increasing in recent years. However, the most recent data published by OISC (Table 10) show that the number of not fee-charging organisations registered at Level 2 or above remains worryingly low. Currently there are only 134 not fee-charging organisations in the entirety of the UK registered to give immigration advice at Level 2 and 3.³⁹¹

In addition to the work by OISC, an important project which should be highlighted for its contribution to enhancing capacity in the sector is the Frontline Immigration Advice Project, established by Refugee Action in 2016. The project aims to support frontline organisations so that



they can provide high quality immigration advice and provides assistance to organisations which want to register with OISC, as well as training and casework support.³⁹²

The work of OISC in this area, together with the work of the Refugee Action Frontline Immigration Advice Project, has gone some way to starting to re-build the immigration advice sector, which was decimated by LASPO. However, there is clearly more to do to develop organisational capacity at Levels 2 and 3.³⁹³

Despite the positive attitude of the regulator, OISC regulation is still seen by some in the refugee sector as inhibiting the development of pro bono legal advice, whilst not acting as an effective deterrent to unscrupulous fee-charging advisers who operate with impunity. Every solicitor and charity staff member interviewed had stories to tell of fee-charging regulated advisers who had given poor advice, often leading to negative decisions from the Home Office, that in some cases were then impossible to overturn because they adversely affected the credibility of either the sponsor or the applicant.

“ There are two things about this – there aren’t sufficiently qualified people to do this work, it’s a real problem for small community groups who can’t employ someone to do all the work. It makes it really hard for community organisations and at the same time there are so many cowboys operating with impunity. Good providers should be funded by the legal aid agency. On the other hand, it can be really complex work – I think it should all be checked by a supervisor, but how many supervisors are there in the country?”
(Solicitor, Law Centre, 20 February 2019)

Difficulties in employing suitably qualified caseworkers was identified as a real problem, particularly within the charity sector, but also by some of the solicitors interviewed. All of the charities interviewed for this report said that they had problems recruiting to cover positions which needed a Level 2 caseworker, or higher. Some charities combat this problem through internal training of new staff or encouraging existing staff to undertake training and gain accreditation. However, this is only possible if there are other qualified and experienced caseworkers in the organisation who have the time to invest in

upskilling new staff. For many organisations where the legal resource is one person, or for people wishing to begin a legal project, this can be very difficult. In addition, several interviewees noted how training up internal staff and volunteers carried its own risks, with qualified advisers then moving on to better paid jobs within the sector.

One possible solution, mentioned by several of the organisations interviewed, would be the creation by OISC of a dedicated Level 2 registration for organisations and individuals who wish to work exclusively on RFR. Indeed, part of the remit of the OISC CVS Support Group is to consider, pilot and monitor requests for specialist registrations relating to specific areas of legal work. Requests that have so far been considered include those from organisations supporting victims of domestic violence to register only for work under the destitute domestic violence (DDV) concession and those from organisations working with immigration detainees in relation to work on bail applications. An ad hoc specialist registration at Level 2 exclusively for RFR work was used to enable the creation of the British Red Cross Family Reunion Project. According to OISC, the British Red Cross was seen as an obvious candidate for a RFR-only qualification because of the organisation’s record and expertise in the field of refugee family reunification, through their refugee services, travel assistance programme and family tracing services, and its excellent training and supervision regimes for their volunteers. A similar specialist Level 2 registration enabling organisations and individuals to work exclusively on RFR cases could be formalised and made available for charitable organisations which are interested in providing legal assistance for RFR applications, thereby ensuring that high quality specialised advice can be confidently provided even by smaller organisations.

6.2.3 Funding

The cuts to legal aid introduced by LASPO have had a devastating effect on solicitors and charities providing legal support to refugees and asylum seekers. However, the charity sector, and the immigration advice sector in particular, are also suffering from an overall loss of funding as a result of the financial crisis and austerity.

Year-on-year increases in demand for services, coupled with an ever-increasing concern that they will not be able to meet their income needs have been the signature of the charitable sector since the last recession. A survey of charity leaders carried out by the Charities Aid Foundation (CAF)



in November 2018 concluded that

Income generation remains the number one challenge for organisations, followed by meeting demand for services and reductions in funding. This comes at a time when over four in five charity leaders state that demand on their organisation's services had increased over the last 12 months.³⁹⁴

These comments pre-date the COVID-19 pandemic and the ensuing economic crisis, which is almost certain to lead to further cuts in funding.³⁹⁵ Whilst income has actually grown slowly since a downturn following the 2008 financial crisis, a larger proportion of charitable income now goes to larger charities. More than half (£29bn) of the sector's income was generated by major and super-major voluntary organisations (i.e. those with an income over £10m).³⁹⁶

In addition, local authorities in England and Wales, which traditionally have contracted work from charities, lost 38% of their central government funding between 2008/2009 and 2018/2019 and as a consequence have had to cut funding to both local charities and local services.³⁹⁷ Government funding provides approximately 29% income to charities in 2020, but the proportion donated by local government (as opposed to central government) has fallen substantially.³⁹⁸

The lack of funding has been a recurrent theme in the interviews with stakeholders from the refugee sector, who all agree that there is still not enough funding to replace the loss of legal aid for RFR and to meet the needs of refugees seeking assistance with the family reunification process. The situation is likely to worsen with the loss of EU funding after Brexit and the challenges that the economy will face recovering from the effects of the pandemic.

Funders who have historically worked with refugee and migrant charities are faced with a situation where they are not able to step in to replace the funding which has been lost as a result of LASPO, but are eager to work with charities to continue their work. The Paul Hamlyn Foundation and Trust for London have recently published research about new ways of increasing immigration advice provision³⁹⁹ and innovative thematic projects like the Families Together Programme, and the upcoming Access to Justice Initiative⁴⁰⁰ are aimed at engendering strategic change across the sector. One of the major concerns around funding is that several of the projects (GMIAU, Central England

Law Centre, North East Law Centre, RMC) receive funding from the Families Together Programme. There is therefore a real risk that, once the funding from this programme ends, the availability of pro bono refugee family reunification will be further affected.

6.3 The way forward: collaboration, partnership and specialisation

Since 2012, organisations in the refugee sector and other charitable actors in England and Wales have stepped up in order to support refugees who seek to be reunited with their families. Whilst this has not been enough to fill the gap created by the cuts in legal aid and the other sweeping cuts to local services in recent years, refugee support charities have real value to add to this vital area of protection work.

A first advantage of the sector is that of specialisation. By contrast with solicitors in private practice, who generally cover the whole range of immigration applications, charities have the possibility to set up single-issue projects focusing on refugee family reunification. Caseworkers working on such projects develop an in-depth understanding of the subject, and, as they gain experience, learn how to make applications in a way that is most likely to be successful. A project that focuses exclusively on one type of application is also in a much stronger position to look at other elements of the overall process, such as finding funding for DNA testing, or providing additional psycho-social support for refugees undergoing the process.

Specialisation is not without its risks and one of the problems that may occur is a concentration of knowledge and skills in one place, adding to the already problematic lack of geographic coverage. There are however examples of projects in other sectors which have successfully avoided such pitfall by creating a partnership network which allows for that centralised knowledge and expertise to be shared with and relied upon by local organisations. The Frontline network, which supports workers from the public, statutory and voluntary sectors working with those experiencing homelessness, is an excellent example of this approach.⁴⁰¹ Based in central London, the organisation works with a number of partners throughout the UK who run regional networks, providing opportunities for those in the sector to meet face-to-face and to discuss specific local situations. There are possibilities within



the Law Centres Network, or the Citizens Advice UK network, to disperse some of the refugee family reunification work in a similar way.

Charities also have the advantage of being able to make use of volunteers to increase their capacity. From organisations which work with volunteers from the refugee community, to university law clinics in which students volunteer, to the many organisations which rely on the goodwill of solicitors, retired or otherwise, providing their services pro bono, there are many ways in which charities are able to maximise that capacity. Volunteers are used widely for administrative tasks, interpreting, and in some cases preparing ECF applications. In many organisations, at least some volunteers are legally trained and some are themselves OISC-registered advisers. The model in which a qualified member of staff or volunteer supervises a team of unqualified volunteers who assist with the gathering of evidence and completion of forms, which are then reviewed by the qualified adviser/solicitor, is common throughout the charity sector.

Being heavily reliant on volunteers may sometimes have a destabilising effect on a project, as many volunteers – and in particular new refugees – will gain the experience they need to move on to paid employment. This is particularly true for those volunteers who obtain OISC registration beyond Level 1, as the limited number of advisers registered at Level 2 and 3 (138 and 75, respectively in 2019)⁴⁰² makes them extremely employable. However, utilising the skills of volunteers from the refugee community, favoured as a model by many charities, adds value to the project both through building the skills of individuals and adding authenticity to casework.

Organisations in the refugee sector are also used to spreading their resources by developing informal or formal partnerships with each other, and with solicitors. None of the organisations interviewed said that it worked completely alone and without partnerships. Unsurprisingly, 75% of the organisations interviewed mentioned that they work closely with the British Red Cross. For those providing legal advice, access to the Family Tracing Services of the British Red Cross are also very important. For refugee service charities, the most commonly accessed service from the British Red Cross is financial assistance with travel costs.

Partnership in action

The Central England Law Centre works in partnership with the British Red Cross. BRC staff provide wrap-around psycho-social services for sponsors both pre- and post-arrival and work with a specially trained group of volunteers who are drawn from the refugee community. Once sponsors have been screened by the BRC, they are referred to the Law Centre. A solicitor there, with the help of volunteers, takes on straightforward cases through the project. If she adjudges the case to be too complex to be managed by the project, she refers it to another pro bono partner, the legal clinic at Birmingham University, who will prepare the application for ECF funding, at which point the case can be taken on by other solicitors in the Law Centre.

When the Centre for Research in Law at the University of Bedfordshire set up its **Refugee Legal Assistance Project** in 2013, it wanted to find a way of running the project without going through the rigours of registering with OISC, so it teamed up with a local charity registered with OISC at Level 2, Bedford Refugee and Asylum Seeker Support (BRASS). BRASS does not have sufficient resources to work in the area of RFR, but was able to provide the legal supervision for students from the Law School. The project runs one evening a week during term time and provides a win-win solution for both partners. BRASS is able to report on the project as its own, boosting their own value for money to funders and other stakeholders, while students get genuine work experience in an area of law that they might not otherwise experience during their studies. Further, the sponsors and applicants get an excellent pro bono service. RLAP also works closely with the BRC Family Reunion Project in London, accepting referrals for straightforward applications. This reduces the waiting list of the BRC project, allowing BRC caseworkers to focus on more complex application, whilst at the same time enabling RLAP clients to take advantage of and access to travel assistance.



The experience of the **Sheffield Hallam Refugee Family Reunion Clinic** illustrates how, given the appropriate resources, a university law clinic can be developed and the benefits such programmes can provide to students, the university's reputation and, most importantly, refugee clients. The clinic, which ran as a pilot in 2018-2019, was fully established at the beginning of the 2020 academic year. The project is able to hold surgeries throughout the year through an international exchange programme. The clinic is to rebrand as the Helena Kennedy Centre (HKC) Refugee Rights Clinic from January 2021 and, through funding obtained from the EU, has entered into partnerships with St Augustine's in Halifax and PAFRAS in Leeds. These partnerships will allow the clinic to extend its geographic reach throughout Yorkshire, with specialist OISC Level 2 caseworkers in each of the partner organisations who will be supervised by the clinic. The clinic is also recruiting an in-house solicitor who will work exclusively on RFR-related appeals and reconsiderations and seek to identify opportunities for strategic litigation. The innovative relationship between the University, local charities and a major funder points to the importance of development partnerships and networks, and the potential for providing support for RFR through universities. This project will make the HKC Refugee Rights Clinic one of the largest pro bono providers of legal assistance for RFR in the UK.

Since July 2019 the **British Red Cross Family Reunion Integration Services** project in eight locations in Scotland, Wales, England and Northern Ireland aims to support 900 refugee families and includes a strong element of research, to pilot different models of integration. The project is designed to offer wrap-around support post-arrival, working closely with families to fulfil their immediate needs and enable them to access integration activities. The project is also working in partnership with local authorities to identify suitable housing before a family's arrival, thereby avoiding what is often a crisis point for refugees and their families. The Scottish government, recognising the need for support for refugee families being reunited, have worked with the

British Red Cross as part of this project to establish the Scottish Welfare Fund Family Reunion Grant, which provides financial support before the arrival of the family in the country which works to avoid destitution.⁴⁰³

A further way in which partnership between organisations working on refugee family reunification can be strengthened, and one which would provide widespread support in return for only minimal outlay, is the creation of online communities of practice.⁴⁰⁴ The value of on-line networks has been emphasised recently by the COVID-19 pandemic and the creation of a shared space where refugee family reunification issues could be discussed, best practices shared and training offered, managed by an organisation with a real expertise in complex casework, could be a particularly effective intervention in this area.

Online networks are not unusual in the charity sector and constitute a cost-effective way of sharing experience and information. For instance, the Refugee Legal Group shares information about all aspects of asylum law, and the Frontline Immigration Advice Project funds an on-line network for newly qualified individuals and organisations.

An excellent example of a single-issue online network is the Asylum Support Advice Network (ASAN), set up and coordinated by a small London-based organisation supporting destitute migrants and asylum seekers.⁴⁰⁵ ASAN brings together over 900 members from voluntary sector organisations and law firms, funding bodies, and some public bodies.⁴⁰⁵ It enables its members to share knowledge and experience about asylum support law and to get advice on specific issues. The organisation also maintains a rota of pro bono legal support for rejected asylum seekers who need assistance appealing the decision of the Home Office to withdraw their support, and provides training and uses the evidence base from its work to advocate for the rights of the people they support.

The Families Together Programme recently set up an online group which provides an opportunity for individuals and organisations working on RFR cases to connect and network, share knowledge, identify common issues, and seek advice and support from colleagues on specific practical or legal questions relating to their RFR casework. If appropriately funded and managed, this group

has the potential to develop into a structured and inclusive community of practice, along the lines of ASAN. Such community of practice would provide a real benefit to the sector in terms of providing a repository for the wealth of expertise on RFR which many in the voluntary sector have accrued in the years since LASPO. In addition, by

providing a forum where the issues encountered by caseworkers, advisers and practitioners who deal with RFR cases on a daily basis, the creation of an inclusive community of practice will facilitate the identification of transversal issues and prompt discussion on strategic issues which can then feed into advocacy and campaigning activities.





6.4 Main findings and recommendations

Main findings

- In the years since the entry into force of LASPO, the refugee sector and other not-for-profit actors have actively tried to fill the gap left by the withdrawal of publicly-funded legal assistance for RFR cases by creating projects and forging partnerships aimed at providing free legal assistance to refugees navigating the family reunification process. Despite this, at present, the pro bono sector is struggling to meet the demand for free legal support for RFR applications. The provision of legal advice is not the focus of the activities of most refugee charities and even those charities which provide legal assistance to refugees often have only limited capacity to take on RFR cases. Law Centres and other pro bono advisers are at present severely under-resourced and very few of them have the resources to take on RFR cases.
- The enhanced regulation of the provision of immigration advice, whilst necessary, imposes an additional level of complication for charities and not-for-profit organisations wishing to provide assistance with RFR applications.
- The creation of clinical legal education projects focusing entirely or in part on RFR in the years since the entry into force of LASPO is an important development. University law clinics have helped to fill the gaps in free qualified legal support left by LASPO, whilst at the same time nurturing the next generation of immigration lawyers.
- The perceived difficulty of obtaining OISC registration at Level 2 has to some extent prevented refugee charities and other not-for-profit actors from stepping in to cover the gap in free legal assistance resulting from the withdrawal of legal aid for RFR.

Recommendations

- Relevant actors within the refugee sector should work to broaden the partnerships built through the Families Together Programme and the Families Together Coalition, so as to include solicitors and barristers working on RFR, local authorities and international NGOs.
- Relevant actors within the refugee sector should work together to create a dedicated online community of practice for those involved in refugee family reunification, so as to facilitate the sharing of information, resources and discussion throughout the sector.
- Relevant actors within the refugee sector should work together to set up independent monitoring and evaluation of the impact of the onshoring process upon the quality of decisions on RFR, particularly those relating to complex, “outside the Rules” applications.
- OISC should continue with ongoing initiatives aimed at promoting a better understanding of its role in relation to regulation of the voluntary sector.
- In order to support not-for-profit organisations wishing to provide pro bono legal assistance for RFR, OISC should simplify the process for registration of organisations and advisers wishing to undertake only RFR casework by creating a dedicated Level 2 registration for RFR work.



7 Conclusions and Recommendations

This research set out to examine in a comprehensive manner the UK legal framework relating to refugee family reunification and the way it operates in practice, with a view to identifying the legal and practical issues faced by refugees who wish to be reunited with their families.

The analysis in the report shows that, despite some significant positive developments in recent years, the UK system for refugee family reunification presents some fundamental flaws, which prevent refugees and other beneficiaries of international protection in the UK from fully enjoying their right to family reunification. Such flaws relate both to the legal framework, and to the policies and practices surrounding the RFR process. The following section provides an overview of the main findings of the research in relation to the thematic issues identified in the report and makes recommendations for concrete steps aimed at improving the efficiency and fairness of the system.

The current UK legal framework on refugee family reunification is not in line with international standards and best practice

There are several issues with the current legal framework which should be addressed as a matter of urgency in order to bring it in line with the UK's international obligations and European and international best practice.

First, not allowing unaccompanied refugee children to act as sponsors for RFR is not only unfair, but is also in breach of the UK's obligations under international law, in particular those deriving from the UN Convention on the Rights of the Child. That Convention is binding on the UK and imposes an obligation to pursue the best interests of the child, which, in most cases, will require family reunification

between parents and minor children – regardless of whether the minor is the sponsor or the applicant in the family reunification process. The so-called "anchor children" argument advanced by the UK Government in order to justify the policy choice of not allowing children to act as sponsors for RFR is not supported by either the available evidence or the experience of those other European States which allow unaccompanied refugee children to act as sponsor for their immediate family members. Allowing children to sponsor their parents and siblings is not only required by the UK's international obligations, but would respond to a real need as well as bringing the UK family reunification system in line with widespread practice elsewhere in Europe.

Second, the narrow approach adopted in Part 11 of the Immigration Rules with regard to the family members who are eligible for RFR is not in line with the generally accepted minimum standards under international law, nor with the practice of other European States. Every sponsor and every organisation interviewed argued for an expansion of the categories of family members who are eligible to apply for RFR.

Whilst for dependent family members who are not eligible for RFR in principle there exist other routes to family reunification, particularly those under Appendix FM of the Immigration Rules, those routes are both more expensive and subject to burdensome requirements and in most cases they do not represent a viable option for refugees. The possibility for family members who do not fit the narrow requirements for RFR under Part 11 of the Immigration Rules to be granted leave "outside the Rules" if there are exceptional circumstances or compassionate factor does not represent an adequate solution for complex cases concerning dependent family members. The fact that there is no clear avenue for the submission of applications which do not meet the requirements in Part 11 is particularly problematic, as refugees who seek to be reunited with a family member other than their spouse or dependent minor children will normally need to obtain specialist legal advice simply in order to decide whether it is possible to apply, and how.

The Immigration Rules are defective insofar as they fail to provide a route for family reunification for post-flight minor children of a refugee who come to the UK unaccompanied to join their refugee parent. In addition, the rules on family reunification for adopted children of refugees are unnecessarily complex and difficult to navigate and create an unjustified difference in treatment between de jure and de facto adopted children.

Recommendations

- Give unaccompanied refugee children in the United Kingdom the right to sponsor their parents and minor siblings to join them, as required by the UK's international obligations.
- Expand the categories of who qualifies as a family member for the purpose of RFR to allow refugees in the UK to sponsor their adult children and siblings under the age of 25, and dependent parents.
- Ensure that applications for dependent family members who are currently not expressly eligible for RFR are brought "within the Immigration Rules" by adding a flexible and open-ended category based on a broad notion of dependency to the existing categories of family members eligible for RFR.
- Amend the Immigration Rules to create a clear route for post-flight minor children coming to the UK on their own to join a refugee parent.
- Amend the Immigration Rules to provide for a clear, consistent and fair route for applications by both de jure and de facto adopted children of a refugee.





Refugee family reunification is a protection matter and should be treated as such

There appears to be growing recognition within Government (although no explicit policy statement has yet been made in that regard) that refugee family reunification is closely linked to the right to asylum and therefore falls to be treated as a protection matter. Quite apart from this, RFR constitutes an important tool by which family members of refugees, who may themselves be at risk of persecution or serious harm, may reach safety.

The Home Office's decision to transfer the decision-making process relating to RFR to a specialised team within the Asylum Directorate is a move in the right direction, which should be followed by a change of approach with regard to the availability of legal aid for RFR applications.

Although it appears that there has come to be a better understanding on the part of asylum caseworkers of the need to take details of family members during asylum interviews, there is still scope for improvement. In particular, the evidence is that most individuals going through the asylum process do not have a clear understanding of the family reunification process. More needs to be done to ensure that refugees are properly informed of the possibility of bringing their close family members to the UK through RFR and of the requirements of that process.

Recommendations

- The Home Office should recognise explicitly that RFR is a protection rather than an immigration matter and ensure that all processes relating to RFR reflect this.
- The Home Office should ensure that all information relevant to RFR is accurately captured during the sponsor's asylum process as asylum caseworkers to provide information about the family reunification process to all asylum seekers during their asylum interviews.
- The Home Office, in consultation with relevant stakeholders, should explore the possibility of further strengthening the link between the sponsor's asylum process and the subsequent family reunification process by introducing the "ghosting" of Refugee Family Reunion applications during the refugee status determination process.





The RFR application process is not straightforward and evidentiary requirements are particularly burdensome

The RFR application process is not straightforward and, in the vast majority of cases, refugees require qualified legal assistance in order to navigate it.

The complexity of the process derives in large part from deficiencies and the lack of clarity of the Immigration Rules and associated Home Office Guidance, but extends also to the process of making an application through the online application system and trying to book appointments at the VACs now managed by commercial entities.

The online application system has become more user-friendly and now includes a dedicated form for RFR applications. However, no matter how much the system is simplified, it remains the case that, without an excellent grasp of the English language and good IT literacy, as well as an understanding of the way in which the Home Office operates, it will always be difficult for most refugees to navigate the RFR process without expert legal help.

Evidentiary requirements remain particularly burdensome. Despite the Home Office's own guidance, it is clear that decision-makers often expect to see documentary evidence which simply may not be available to refugees. DNA evidence, which, although not mandatory, is sometimes indispensable due to the prevailing approach of the Home Office to assessing evidence, represents a significant cost for those submitting RFR applications.

There appear to have been some changes in practice following the "onshoring" of decision-making to the Asylum Directorate in Sheffield. A significant positive development is that decision-makers now appear to be more prepared to make contact with sponsors or their representatives in order to ask for additional evidence, rather than simply rejecting an application on the basis that the evidence is insufficient. That said, it remains the case that use is made only very infrequently of the possibility of interviewing sponsors when the evidence submitted with the application is not satisfactory.

Recommendations

- Simplify and rationalise the Immigration Rules governing RFR and Family Member visa applications to ensure that they are accessible and understandable.
- The Home Office should monitor the functioning of the new online application system and address any remaining technical issues, including those relating to the functionality of the document upload system.
- The Home Office should monitor the functioning of VACs operated by commercial partners, including ensuring the availability of free appointments for RFR applicants.
- The Home Office should take steps to ensure that the approach of decision-makers to evidence and evidentiary requirements is in line with the Home Office's own guidance and takes into account the difficulties which refugees may encounter in producing documentary evidence.
- The Home Office should mandate decision-makers to make increased use of the possibility to interview sponsors and applicants whenever they consider that the evidence submitted with the application is not fully satisfactory.



The Home Office decision-making process has improved, but the “culture of disbelief” remains an issue

There have been marked steps towards improvement of the Home Office decision-making process in the last few years. The move of the decision-making process from ECOs based in embassies around the world to a single UK-based team has resulted in an overall improvement in communication and has the potential to lead to better-quality and more consistent decisions.

There remain serious concerns about the quality of decision-making, particularly for non-standard, complex applications in which the existence of exceptional circumstances or compassionate factors should lead to a grant of leave “outside the Rules”. In response to the criticism by the ICIBI, the Home Office has improved the relevant guidance for decision-makers and both the ICIBI and some of the practitioners interviewed have reported noticing a small increase in the number of grants made outside the Rules in recent years. However, the lack of published data on the numbers of applications refused, the reasons for refusal, and number of appeals and resubmission makes it extremely difficult to assess any trend in the decision-making process other than through anecdotal evidence.

The “culture of disbelief” within the UK asylum system, which has been consistently documented over many years, is seen by many in the sector to be the most pervasive systemic factor influencing poor decision-making in RFR cases. This culture of disbelief, and target-driven service delivery, is seen as the main cause of a decision-making process that appears too often to be about looking for reasons to refuse rather than to grant applications, and a preoccupation with the quantity of cases dealt with in a time period, rather than the quality, correctness and fairness of the decisions. The culture of disbelief fuels an environment in which evidentiary requirements are applied in an unreasonable fashion and decision-makers

appear frequently to ignore the Home Office’s own guidance.

The positive operational changes implemented by the Home Office in recent years, including onshoring of RFR applications and their transfer to a team within the Asylum Directorate, risk having a limited effect on the quality of RFR decisions if they are not accompanied by a meaningful programme of “major culture change” aimed, inter alia, at eradicating the culture of disbelief from all areas of the Home Office.

Recommendations

- **The Home Office should improve internal monitoring and reporting systems in order to ensure quality control and transparency of decision-making in respect of RFR applications, particularly those concerning complex, non-standard cases and grants of leave “outside the Immigration Rules”.**
- **The Home Office should engage fully with the recommendations of the Windrush Review and design and implement a meaningful and radical programme of “major cultural change” aimed at eradicating the “culture of disbelief” in all areas of the asylum and immigration system.**



The lack of legal aid for RFR remains a significant obstacle to the enjoyment of the right to family reunification

The fact that there is no legal aid for RFR is as significant a problem today as it was when LASPO entered into force in 2013.

The ECF scheme, which was meant to cover the gap left by the withdrawal of legal aid, is regarded as grossly inadequate to fulfil that function by virtually everyone in the sector. Although ECF is now relatively easy to obtain for immigration cases, including RFR applications, the current ECF rates are insufficient to cover the work needed for even a single RFR application, let alone applications for several family members. This means that, as charity workers providing support to refugees lament, it is extremely difficult (and in some parts of England and Wales almost impossible) to find a solicitor who is willing to take on complex applications or appeals, even when ECF is obtained.

The cost of professional legal support represents only a fraction – albeit a considerable one – of the overall costs involved in the family reunification process. Other costs may include those incurred for DNA and TB tests, in-country (or international) travel of the applicants to the VAC and related accommodation costs, the costs involved in obtaining documentation and, for those refugees who are not eligible or able to access travel support from charities, the costs of flights for the family to travel to the UK. The overall costs incurred by refugees during the family reunification process can total many thousands of pounds, and refugees are very unlikely to have saved or be earning significant amounts by the time they come to make an application for reunion with their family. Most borrow money from friends, churches or communities

and remain in debt for many years afterwards, thus impeding their integration. The lack of funding impinges further on families after arrival, when they may spend months staying in poor quality bed and breakfast accommodation, be affected by cuts to English language classes, problems with accessing benefits and face difficulties with longer-term integration. The pressure put on sponsors and families to obtain quite large sums of money to fund the family reunification process at a time when they are recovering from recent traumatic experiences in their home countries or on the journeys to reach the UK, as well as an often gruelling asylum process, can lead to family breakdown.

Recommendations

- Given the complexity of the RFR application process, what is at stake for applicants and sponsors and the nature of refugee family reunification as an instrument of protection, legal aid should be reinstated for all RFR applications**

- Pending the reintroduction of legal aid for RFR, the levels of fees and disbursements available through ECF should be increased so as to make it viable for practitioners to take on RFR cases.**



The pro bono sector has stepped in to fill the gap in free legal assistance created by LASPO, but it is unable on its own to fully meet demand for RFR cases

The voluntary sector has reacted to the cuts to legal aid introduced by LASPO and many refugee organisations have stepped in to try to fill the gap left by the withdrawal of legal aid for RFR.

The research provided insights into a range of projects providing assistance to refugees seeking to be reunited with their families, all of which have been established as a response to LASPO. In many respects, the loss of legal aid and funding cuts have resulted in this particular aspect of the refugee experience in the UK being subject to special scrutiny and has forced the sector to come up with innovative solutions.

The voluntary sector has the advantages of volunteerism, partnership and networking experience. Some actors, including university clinics, have developed a real specialism in the field, in a way that does not happen with the majority of solicitors, whether private or legally aided. The creation of a strong network of organisations, solicitors and other institutional and private actors working on refugee family reunification would be a useful step to consolidate and share the expertise and knowledge which has been developed in various parts of the sector in the years since LASPO.

However, whilst the present report focuses on the refugee family reunification process, it should be borne in mind that RFR work takes place in the context of the overall asylum/refugee situation and refugee family reunification is one of many competing needs in the sector. At present, there exists a huge gap between the available capacity of different parts of the voluntary sector and the demand for legal assistance in relation to refugee family reunification. Unfortunately, far too often, that gap is filled by unscrupulous and unskilled private immigration advisers. There is a real need for more refugee charities and other not-for-profit actors to become regulated by OISC at Level 2 so that they are able to provide much needed free legal assistance.

One of the reasons why voluntary organisations may be unwilling to provide assistance for RFR applications is a misinformed perception about the difficulty of registering with OISC. In reality, the regulator is committed to supporting the development of immigration advice within the voluntary sector, and is willing to consider applications for registration exclusively for RFR work in appropriate circumstances.

Recommendations

- **OISC should continue with ongoing initiatives aimed at promoting a better understanding of its role in relation to regulation of the voluntary sector.**
- **In order to support not-for-profit organisations wishing to provide pro bono legal assistance for RFR, OISC should simplify the process for registration of organisations and advisers wishing to undertake only RFR casework by creating a dedicated Level 2 registration for RFR work.**
- **Relevant actors within the refugee sector should work to broaden the partnerships built through the Families Together Programme and the Families Together Coalition, so as to include solicitors and barristers working on RFR local authorities and international NGOs.**
- **Relevant actors within the refugee sector should work together to create a dedicated online community of practice for those involved in refugee family reunification, so as to facilitate the sharing of information, resources and discussion throughout the sector.**
- **Relevant actors within the refugee sector should work together to set up independent monitoring and evaluation of the impact of the onshoring process upon the quality of decisions on RFR, particularly those relating to complex, “outside the Rules” applications.**



Endnotes

1. For discussion of the psycho-social impact of separation on members of refugee families, see R. Marsden, *Voices of Strength and Pain: Impacts of Separation, Loss and Trauma on the Health and Wellbeing of Reuniting Refugee Families* (British Red Cross, 2016), available at www.redcross.org.uk/-/media/documents/about-us/research-publications; *Safe but not Settled: The Impact of Family Separation on Refugees in the UK* (Oxfam and Refugee Council, 2018).
2. See <https://familiestogether.uk>
3. The first substantial report to be published in the wake of LASPO was a comprehensive study published by the BRC in 2015: see J. Beswick, *Not So Straightforward: The Need for Qualified Legal Support in Refugee Family Reunion* (British Red Cross, 2015). Also of note is the report published by the Red Cross EU Office and the European Council For Refugees and Exiles (ECRE) in 2017, which focuses on the disparities in the application of international standards in countries across the EU, looking at areas such as access to legal aid, child applicants, costs of family reunion, evidential requirements and other aspects using a comparative methodology ; see (A. Bathily and A. Faure-Atger, *Disrupted Flight: The Realities of Separated Families in the EU* (Red Cross EU Office and ECRE, 2014), available at <https://www.refworld.org/docid/58514a054.html>. In January 2019, Greater Manchester Immigration Advice Unit (GMIAU) produced a succinct but particularly insightful overview of the situation in the North West: see *Briefing Paper on Family Reunion for Refugees in the North West* (GMIAU, 2019), available at <https://gmiau.org/refugee-family-reunion>. A recent publication by the Families Together Programme, originally written as a submission to the LASPO post-implementation review, focuses on the need for legal aid to be re-introduced for the process: see S. Holden, *Cuts that Cost: The Impact of Legal Aid Cuts on Refugee Family Reunion* (Families Together, 2020)
4. See, e.g., UNHCR, *Family Reunion in the United Kingdom* (March 2016), at www.unhcr.org/protection/basic/576019c67/family-reunion-in-the-united-kingdom-briefing-paper-2016-576019c67.html.
5. ICIBI, "An Inspection of family reunion applications – January to May 2016", September 2016 ("ICIBI RFR Report 2016"); ICIBI, "An interim re-inspection of Family Reunion applications received at the Istanbul Entry Clearance Decision-making Centre. December 2016 – March 2017", July 2017, ("ICIBI RFR Re-inspection Report (Istanbul) 2017"); ICIBI, "A re-inspection of the family reunion process, focusing on applications received at the Amman Entry Clearance Decision-making Centre. November 2017 – April 2018", September 2018 ("ICIBI RFR Re-inspection Report 2018"); ICIBI, "An inspection of family reunion applications (June-December 2019)", October 2020 ("ICIBI RFR Report 2020"). All of the ICIBI reports are available at <https://www.gov.uk/government/collections/inspection-reports-by-the-independent-chief-inspector-of-borders-and-immigration>.
6. Refugees (Family Reunion) (No. 2) Bill (HC Bill 13) (sponsor Angus Brendan McNeil), available at: <https://services.parliament.uk/Bills/2017-19/refugeesfamilyreunionno2.html> (14 July 2017); a parallel Bill was introduced in the House of Lords by Baroness Hamwee in 2018 (Refugees (Family Reunion) Bill [HL] 2017-19, at <https://services.parliament.uk/bills/2017-19/refugeesfamilyreunionbill.html>). In addition to envisaging the reintroduction of legal aid, the Bills proposed the expansion of the list of family members who can apply for family reunification under the less burdensome procedure set out in Part 11 of the Immigration Rules.
7. See Refugees (Family Reunion) Bill [HL] (HL Bill 15) (sponsor Baroness Hamwee), at <https://bills.parliament.uk/bills/2538>
8. See Ministry of Justice, "Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)", February 2019, ("LASPO Review").
9. See Article 1(a), Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 ("Refugee Convention"), as amended by the 1967 Protocol Relating to the Status of Refugees Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.
10. See Annex A for a list of the organisations and service providers whose staff were interviewed.
11. Art. 16(3), Universal Declaration of Human Rights (UDHR), A/RES/217(III); Art. 23(1), International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171; Art. 10(1), International Covenant on Economic, Social and Cultural Rights (ICESCR), 993 UNTS 3; Preamble, para. 5, Convention on the Rights of the Child, 1577 UNTS 3 (CRC).
12. Recommendation B, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, available at www.unhcr.org/protection/travaux/40a8a7394/final-act-united-nations-conference-plenipotentiaries-status-refugees-stateless.html.
13. See A. Edwards, "Human Rights, Refugees and the Right 'To Enjoy' Asylum", 17 (2005) *International Journal of Refugee Law* 293, at p. 310.
14. See, e.g., Arts 12 and 16(3) UDHR; Art. 17 ICCPR. Although the instruments in question do not expressly mention a right to family unity as such, it is generally recognised that such a right is an essential precondition of the express negative duty of States not to interfere with the family unity of individuals under its jurisdiction. Note also Article 10 ICESCR, according to which "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children".
15. Human Rights Committee, General Comment No. 19: Article 23 (The Family); Protection of the Family, the Right to Marriage and Equality of the Spouses (1990), para. 5. According to the Committee (*ibid.*), such obligation derives from the combined reading of Art. 17 ICCPR (on non-interference with family unity) and Art. 23 (right to marry and found a family). For discussion, see L. Manca, "Family Reunification in International Law: The Current United Nations Legal Framework and the Practice of Human Rights Bodies", 2 (2018) *Nomos* 1, at pp. 12-13. J.C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005), pp. 551-552; UNHCR, *Family Reunion in the United Kingdom* (above n. 4), at 2.
16. For an analysis of the relevant practice, see Hathaway, *Rights of Refugees* (above n. 16), pp. 546-547. See also C. Costello and others, "Realising the right to family reunification of refugees in Europe" (Council of Europe, Issue paper, 2017) at p. 20.
17. See ExCom Conclusions 1 (XXVII) 1975, para f; ExCom Conclusions 9 (XXVIII) 1977, para a; ExCom Conclusions 15 (XXX) 1979, para e; ExCom Conclusions 24 (XXXII) 1981, para 8; ExCom Conclusions 47 (XXXVIII) 1987, paras d, h, i; ExCom Conclusions 74 (XLV) 1994, para gg; ExCom Conclusions 84 (XLVIII) 1997, para b; ExCom Conclusions 85 (XLIX) 1998, paras k, u, v, w, x; ExCom Conclusions 88 (L) 1999, para b(iii); ExCom Conclusions 91 (LI) 2001, para a; ExCom Conclusions 103 (LVI) 2005, para n; ExCom Conclusions 104 (LVI) 2005, para n(vi); ExCom Conclusions 107 (LVIII) 2007, paras b, c, g, h. See UNHCR, Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017
18. ExCom Conclusions 24 (XXXII) 1981, para 2; ExCom Conclusions 85 (XLIX) 1998, para w.
19. ExCom Conclusions 24 (XXXII) 1981, para 4.
20. *Ibid.*, para 9.
21. UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC), February



- 2012, available at <https://www.unhcr.org/4f54e3fb13.pdf>, at p. 16.
22. ExCom Conclusions 24 (XXXII) 1981, para .6.
23. See F. Nicholson, *The Right to Family Life and Family Unity of Refugees and Others in Need of Protection and the Family Definition Applied* (UNHCR, January 2018), available at <https://www.unhcr.org/en-us/5a8c40ba1.pdf>, pp. 10-11; See also F. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification* (UNCHR, January 2018), available at <https://www.unhcr.org/5a8c413a7.pdf>, pp. 5, 7.
24. "Where immigration is concerned, Art. 8 ECHR cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory." See *Biao v. Denmark* (App. No. 38590/10), ECtHR [GC], 6 May 2016, para. 117; *Jeunesse v. the Netherlands* (App. No. 12738/10), ECtHR [GC], 3 October 2014, para. 107; *Tuquabo-Tekle et al v. the Netherlands* (App. No. 60665/00), ECtHR, 1 December 2005.
25. For commentary see C. Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press, 2015), at pp. 127-130.
26. The "elsewhere approach" was first developed by the ECtHR in the case of *Abdulaziz, Cabales and Balkandali v. United Kingdom* (App. No. 9474/81), 28 May 1985, paras 67-68. See also *Gül v. Switzerland* (App. No. 23218/94), ECtHR, 19 February 1996, paras 38-39; *Sen v. the Netherlands* (App. No. 31465/96), ECtHR, 21 December 2001, para. 40; *Berisha v. Switzerland* (App. No. 948/12), ECtHR, 30 July 2013, para. 60. For commentary, see Costello, *The Human Rights of Migrants* (above n. 26), pp. 114 et seq.
27. H. Lambert, "The European Court of Human Rights and the Right of Refugees and Other Persons in Need of Protection to Family Reunion", 11 (1999) *International Journal of Refugee Law* 427, pp. 448-449.
28. *Sen v. Netherlands* (above n. 27), para. 40; *Tuquabo-Tekle v. Netherlands*(above n. 25), paras 47-48. For commentary, see T. Spijkerboer, "Structural Instability: Strasbourg Case Law on Children's Family Reunion" 11 (2009) *European Journal of Migration Law* 271. See also Costello, "Realising the right to family reunification" (above n. 17), at p. 21.
29. *Sen v. Netherlands* (above n. 27), para. 40.
30. *Tuquabo-Tekle v. Netherlands* (above n. 25), paras 48, 50.
31. *Sen v. Netherlands* (above n. 27), paras 37, 39; *Tuquabo-Tekle v. Netherlands* (above n. 25), para 50.
32. *Sen v. Netherlands* (above n. 27), para. 40; *Tuquabo-Tekle v. Netherlands* (above n. 25), para 47.
33. *Tanda-Muzinga v. France* (App. No. 2260/10), ECtHR, 10 July 2014, para 75. See also Nicholson, "Essential Right" to Family Unity (above n. 24), at p. 20.
34. *Tanda-Muzinga v. France* (above n. 34), paras 75, 79, 82; *Mugenzi v. France* (App. No. 52701/09), ECtHR, 10 October 2014, paras 54, 56, 58-59, 62.
35. Hathaway, *Rights of Refugees* (above n. 16), at pp. 543-547.
36. See ECRE and Red Cross EU Office, Disrupted Flight (above n. 3), p. 11. See also Nicholson, "Essential Right" to Family Unity (above n. 24), at p. 39; A. Staver, "Family Reunification: A Right for Forced Migrants?", Refugee Studies Centre Working Paper Series No. 15 (2008), at p. 6.
37. UNHCR Guidelines on Reunification of Refugee Families (July 1983), available at www.unhcr.org/uk/protection/globalconsult/3bd0378f4/unhcr-guidelines-reunification-refugee-families.html, para. 5(a).
38. Ibid.
39. Ibid., para. 5(b).
40. ExCom Conclusions 24 (XXXII) 1981, para 5; ExCom Conclusions 88 (L) 1999, para b(ii). See also Nicholson, "Essential Right" to Family Unity (above n. 24), p. 36; UNHCR Guidelines on Reunification of Refugee Families (above n. 38), para. 5(c).
41. UNHCR, Annual Tripartite Consultations on Resettlement – Protecting the Family: Challenging in Implementing Policies in the Resettlement Context, 20-21 June 2001, p. 2. On the UNHCR's interpretation of the notion of dependency, see also UNHCR, "Summary Conclusions: Family Unity, Expert roundtable organized by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8-9 November 2001", in Feller et al. (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003), at 604-608, available at: <http://www.unhcr.org/419dbfaf4.pdf>, para 8
42. See Human Rights Committee, General Comment No. 19 (above n. 15), para 2: "when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in Article 23".
43. Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy). *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (1988), para 5.
44. Hathaway, *Rights of Refugees* (above n. 16), at p. 556.
45. It should be noted that much of the ECtHR's case law concerning the application of Article 8 in the context of immigration deals with cases of deportation, rather than family reunification.
46. H. Lambert, "Family Unity in Migration Law: The Evolution of a More Unified Approach in Europe", in V. Chetail and C. Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar Publishing, 2014), p. 194, at pp. 205; H. Stafford, "Concepts of Family under EU Law – Lessons from the ECHR", 16 (2002) *IJLPF* 410, p. 413; Costello, *The Human Rights of Migrants* (above n. 26), pp. 163-164.
47. Whilst for married couples family ties exist even when the partners are not cohabitating, for unmarried couples it is necessary to assess whether the partners live together and for how long they have done so, with a view to determining the existence of "commitment to each other". See *Abdulaziz, Cabales and Balkandali* (above n. 27), paras 62-63; Nicholson, *Right to Family Life* (above n. 24), pp. 22-23.
48. Pini et al v. Romania (App. Nos 78028/01, 78030/01), 22 June 2004, para 146; Nicholson, *Right to Family Life* (above n. 24), at p. 24.
49. See, e.g., *Schalk and Kopf v. Austria* (App. No. 30141/04), 24 June 2010, para. 94; Nicholson, *Right to Family Life* (above n. 24), at p. 25.
50. See *Berrehab v. the Netherlands* (App. No. 10730/84), ECtHR, 21 June 1988, para. 21; *Ahmut v. the Netherlands* (App. No. 21702/93), ECtHR, 28 November 1996, para. 30; *Gül v. Switzerland* (above n. 27), para. 32; Nicholson, *Right to Family Life* (above n. 24), at p. 26.
51. See, e.g., *Onur v. the United Kingdom* (App. No. 27319/07), ECtHR, 17 February 2009, para. 44; Nicholson, *Right to Family Life* (above n. 24), p. 27.
52. Nicholson, *Right to Family Life* (above n. 24), pp. 27-28.
53. See, e.g., *Maslov v. Austria* (App. No. 1638/03), ECtHR, 22 March 2007, paras 61-62; *A.A. v. the United Kingdom* (App. No. 8000/08), ECtHR, 20 December 2011, paras 46, 48-49; Nicholson, *Right to Family Life* (above n. 24), at p. 29.
54. *A.W. Khan v. United Kingdom* (App. Nos. 47486/06, 6222/10), ECtHR, 10 January 2012, paras 32, 39-41; Nicholson, *Right to Family Life* (above n. 24), at pp. 28-29.
55. *Mustafa and Armağan Akin v. Turkey* (App. Nos. 4694/03), 6 April 2010, paras 18-19, 21; Nicholson, *Right to Family Life* (above n. 24), pp. 26-27.
56. *Moustaquim v. Belgium* (App. No. 12313/86), ECtHR, 18 February 1991, para. 36; *Boughanemi v. France* (App. No. 22070/93), ECtHR, 27 March 1996, para 35; Nicholson, *Right to Family Life* (above n. 24), p. 29.
57. Nicholson, *Right to Family Life* (above n. 24), at pp. 29-30.
58. Note, however, that it has been argued that the ECtHR's approach is more restrictive with regard to the concept of family life in immigration compared to non-immigration cases, to the point of



- raising issues of non-discrimination under Art. 14 ECHR; see A. Desmond, "The Private Life of Family Matters: Curtailing Human Rights Protection for Migrants under Article 8 of the ECHR?", 29(1) *EJIL* 2018, 261 at pp. 265-270.
59. R. Brittle, "A Hostile Environment for Children? The Rights and Best Interests of the Refugee Child in the United Kingdom's Asylum Law", 19 *Human Rights Law Review* (2019) 735, at p. 767.
60. Ibid.
61. The only exception to this is when family reunification would not be in the child's best interests as per Art. 3(1) CRC. Still, such a case must be considered carefully, in order not to constitute an arbitrary or unlawful interference with the child's right to respect for their family life (Art. 16 CRC).
62. On Article 22 CRC and the best interests of the child principle, see Brittle (above n. 60) at p. 767.
63. Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>, paras 82-83. See also See UN Committee on the Protection of the Rights of Migrant Workers and UN Committee on the Rights of the Child, Joint General Comment on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4 - CRC/C/GC/23, para. 35.
64. UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, para. 59.
65. Ibid., para 60. See also *YB and NS v Belgium*, UN Committee on the Rights of the Child, 12/2017, 27 September 2018, paras 8.10-8.11.
66. See, e.g., ExCom Conclusions 85 (XLIX) 1998, para k. The ExCom places great emphasis on the need for tracing procedures in order to help children regain contact with their family members and proceed with family reunification afterwards; see, e.g. ExCom, Conclusions 24 (XXXII) 1981, para 7; ExCom, Conclusions 47 (XXXVIII) 1987, para i; ExCom, Conclusions 74 (XLV) 1994, para gg; ExCom, Conclusions 84 (XLVIII) 1997, para b(i); ExCom, Conclusions 88 (L) 1999, para c; ExCom, Conclusions 107 (LVIII) 2007, para h(iii).
67. UNHCR Guidance on Reunification of Refugee Families (July 1983), para. 5(iii).
68. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (App. No. 13178/03), ECtHR, 12 October 2006, para 85.
69. *Mugenzi v. France* (above n. 35), para. 45; *Tanda-Muzinga v. France* (above n. 34), para. 67.
70. UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate (2016), Unit 5 "Processing Claims Based on the Right to Family Unity", para. 5.2.1. Although the specific paragraph refers to family members accompanying the refugee (thus outside of their country of origin), the same reasoning is indeed applicable to family members left behind in the country of origin, who are continuing to endure those threats. See also K. Dixon-Fyle, "Putting the Family First", 95 *Refugees* (1994), <https://www.unhcr.org/publications/refugeemag/3b5309ba4/refugees-magazine-issue-95-international-year-family-first.html>; and UNHCR, "Year of the Family", 95 *Refugees* (1994), <https://www.unhcr.org/publications/refugeemag/3b53087a4/refugees-magazine-issue-95-international-year-family-year-family.html>. The ExCom has repeatedly stressed the importance of recognising that the family members of refugees are often themselves in need of international protection; see, e.g., ExCom Conclusions 24 (XXXII) 1981, para 8; ExCom Conclusions 47 (XXXVIII) 1987, para h; ExCom Conclusions 88 (L) 1999, para b(iii). The ExCom also emphasised that once the family members are reunited with their sponsor in the country of asylum, in addition to being given "derivative status" in line with their sponsor, they should be given the possibility to apply for asylum and obtain international protection in their own right; see ExCom Conclusions 88 (L) 1999, para b(iii); EXCOM, Family Protection Issues (EC/49/SC/CRP.14) 4 June 1999, <https://www.refworld.org/docid/4ae9aca00.html>, paras 9-10; Council of Europe, *Family Reunification for Refugee and Migrant Children. Standards and Promising Practice*, April 2020, <https://rm.coe.int/family-reunification-for-refugee-and-migrant-children-standards-and-pr/16809e8320>, at 28; Hathaway, *Rights of Refugees* (above n. 16), at pp. 541-542. See also UNHCR, Annual Tripartite Consultations on Resettlement 2001 (above n. 42), para. 6.
71. A. John, "Family Reunification for Migrants and Refugees: A Forgotten Human Right?", University of Coimbra Human Rights Center Working Paper (2003), available at <http://www.igc.fd.uc.pt/data/fileBIB2017724164832.pdf>, at p. 35.
72. J.C. Hathaway and M. Foster, *The Law of Refugee Status* (Cambridge University Press, 2014), at pp. 108-110.
73. An obvious example in this sense is that of political opinion: see UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (reissued February 2019), <https://www.unhcr.org/uk/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>, at p. 24, para. 80. However, it can be the case with the other grounds recognized in the Refugee Convention as well; see Hathaway and Foster (above n. 73), at pp. 394-395, 403, 409-410.
74. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (above n. 74), p. 24, para. 80; UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1(A)(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (2002), paras 22, 32-33; UNHCR, Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1(A)(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (2004), para 10; UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Article 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (2009), paras 41-42, 46; UNHCR, Guidelines on International Protection No. 12: Claims to Refugee Status related to Situations of Armed Conflict and Violence under Article 1(A)(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions (2016), para 33.
75. UNHCR, Procedural Standards for Refugee Status Determination (above n. 71), at p. 2.
76. ExCom, Family Protection Issues (above n. 71), paras 10, 27(d). At the EU level, this concept is also reaffirmed in the EU Directive on Qualifications (recast), which recognizes that: "Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status"; see Directive 2011/95/EU, Preamble, para. 36.
77. UNHCR, Guidelines on International Protection No. 2: "Membership of a particular social group" within the context of Article 1(A)(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (2002), <https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html>, paras 1, 6-7; Hathaway and Foster (above n. 73), at pp. 445-446.
78. See Hathaway and Foster, *The Law of Refugee Status* (above n. 73), at pp. 446-448; M. Foster, *The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'*, UNHCR Legal and Protection Policy Research Series PPLA/2012/02, August 2012, at pp. 54-55.
79. See EDAL, Denmark - The Refugee Appeals Board's decision of 10 May 2017, <https://www.asylumlawdatabase.eu/en/case-law/denmark-refugee-appeals-board%E2%80%99s-decision-10-may-2017#content>.
80. *Secretary of State for the Home Department v. K* [2006] UKHL 46 (18 October 2006), para. 45. See also Foster, *The 'Ground with the Least Clarity'* (above n. 79), at 56-57.



81. UNHCR Guidelines on International Protection No. 12 (above n. 75), paras 10, 12, 17, 21-22, 33-39.
82. See R. Mandal, Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection") (2005), UNHCR Legal and Policy Research Series PPLA/2002/02, available at <https://www.refworld.org/docid/435e198d4.html>; H. Battjes, "Subsidiary Protection and Other Alternative Forms of Protection", in V. Chetai and C. Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar, 2014), at p. 541.
83. Directive 95/2011/EU (recast), Arts 2(f), 15(c). Although the UK had opted out of this Directive, prior to leaving the EU on 30 December 2020, it was still bound by the previous version (Directive 2004/83/EC), which was in similar terms. The relevant norms for determining eligibility for humanitarian protection (i.e. the equivalent of subsidiary protection) have been transposed into UK law under Part 11 of the Immigration Rules (see Articles 339C-339CA).
84. CJEU, Case C-465/07, *Elgafaji v Staatssecretaris van Justitie*, 17 February 2009, para. 35.
85. See also *Not So Straightforward* (above n. 3), pp. 26-30.
86. See G.S. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (Oxford University Press, 2007), at p. 63.
87. See Nicholson, "Essential Right" to Family Unity (above n. 24), at pp. 213-214.
88. UNHCR, Family Reunion in the United Kingdom (above n. 4), at pp. 3-4, 7. See also UN GA, Resolution A/RES/71/1 (3 October 2016), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf, para 79; UNHCR, Global Consultations on International Protection. Summary conclusions: family unity (8-9 November 2001), <https://www.unhcr.org/419dbfaf4.pdf>, para 6; UNHCR, Desperate Journeys: Refugees and Migrants entering and crossing Europe via the Mediterranean and Western Balkans Routes (August 2017), <https://www.refworld.org/docid/59ad23046.html>, at p. 15.
89. At the time of writing, the UK operates four resettlement programmes, namely the Gateway Programme, the Mandate Refugee Programme, the (Syrian) Vulnerable Persons Resettlement Scheme (VPRS) and the Vulnerable Children's Resettlement Scheme (VCRS). See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730643/Resettlement_Policy_document_.pdf.
90. For discussion, see M. Gower, *Brexit: the end of the Dublin III Regulation in the UK*, Briefing Paper 9031, 21 December 2020, <https://commonslibrary.parliament.uk/research-briefings/cbp-9031>.
91. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 23 April 2013, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>.
92. Within the EU legal system, the conditions for family reunification of third-country nationals within the EU with their family members are set out in Directive 2003/86/EC ("the Family Reunification Directive"), which, inter alia, established for the first time the right of refugees to family reunification in EU Law. The UK did not opt in to the Family Reunification Directive and therefore, even before Brexit, was never bound by its provisions.
93. Article 2(h), Dublin III Regulation.
94. Immigration statistics, Dublin Regulation, available at <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets> (last visited 31 Jan 2021). The data concern applications submitted by minors (Arts 8(1-2)); family members of beneficiaries of international protection (Art. 9); family members of applicants for international protection (Art. 10); and family procedures – i.e. when several family members apply for international protection in different Member States (Art. 11).
95. See RFR Guidance (n. 99), pp. 25-26.
96. Immigration Rules, Part 11, paras 352A(i), 352D(i), 352FA(i), 352FG(i). Under para. 352FA(i), beneficiaries of humanitarian protection can only act as sponsors if they were granted this status on or after 30 August 2005. For beneficiaries of humanitarian protection who were recognised as such before 30 August 2005, access to family reunification can only be obtained through the normal Immigration Rules; see C. Yeo, "Refugee Family Reunion: a user's guide", Free Movement, 20 March 2019, at www.freemovement.org.uk/refugee-family-reunion-a-users-guide/#Children_of_a_refugee.
97. Some of the caseworkers interviewed have noticed that in practice, however, with regard to resettled refugees acting as sponsors, RFR can prove extremely difficult to obtain. One of the caseworkers interviewed noted that "this is particularly the case as the Home Office usually requests that sponsors justify the reasons why their family members were not included in the original resettlement application. While sponsors would often say that they were advised in this sense by UNHCR staff on grounds that they could apply for RFR once in the UK, the UNHCR deny this. Clearly, this not just creates a complicated situation for the outcome of RFR applications themselves – it also undermines the credibility of sponsors".
98. Immigration Rules, Part 11, paras 352A(i) and 352FA(i); and Home Office Guidance, *Family Reunion: for refugees and those with humanitarian protection*, published 5 July 2011 (v. 5.0, last updated 31 December 2020), available at <https://www.gov.uk/government/publications/family-reunion-instruction> (hereinafter "RFR Guidance"), p. 14.
99. Ibid., p. 15.
100. The relevant part of the RFR Guidance (ibid.) reads: "a minor (under 18 years of age) with leave in any category, including refugee status – if a minor holds refugee status, they cannot sponsor relatives under the rules (even parents)".
101. The sponsor and their partner must not be "within the prohibited degree of relationship", i.e. consanguineous (Immigration Rules, Part 11, paras 352A(vi) and 352FA(vii)). Under para. 352AA, unmarried or same-sex partners could only apply for RFR if their sponsor had been granted refugee status or international protection on or after 9 October 2006; this requirement has now been cancelled (see House of Commons, Statement of Changes in Immigration Rules (HC 667) 3 November 2016, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/564933/57079_-_HC_667_-_Web_Accessible.pdf, para 11.144).
102. Immigration Rules, Part 11, paras 352D and 352FG.
103. Immigration Rules, Part 11, paras 352A, 352FA. In addition to this, as per para. 352A(iv) the applicant sponsored by a refugee must not fall under the exclusion conditions set out in para. 334(iii) or (iv) and art. 1(F) of the Refugee Convention; whilst an applicant sponsored by a beneficiary of humanitarian protection must not fall under the exclusion conditions set out in para. 339D (para. 352FA(iv)).
104. Immigration Rules, Part 11, para. 352A(iii), 352FA(iii).
105. Immigration Rules, Part 11, para. 352A(ii), 352FA(ii).
106. RFR Guidance (above n. 99), p. 16.
107. Immigration Rules, Part 11, para. 352D(ii-iii) and 352FG(ii-iii).
108. See RFR Guidance (above n. 99), p. 17: "where a child reaches the age of 18 after such an application has been lodged, but before it has been decided, the caseworker must consider the applicant's eligibility under paragraph 352D of the Immigration Rules as if the applicant was still under 18".
109. Ibid., p. 17.
110. Ibid., p. 20.
111. Immigration Rules, Part 11, paras 352D(iv), 352FG(iv). The RFR Guidance specifies that "a child conceived before the sponsor fled to seek asylum in the UK but born post-flight should be treated as part of the pre-flight family of the sponsor" (ibid., p. 18).
112. The RFR Guidance requires the sponsor to hold "an adoption order [...] granted either by the administrative authority in the third country, or by a court which has the legal power to decide such applications". Such an order must be "recognised as valid for the



- purposes of UK law" (*ibid.*, p. 17).
- 113.** *Ibid.*, p. 19. The *RFR Guidance* expressly includes de facto adopted children among those who are not eligible for RFR (*ibid.*, p. 18).
- 114.** These situations are regulated by Part 8 of the Immigration Rules, para. 319X; see *ibid.*, p. 32.
- 115.** *Ibid.*, p. 19.
- 116.** Appendix FM, para. GEN.1.1 (emphasis added).
- 117.** The relevant paragraphs were paragraphs 319L–319XB of Part 8, Immigration Rules.
- 118.** The interplay between Part 8 and Appendix FM of the Immigration Rules is regulated by paras A280-A280B of Part 8.
- 119.** Paragraph A280(b), Immigration Rules.
- 120.** As of January 2021, the fee for applications by dependent relatives of a refugee ("Settlement – refugee dependant relative") is £388. This is considerably lower than the fee for dependent relatives of individuals with other immigration status (currently £3,250). See Home Office, Immigration and nationality fees: <https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-6-april-2020>.
- 121.** This applies both to applications under Part 8 and Appendix FM: see Part 8, paras 281(i)(a)(ii–vi),(b)(ii), 295A(i)(a)(ii–vi),(b)(ii), 319L(i)(b), 319O(i)(b); Appendix FM, para E-ECP.4.1.1-E-ECP.4.2.
- 122.** Both pre- and post-flight partners are in principle eligible to apply under this route, although clearly pre-flight partners should make use of the RFR route under Part 11. The previous rules under Part 8 were expressly stated to be applicable only to post-flight relationships. See Part 8 Immigration Rules Arts 319L(i)(a), 319O(i)(a).
- 123.** Appendix FM, para GEN.1.2. An "unmarried partner" is defined for these purposes as "a person who has been living together with the applicant in a relationship akin to marriage or civil partnership for at least two years prior to the date of application".
- 124.** See Appendix FM, paras E-ECP2.(1-6, 9-10). Paras 277-280 and 295AA of Part 8 on the need for sponsor and applicant to be at least 18 and not involved in a polygamous relationship are also still applicable by virtue of para. A280(a).
- 125.** See Appendix FM, paras E-ECP3.1-E-ECP.3.4.
- 126.** Appendix FM, paras E-ECP3.1-E-ECP.3.4.
- 127.** Under Part 8, the case of reunion between a post-flight child and his or her parent in the UK used to be regulated in a relatively straightforward manner by para. 319R, pursuant to which the parent needed to have refugee status or humanitarian protection and prove he/she was able to provide adequate maintenance and accommodation, whilst the child needed to be minor, dependent, and conceived post-flight.
- 128.** Part 8 Immigration Rules, para. 297 (ii-v). The usual requirements as to the child being a minor, unmarried and not leading an independent life apply. In addition, by virtue of para. A280(b), section S-EC.1.9 of Appendix FM applies, providing that the parent must not "pose a risk to the applicant" with respect to specifically identified categories of convictions and offences.
- 129.** See further Appendix FM para EC-C.1.1-E-ECC.2.4.
- 130.** See by virtue of paragraph A280(c).
- 131.** Home Office, *Statement of Intent: Family Migration*, June 2012, data.parliament.uk/DepositedPapers/Files/DEP2012-0920/StatementofIntent-FamilyMigration.pdf, p. 62.
- 132.** Although there is no official indication in the Guidance in this regard (in contrast to the situation in respect of de facto adopted children; see below, text accompanying n. 137), the practitioners interviewed indicated that this is the generally accepted approach in this type of case.
- 133.** One or both parents must be present and settled in the UK or being admitted for settlement in the UK on the same occasion as the child, or one of them must be present and settled or is being admitted on the same occasion and has the sole responsibility for the child's upbringing; Part 8, para. 310(i).
- 134.** Part 8, para. 310(ii–iv).
- 135.** Part 8, para. 310(vii)(a).
- 136.** *RFR Guidance* (above n. 99), p. 31.
- 137.** Part 8, para.309A.
- 138.** Part 8, para. 309A (a) and (b)(i). Para. 309A (b)(ii) further requires the sponsor and their partner to "have assumed the role of the child's parents, since the beginning of the 18 month period, so that there has been a genuine transfer of parental responsibility".
- 139.** *RFR Guidance* (above n. 99), p. 30-31. Para. 319X is still applicable after 09/07/2012 as per para. A280(b).
- 140.** If the sponsor has ILR, para. 297 applies. In both cases, the child must be a minor, unmarried and not leading an independent life (see paras 319X(iv-v) and 297(i)(f)(ii-iii)).
- 141.** Part 8, para. 319X(ii).
- 142.** Part 8, para. 319X(iv-vii).
- 143.** Appendix FM, paras E-ECDR.2.3(a), (b).
- 144.** *Ibid.*, para E-ECDR.2.1. In the case of parent and grandparent applicants, they must not be in a subsisting relationship unless their partner in such a relationship is also the sponsor's parent or grandparent and applying for Family reunification as well (*ibid.*, para E-ECDR.2.2). Whilst Part 8 previously required the applicant to be aged over 65 or under the age of 65 "in the most exceptional compassionate circumstances" (para. 319V(i)), Appendix FM does not set any age requirement in respect of the parent or grandparent of the sponsor.
- 145.** *Ibid.* paras E-ECDR.2.4, E-ECDR.2.5.
- 146.** Appendix FM, para. E-ECDR.3.1.
- 147.** *Ibid.*, para E-ECPT.2.2(c).
- 148.** Appendix FM, paras E-ECP.3.1-E-ECP.3.4.
- 149.** Immigration Directorate Instruction, "Family Migration: Appendix FM Section 1.7A – Adequate Maintenance & Accommodation" (v. 7.0, January 2021), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957484/adequate-maintenance-and-accommodation-appendix-fm-annex-1.7a-v7.0ext.pdf, p. 6.
- 150.** *Ibid.*,p. 22-23.
- 151.** *Ibid.*, p. 23.
- 152.** *MM (Lebanon) & Others v. Secretary for the Home Department* [2017] UKSC 10.
- 153.** See Statement of Changes in Immigration Rules HC290, 20 July 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630926/60429_HC_290_Accessible.pdf, p. 3. See further C. Desira, 'Home Office makes changes to Appendix FM Minimum Income Rule following MM case', *Free Movement*, 10 August 2017, at <https://www.freemovement.org.uk/home-office-makes-changes-appendix-fm-minimum-income-rule-following-mm-case/>.
- 154.** *Ibid.*, para 7.2. The relevant sources are specified in para. 21A of Appendix FM-SE.
- 155.** *RFR Guidance* (n. 99), p. 20.
- 156.** *Ibid.*, p. 20.
- 157.** *Ibid.*
- 158.** *Ibid.*, pp. 18-19.
- 159.** *RFR Guidance* and that on Appendix FM refer caseworkers to the *Home Office Guidance on Family Policy – Family life (as a partner or parent), private life and exceptional circumstances*, June 2020, available at [\(hereinafter Guidance on Family Policy\)](https://www.gov.uk/government/publications/family-life-as-a-partner-or-parent-private-life-and-exceptional-circumstance), p. 9.
- 160.** *Ibid.*, pp. 70-71.
- 161.** Under section 55 of the Borders, Citizenship and Immigration Act 2009, caseworkers are expressly required to give "direct effect" to the best interests of the child principle when deciding on immigration matters concerning children. See also *Guidance on Family Policy* (above n. 160), p. 66; *R (Agyarko) v Secretary of State for the Home Department; R (Ikuga) v. Secretary of State for the Home Department* [2017] UKSC 11.
- 162.** *Guidance on Family Policy* (above n. 160), pp. 72-75.
- 163.** See Home Office, *Statement of Intent: Family Migration* (June 2012), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257359/soi-fam-mig.pdf, paras 7, 28-31.



164. See also above “Financial and accommodation requirements under Appendix FM: A closer look”.
165. *Guidance on Family Policy* (above n. 160), p. 67. Cf. “could” in para GEN.3.1.(1)(b) with “would” in para. GEN.3.2.(2): in the first case, the mere possibility allows for a more flexible approach in assessing whether the financial requirements are met; in the second case instead, since the consequences of refusal are certain, family reunification must be allowed with no need to further examine financial or accommodation requirements (see further Home Office, *Family Policy Family life (as a partner or parent), private life and exceptional circumstances* Version 13.0 (28 January 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957302/family-life_-as-a-partner-or-parent_-private-life-and-exceptional-circs-v13.0-ext.pdf, at 71-72).
166. The Guidance provides the example of an applicant who has suffered a bereavement and may need to stay in the UK for some time to organise a funeral and/or “deal with their loss”; see ibid., p. 83.
167. Interview with supervisor, University law clinic, 5 May 2019.
168. Interview with caseworker, Refugee support charity 2 July 2019, Interview with sponsor.
169. See ICIBI RFR Report 2020 (above n. 5), p. 30, para. 6.39.
170. Ibid.
171. UNHCR, Family Reunion in the United Kingdom (above n. 4), p. 4.
172. UNHCR, *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, June 2001, available at www.refworld.org/docid/4ae9aca12.html, para. 1(c).
173. Refugees (Family Reunion) (No. 2) Bill (HC Bill 13) (sponsor Angus Brendan McNeil MP), available at <https://services.parliament.uk/Bills/2017-19/refugeesfamilyreunionno2.html> (14 July 2017) (McNeil Bill); a parallel Bill had been introduced in the House of Lords by Baroness Hamwee in 2017 (Refugees (Family Reunion) Bill [HL] 2017-19 (27 June 2017)), at <https://services.parliament.uk/bills/2017-19/refugeesfamilyreunionbill.html> (Hamwee Bill). The Bills aimed at bringing refugee family reunion back into scope of legal aid, allowing minors to act as sponsors, and expanding the categories of eligible family members.
174. See Refugees (Family Reunion) Bill [HL] (HL Bill 15) (sponsor Baroness Hamwee), at <https://services.parliament.uk/bills/2019-21/refugeesfamilyreunion.html>. The bill had its first reading on 9 January 2020; as at the time of finalisation of this report in February 2021, a second reading was yet to be scheduled.
175. In order to be eligible, the adult child must also have been under the age of 18 or unmarried at the time the sponsor left the country of their habitual residence in order to seek asylum.
176. McNeil Bill, section 1(4)(e).
177. See above, section 2.4.
178. House of Commons, Home Affairs Committee, The work of the Immigration Directorates (Q1 2016), 27 July 2016, HC 151 2016-17, available at <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/151/151.pdf>, p. 20, para. 41.
179. Home Office, *Every Child Matters. Change for Children* (November 2009), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf, para 2.7. Until 2008, the UK government had a reservation to exclude the application of the Convention on the Rights of the Child in immigration matters. For commentary, see Brittle, “A Hostile Environment for Children” (above n. 60), at p. 771.
180. *ZH (Tanzania) v. Secretary of State for the Home Department* [2011] UKSC 4, para 33.
181. *Zoumbas v. Secretary of State for the Home Department* [2013] UKSC 74 (27 November 2013), para. 10. A such, in order to determine the proportionality of an interference with Article 8 rights, a thorough examination of the child’s situation must be conducted, so as to analyse all factors contributing to their best interests (ibid.).
182. *AT and Another v. Secretary of State for the Home Department* [2016] UKUT 227 (IAC), paras 25-26, 37-39, 43.
183. *KF and Others v. Secretary of State for the Home Department* [2019] UKUT 413 (IAC).
184. *AT and Another* (above n. 183), para 43.
185. KF and Others (above n. 184), paras 14, 17.
186. Ibid., para 15.
187. Home Office, *Every Child Matters. Change for Children* (above n. 180), para. 2.32.
188. *KF and Others* (above n. 184), paras 9, 19(b).
189. Ibid., para. 20(g).
190. Ibid.
191. A. Harvey, “Upper Tribunal grants refugee family reunion outside the Immigration Rules”, *Free Movement*, 3 March 2020, available at <https://www.freemovement.org.uk/upper-tribunal-grants-refugee-family-reunion-outside-the-immigration-rules/>.
192. Ibid.
193. *KF and Others* (above n. 184), para. 18(d).
194. On this point, see further Harvey (above n. 192).
195. Home Office, *Response to the Independent Chief Inspector of Borders and Immigration’s report: An inspection of family reunion applications June–December 2019*, 8 October 2020, <https://www.gov.uk/government/publications/response-to-the-report-on-an-inspection-of-family-reunion-applications> (“*Home Office Response to ICIBI Report 2020*”), p. 4, paras 4.3-4.4.
196. Parliamentary Question, subject: anchor children, 13 February 2012, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2012-001344+0+DOC+XML+V0//EN&language=GA>.
197. See European Migration Network, ‘Ad-Hoc Query on Unaccompanied asylum-seeking children followed by family members under Dublin Regulation, requested by A. Lainé’, 8 June 2017, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2017.1199_be_unaccompanied_asylum_wider-dissemination.pdf. As to the debate in European States, see e.g., G. Woessner, “Le regroupement familial va-t-il passer aux frères et sœurs pour les mineurs isolés?”, Europe 1, 6 April 2018, available at: <https://www.europe1.fr/emissions/Le-vrai-faux-de-l-info2/le-regroupement-familial-va-t-il-passer-aux-freres-et-soeurs-pour-les-mineurs-isoles-3619346>; “Regroupement familial: les mineurs pourront-ils faire venir leurs frères et sœurs?”, 20 Minutes, 19 April 2018, available at <https://www.20minutes.fr/politique/2257887-20180419-regroupement-familial-mineurs-isoles-pourront-fairevenir-freres-urs>.
198. House of Lords, European Union Committee, “Children in crisis: unaccompanied migrant children in the European Union”, 26 July 2016, available at <https://publications.parliament.uk/pa/ld201617/ldselect/lduecom/34/34.pdf>, paras 59-62. See also the doubts expressed by the Immigration and Appeals Chamber of the Upper Tribunal in respect of the evidence put forward by the Government in an attempt to substantiate the existence of the anchor child phenomenon in *AT and another*, (above n. 183), para. 42.
199. See UNHCR, “Destination Anywhere” (June 2019), available at <https://www.unhcr.org/uk/5daf2cef4>, at p. 23.
200. Ibid., p. 31, para. 3.6.
201. Ibid., p. 44.
202. *Home Office Response to ICIBI Report 2020* (above n. 196), p. 4 paras 4.3-4.4.
203. States which only allow family reunification with parents are Austria, Belgium, Croatia, Cyprus, France, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Norway, Poland (parents or grandparents), Portugal, Romania, Slovakia, Slovenia and Sweden. Other adult legal guardians can apply in Bulgaria, Czech Republic, Estonia, Finland, Germany, Latvia, Luxemburg, Malta and Spain. In Denmark, which is not bound by Directive 2006/83, parents can be reunited with their unmarried minor children only if denying family reunification would constitute a breach of



- Denmark's international obligations (<https://www.nyidanmark.dk/en-GB/You-want-to-apply/Family/Family-reunification/Parent-or-sibling-of-an-unaccompanied-minor-in-Denmark>). .
- 204.** Art. 10(3)(a), Family Reunification Directive (above n. 93).
- 205.** See *ibid.*, Art. 10(1).
- 206.** See *ibid.*, Art. 10(3)(b).
- 207.** Art. 10, Family Reunification Directive (above n. 93).
- 208.** Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, the Netherlands, Norway, Portugal.
- 209.** International Protection Act 2015, section 56 (9)(b) and (c).
- 210.** Danish Immigration Service, New to Denmark, <https://www.nyidanmark.dk/en-GB/You-want-to-apply/Family/Family-reunification/Parent-or-sibling-of-an-unaccompanied-minor-in-Denmark>, last updated 18 June 2019.
- 211.** See S.A. Motz, *Family Reunification for Refugees in Switzerland: Legal Framework and Strategic Considerations* (Centre Suisse pour la Défense des Droits des Migrants, 2017), available at <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/11/201710-CSDM-UNHCR-FamReun-for-Refugees-in-Switzerland.pdf>.
- 212.** Law Commission, *Simplification of the Immigration Rules: Report*, 13 January 2020, available at <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules> (hereinafter Law Commission, *Simplification Report*, p. 1, para. 1.1. The report explores a broad range of issues, including the evidentiary burden and eligibility criteria, as well as the on-line application process and ensuring that there is consistency between the application process, the rules and the guidance.
- 213.** Home Office, "Simplifying the Immigration Rules: A Response", 20 March 2020, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875205/24-03-2020_-_Response_to_Law_Commission_for_publication.pdf (hereinafter "Home Office Response to Simplification Report"), p. 10.
- 214.** *Home Office Response to Simplification Report* (above n. 214).
- 215.** UNHCR, *Family Reunion in the United Kingdom* (above n. 4), p. 6.
- 216.** <https://www.visa4uk.fco.gov.uk/home/welcome>
- 217.** Interview with supervisor, University law clinic, 11 May 2019.
- 218.** With regard to the lack of a dedicated form for RFR applications on the old online application system, see also UNHCR, *Family Reunion in the United Kingdom* (above n. 4), p. 3.
- 219.** For example, one of the sponsors interviewed had been making an application on behalf of his daughter. One question asked with whom the applicant would be staying when she came to the UK. There was no option on the drop-down menu for "father" or "parent", so the sponsor selected the option "other" and explained in the notes section of the online application why he had done this. The application was rejected on the basis that the it had not been proven to the ECO's satisfaction that the sponsor was the father of the girl, partly because he had ticked "other" on the drop-down menu. The case was overturned on appeal with DNA evidence.
- 220.** See J. Kingham, "Computer says no": Facing up to the full implications of a digitised immigration system", *Freemovement*, 8 January 2019, at <https://www.freemovement.org.uk/computer-says-no-digitised-immigration-system/>.
- 221.** "The new website is really difficult to find – and there is nothing to direct you there. You go onto the old website and you can fill in the entire form until you get to the bit where you make an appointment and there are no appointments! And on the new website it's really difficult to find, then there is quite a bit problem with the bit where you book an appointment because the first tab is for priority appointments which you have to pay for, and you have to know that as a refugee you go for the standard appointment which is on another tab, but the actual system itself is really simple, and doesn't ask for endless information over and over again. I think if they can sort out some of the problems it will be much more accessible." (Interview with Operations Manager A, BRC RFR Project, 27 July 2019)
- 222.** Law Commission, *Simplification Report* (above n. 213), p. 173, para. 11.32.
- 223.** *Ibid.*, pp. 176-177, para. 11.48.
- 224.** *Ibid.*, p. 176, paras. 11.45-11.47.
- 225.** Concerns relating to the consistent "upselling" of services by commercial partners have also been expressed by the ICIBI; see *Report on Network Consolidation 2020* (below n. 252), p. 9, para. 3.20.
- 226.** Law Commission, *Simplification Report* (above n. 213), pp. 173-175, paras. 11.34-11.39.
- 227.** RFR Guidance (above n. 99), p. 22.
- 228.** *Ibid.*
- 229.** See Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), "Understanding statelessness in the Syria refugee context" (2016), available at <https://www.refworld.org/docid/584011494.html> [Stateless persons who lived in Syria before the conflict may have held different documents to those possessed by nationals. They would not, for example, possess a hawiya [state issued identity card], which is reserved for nationals. In many cases stateless Kurds – Maktoum in particular – do not have any documents. Palestinians in Syria are issued other documents, including a Palestinian travel document: a document issued by the Syrian authorities to Palestinians who habitually reside on the territory, in lieu of a national passport, but not denoting nationality.]
- 230.** See Refugees International, *South Sudan Nationality: Commitment Now Avoids Conflict Later* (May 2012), available at <https://www.refworld.org/docid/4fc8605a2.html>.
- 231.** For instance, the Country of Origin Information Report on Afghanistan quotes a 2011 report of the UN High Commissioner for Human Rights noting that the majority of children remain unregistered and that children born out of wedlock may be deprived of their right to birth registration. See United Kingdom: Home Office, Country of Origin Information Report – Afghanistan, 8 May 2013, available at: <https://www.refworld.org/docid/512de6902.html>.
- 232.** The most recent ICIBI report found that documents from some countries (in particular from Sudan and Eritrea) were more routinely doubted and disregarded as evidence, and that this was much more the case in cases assessed by the ECOs in Pretoria than by the team in Sheffield. See ICIBI RFR Report 2020 (above n. 5), p. 49, para. 9.12.
- 233.** See also ICIBI RFR Report 2016 (above n. 5), p. 5, noting that in some of the sampled cases the applications of children had been refused because they had failed to provide adequate evidence of their ongoing relationship.
- 234.** See Home Office, *DNA Policy Guidance*, March 2020 (v. 4.0), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873640/dna-v4.0ext1.pdf, p. 4. The relevant paragraph was added in October 2018 to clarify the position following the emergence of evidence that the Home Office mandating DNA evidence in certain circumstances concerning specific categories of individuals making immigration applications; for the background, see D. Singh, *Independent Review of the Home Office response to the mandating of DNA evidence for immigration purposes*, 10 June 2019, available at <https://www.gov.uk/government/publications/use-of-dna-evidence-in-immigration-applications>.
- 235.** ICIBI RFR Report 2016 (above n. 5), para. 2.7.
- 236.** For instance, the BRC has an agreement with a DNA test provider whereby they are able to get a 40% discount in testing for their clients.
- 237.** Home Office Response to ICIBI Report 2020 (above n. 196), para 4.7.
- 238.** Home Office, *DNA Policy Guidance* (above n. 235), p. 13.
- 239.** For instance, staff at the BRC Family Reunion Project have reported particular difficulties for applicants from Eritrea, who often only have baptismal documents to prove their identity. As a consequence, the Project has had to ask individuals to register with UNHCR in order to obtain photographic identity documents, a time-consuming and stressful process: Interview with Policy Officer, Families Together Partnership, 19 June 2020.



240. ICIBI RFR Report 2016 (above n. 5), p. 17, para. 2.14.
241. Ibid., p. 12, para. 2.16. The ICIBI noted that none of the 181 cases sampled during the inspection had been referred to the Referred Casework Unit, despite some appearing to merit consideration. Of particular concern was the fact that the treatment of married women under the age of 18 appeared to take no account of the existence of “compassionate factors”. In this regard, the inspection highlighted a particularly egregious case where the wife, aged 16, with two very young children, was about to be left in Syria without family support. She was refused leave twice, without reference to the RCU, as the Immigration Rules require both the applicant and UK sponsor to be aged 18 at the time of the application.
242. Ibid., (above n. 5), p. 9, recommendation 5.
243. See *RFR Guidance* (n. 99), pp. 20-21 (“Exceptional circumstances and compassionate factors”).
244. See ICIBI RFR Re-inspection Report 2018 (above n. 5), p. 9, para. 3.10 and p. 28, para. 4.34; ICIBI RFR Re-inspection Report (Istanbul) 2017 (above n. 5), p. 11, para. 4.34.
245. See ICIBI RFR Re-inspection Report 2018 (above n. 5), p. 9, para. 3.10.
246. ICIBI RFR Report 2020 (above n. 5), p. 26.
247. Ibid., p. 28, para. 6.30.
248. Ibid.
249. Comment from Immigration Clinic Supervisor, 3 September 2020. Others have noted that the length of the decision-making implies that “the pressure is on [caseworkers] as the sponsor is constantly asking and there is nothing I can do” [interview with GMIAU Director, 20 February 2019].
250. Many of the recommendations in the ICIBI’s initial report on RFR of 2016 were directed at the decision-making process in use by ECOs, including the fact that they did not give full consideration to evidence, failures to retain evidence in cases of refusal, and poorly motivated refusal notices; see ICIBI RFR Report 2016 (above n. 5), p. 17, paras 2.10 and 2.14. Most of those issues were highlighted as remaining unresolved in the re-inspection report in 2018; see ICIBI RFR Re-inspection Report 2018 (above n. 5), p. 5, para. 3.9.
251. The network consolidation programme has so far resulted in the closure of over 100 overseas DMCs and the establishment of two DMCs in the UK, in Croydon and Sheffield. For discussion, see ICIBI, “An inspection of the Home Office’s Network Consolidation Programme and the ‘onshoring’ of visa processing and decision-making to the UK”, 6 February 2020, available at <https://www.gov.uk/government/publications/an-inspection-of-the-home-offices-network-consolidation-programme-and-the-onshoring-of-visa-processing-and-decision-making-to-the-uk> (hereinafter “ICIBI Report on Network Consolidation 2020”).
252. The onshoring of RFR applications was presented by the Home Office as the solution to several of the issues highlighted in the initial ICIBI’s report on the RFR process; see Home Office Response to the Independent Chief Inspector’s report: ‘An Inspection of Family Reunion Applications’ January – May 2016 (September 2016), available at <https://www.gov.uk/government/publications/home-office-response-to-the-report-an-inspection-of-family-reunion-applications-january-to-may-2016> (hereinafter “Home Office response to ICIBI Report 2016”).
253. The last group of applications to be “onshored” were those from Sudan, which until 1 January 2021 were processed at the overseas DMC in Pretoria; see ICIBI RFR Report 2020 (above n. 5), p. 15, section 5.18.
254. Ibid., p. 44, para. 8.11.
255. See, e.g., ICIBI RFR Report 2016 (above n. 5), pp. 20-21. Interview with ICIBI, 24 July 2019. See also GMIAU, Briefing paper (above n. 3).
256. See ICIBI Report on Network Consolidation 2020 (above n. 252), p. 9, para. 3.2.3, suggesting that the Home Office needs to do more to evidence that the programme not only saves it money, but also ease of access and use by applicants, accuracy and fairness.
257. <https://www.gov.uk/find-a-visa-application-centre>
258. D. Stevenson, “The Absolute State of the Visa System”, *Free Movement*, 2 May 2019.
259. Written comments, Clinic Supervisor, 3 March 2020. ICIBI RFR Report 2020 (above n. 5), p. 74, section 11.36.
260. British Red Cross, *The Long Road to Reunion: Making Refugee Family Reunion Safer* (2020), available at <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/the-long-road-to-reunion.pdf>.
261. ICIBI RFR Report 2020 (above n. 5), p. 8, para. 3.17.
262. Home Office Response to ICIBI Report 2020 (above n. 196), paras 5.2-5.3.
263. ICIBI RFR Report 2020 (above n. 5), p. 45, para. 8.21.
264. Ibid., p. 7, para. 3.1.
265. Written comments, Immigration Clinic Supervisor, 3 September 2020.
266. See ICIBI RFR Report 2020 (above n. 5), p. 54, para. 9.32.
267. See RFR Re-inspection Report 2018 (above n. 5), p. 36, recommendation 3; ICIBI RFR Report 2020 (above n. 5), p. 10, para. 4.3.
268. ICIBI RFR Report 2020 (above n. 5), p. 10, para. 4.3. The Home Office has accepted this recommendation and responded that, once the move to Sheffield has been completed, “the suite of management reports will provide a complete and comprehensive overview of all family reunion applications and related supporting processes”; see Home Office Response to ICIBI Report 2020 (above n. 196), p. 3, para. 3.2.
269. The ICIBI recommended that Home Office caseworkers record relevant family details during the substantive asylum interview of prospective sponsors and that these details should be made easily available to the decision makers in the family reunification process; see ICIBI RFR Report 2016 (above n. 5), p. 6, Recommendation 1.
270. Home Office, *Guidance for Substantive Asylum Interviews*, 5 June 2019, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf, p. 22.
271. Ibid., p. 22.
272. ICIBI RFR Re-inspection Report 2018 (above n. 5), p. 20, para. 4.6.
273. See, e.g., GMIAU, Briefing paper (above n. 3).
274. Ibid.
275. Interview with Law Clinic Supervisor, 3 September 2020.
276. Preliminary Information Questionnaire, 27 May 2020, available at <https://www.gov.uk/government/publications/preliminary-information-questionnaire-for-asylum-claims>.
277. The Home Office’s willingness to establish a constructive relationship with key stakeholders is also evidenced by the setting up of a sub-group on Family Reunion within the framework of the National Asylum Stakeholder Forum (NASF) sub-group on Family Reunion. The forum is co-chaired by the British Red Cross and the Home Office and enables stakeholders to meet on a quarterly basis to discuss issues relating to process and decision-making.
278. ICIBI, “An Inspection of Asylum Intake and Casework”, 28 November 2017, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662769/An_Inspection_of_Asylum_intake_and_casework.pdf (hereinafter “ICIBI Asylum Casework Report 2017”).
279. The expression “hostile environment” is linked to a set of policies enacted in 2012 by the then Home Secretary Theresa May with the stated aim to make life “as difficult as possible for illegal migrants”; see J. Kirkup and R. Winnett, “Theresa May interview: ‘We’re going to give illegal migrants a really hostile reception’, *The Telegraph*, 25 May 2012. Those policies included restrictions on the ability to rent accommodation, hold a bank account, and gain access to medical care and benefits.
280. See, e.g., House of Lords, European Union Committee, “Children in crisis: Unaccompanied migrant children in the EU”, HL Paper 34, 26 June 2016, available at <https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/34/34.pdf>, which identifies the “culture of suspicion and disbelief” as one of the four main problems underlying the practical difficulties that face



- unaccompanied migrant children. See also UNHCR, “Beyond Proof. Credibility Assessment in EU Asylum Systems”, May 2013, at <https://www.unhcr.org/uk/protection/operations/51a8a08a9/full-report-beyond-proof-credibility-assessment-eu-asylum-systems.html>, p. 13. Freedom from Torture, Beyond Belief: How the Home Office fails survivors of torture at the asylum interview, 26 June 2020, available at https://freedomfromtorturestories.contentfiles.net/media/documents/Beyond_Belief_report.pdf
- 281.** Freedom from Torture, Lessons Not Learned: The failure of asylum decision-making in the UK, September 2019, available at https://www.freedomfromtorture.org/sites/default/files/2019-09/FFT_LessonsNotLearned_Report_A4_FINAL_LOWRES_0.pdf, p. 4
- 282.** *Windrush: Lessons Learned Review. Independent review by Wendy Williams*, HC 93 (March 2020), available at <https://www.gov.uk/government/publications/windrush-lessons-learned-review>.
- 283.** Freedom from Torture, Lessons Not Learned (above n. 282), p. 11.
- 284.** See *Windrush Lessons Learned Review* (above n. 283), Recommendations 14 and 15.
- 285.** Home Office, *Response to the Windrush Lessons Learned Review: A Comprehensive Improvement Plan*, CP 293, September 2020, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922973/CCS001_CCS0820050750-001_Resp_to_Windrush_Lessons_CP_293_Accessible.pdf, para. 72.
- 286.** Ibid., para. 73.
- 287.** Ibid., para. 88.
- 288.** See <https://www.gov.uk/settled-status-eu-citizens-families>.
- 289.** “All of the Home Office staff involved appeared enthusiastic about the Scheme. It was clear that a great deal of thought had gone into trying to ensure that the ‘customer experience’ was a positive one, not least the fact that Home Office staff assisting applicants all wore pastel polo shirts, which were smart, easily identifiable, and far-removed from the blue-black uniforms more often associated with immigration and borders functions”; ICIBI, “An inspection of the EU Settlement Scheme (April 2019 to August 2019)” (February 2020), available at <https://www.gov.uk/government/publications/an-inspection-of-the-eu-settlement-scheme-april-2019-to-august-2019>, p. 10, para 5.17.
- 290.** See *ibid.*, p. 6, para. 3.9.
- 291.** See <https://www.gov.uk/government/publications/syrian-vulnerable-person-resettlement-programme-fact-sheet>.
- 292.** See *Funding Instruction for local authorities in support of the United Kingdom’s Resettlement Programmes. Financial Year 2018 - 2019*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722154/Combined_local_authority_funding_instruction_2018-2019_v2.pdf
- 293.** See, e.g., ICIBI, “An Inspection of the Vulnerable Persons Resettlement Scheme” (May 2018), available at <https://www.gov.uk/government/publications/an-inspection-of-the-vulnerable-persons-resettlement-scheme>.
- 294.** See Asylum and Resettlement Data, May 2020, available at <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>.
- 295.** “Relevant matters” under the Act are “(a) a claim for asylum; (b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom; (c) unlawful entry into the United Kingdom; (d) nationality and citizenship under the law of the United Kingdom; (e) citizenship of the European Union; (f) admission to Member States under Community law; (g) residence in a Member State in accordance with rights conferred by or under Community law; (h) removal or deportation from the United Kingdom; (i) an application for bail under the Immigration Acts or under the [1997 c. 68.] Special Immigration Appeals Commission Act 1997; (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i)” (1999 IAA, s. 82(1)). See also ILPA, *The Regulation of Immigration Advice* (June 2017), at www.ilpa.data.resources.17.06.27-regulation-of-immigration-advice.
- 296.** IAA 1999, Part V.
- 297.** IAA 1999, s. 82. Immigration services are defined as “the making of representations, in connection with one or more relevant matters, on behalf of a particular individual either in: (a) civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or (b) in correspondence with a Minister of the Crown or government department”.
- 298.** OISC, “How to become a regulated immigration adviser”, April 2020 <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser>.
- 299.** OISC, “OISC regulation and solicitors”, updated 26 November 2019, available at <https://www.gov.uk/government/publications/oisc-regulation-and-solicitors/oisc-regulation-and-solicitors>.
- 300.** The Law Society, Immigration and Asylum law Accreditation, September 2018, available at <https://www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/>.
- 301.** OISC, “How to become a regulated immigration adviser”, April 2020, available at <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser>.
- 302.** See however the recent guidance about the costs involved in the family reunification process prepared by the charity Together Now (available at <http://togethernow.org.uk/wp-content/uploads/2017/09/Together-Now-Costs-of-family-reunion-guidance.pdf>).
- 303.** Holden, *Cuts that Cost* (above n. 3), p. 32.
- 304.** BRC, *Long Road to Family Reunion* (above n. 261).
- 305.** The validity period is currently extended to 90 days in light of the COVID-19 pandemic.
- 306.** See UNHCR, *Family Reunion in the United Kingdom* (above n. 4), p. 5.
- 307.** See Refugee Integration Loan, March 2015 available at: <https://www.gov.uk/refugee-integration-loan/what-youll-get>.
- 308.** <https://www.redcross.org.uk/get-help/get-help-as-a-refugee>
- 309.** LASPO Review (above n. 8).
- 310.** For an overview of the areas for which public funding for representation and advice remains available after LASPO, see A. Harvey, “Legal Aid for Immigration Cases” (Legal Action Group, June 2015), available at <https://www.lag.org.uk/article/202755/legal-aid-for-immigration-cases>.
- 311.** See LASPO, Part 1, Schedule 1, para. 30, which allows the provision of civil legal services “in relation to rights to enter, and to remain in, the United Kingdom arising from the Refugee Convention, Article 2 or 3 of the Human Rights Convention, the Temporary Protection Directive, and the Qualification Directive”.
- 312.** Ministry of Justice, *Proposals for the Reform of Legal Aid in England and Wales*, CP12/10, November 2010, p. 68, para 4.201.
- 313.** Ibid., paras 4.202 and 4.201.
- 314.** Ibid., para 4.202,
- 315.** BRC, *Not So Straightforward* (above n. 3); see also Refugee Action, Family Reunion Briefing Paper, available at https://www.refugee-action.org.uk/wp-content/uploads/2016/10/briefing_-_refugee_family_reunion.pdf; GMIAU, Briefing paper (above n. 3). For a general assessment of the impact of cuts, see Amnesty International, *Cuts that hurt: The impact of legal aid cuts in England on access to justice*, October 2016, https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf.
- 316.** NACCOM and Refugee Action, “Tipping the Scales”, July 2018, available at <https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf>.
- 317.** J. Wilding, *Droughts and Deserts. A report on the immigration legal aid market*, June 2019, available at <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>
- 318.** Ibid p. 9.
- 319.** LASPO Review (above n. 8).
- 320.** See, e.g., Rights of Women, “Submission to the Government Post-Implementation Review of the Legal Aid, Sentencing



- and Punishment of Offenders Act 2012 (LASPO)", September 2018, available at <https://rightsofwomen.org.uk/wp-content/uploads/2018/10/Submission-LASPO-PIR-final-Sept-2018.pdf>; Coram Children's Legal Centre, "Briefing for House of Commons Westminster Hall debate – Legal aid and the post-implementation review", 4 September 2018, available at https://www.childrenslegalcentre.com/wp-content/uploads/2018/09/CCLC-briefing_Legal-aid_August-2018.final_.pdf; "UNHCR Submission to the Post Implementation Review Evidence Gathering Exercise of the Legal Aid, Sentencing and Punishment of Offenders Act 2012", December 2018, available at <https://www.unhcr.org/uk/5bb70cea4.pdf>.
- 321.** For an overview of the early reactions from the refugee sector, see Electronic Immigration Network (EIN), "Ministry of Justice publishes long-awaited review into legal aid, proposes no significant changes for immigration", 11 February 2019, available at <https://www.ein.org.uk/news/ministry-justice-publishes-long-awaited-review-legal-aid-proposes-no-significant-changes>. On a marginally positive note, LASPO was amended in October 2019 to bring all immigration matters for separated migrant children into the scope of general legal aid funding; see Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019, S.I. No. 1396, available at <http://www.legislation.gov.uk/uksi/2019/1396/contents/made>; notably, the expansion of legal aid includes applications made by the child or another person for entry clearance, or leave to enter and remain made outside the scope of the Immigration Rules on the basis of exceptional circumstances or compassionate and compelling factors (see *ibid.*, r. 2, inserting a new s. 31A in LASPO 2012. This change however occurred principally as a result of a judicial review challenge brought by the Children's Society, rather than due to the LASPO Review; see Ministry of Justice, "Legal Support: The Way Ahead. An action plan to deliver better support to people experiencing legal problems", February 2019, available at <https://www.gov.uk/government/publications/legal-support-action-plan>, p. 4.
- 322.** Source: LASPO Review (above n. 8), p. 57.
- 323.** *Ibid.*
- 324.** Several organisations raised this point in the context of the LASPO post-implementation review, noting that "these costs have been shifted onto local authorities to an extent which may outweigh that of the corresponding legal aid provision." The review's response to this was to reply that it was not possible to collect the data to verify or to deny this; see LASPO Review (above n. 8), p. 65.
- 325.** See H. Connolly, "Without my family: The impact of family separation on child refugees in the UK" (Amnesty International UK, the Refugee Council and Save the Children, 2019), available at <https://resourcecentre.savethechildren.net/library/without-my-family-impact-family-separation-child-refugees-uk>. See also UNHCR, Family Reunion in the United Kingdom (above n. 4), p. 2.
- 326.** The stated purpose of the introduction of ECF was "to enable compliance with ECHR and EU law obligations in the context of a civil legal aid scheme that has refocused limited resources on the highest priority cases". See Lord Chancellor's Exceptional Funding Guidance (Non-Inquests), para. 8, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477317/legal-aid-chancellor-non-inquests.pdf.
- 327.** See LASPO, Part 1, s. 10(3), providing that an Exceptional Case Determination will be made by the Director of the Legal Aid Casework when "(a) [...] it is necessary to make the [civil legal] services available to the individual [...] because failure to do so would be a breach of— (i) the individual's Convention rights (within the meaning of the Human Rights Act 1998), or (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or (b) that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach".
- 328.** See LASPO, Part 1, s.11 (Qualifying for civil legal aid).
- 329.** See OISC Guidance, "Clarification of OISC's jurisdiction", June 2016, at <https://www.gov.uk/government/publications/clarification-of-the-oiscs-jurisdiction/clarification-of-oiscs-jurisdiction>.

- 330.** "Disbursements" means counsel's fees, experts' fees, court fees, travelling and witness expenses and other out of pocket expenses properly incurred by a fee earner which would be properly chargeable to a client. Counsel's fees are also treated as disbursements for most purposes but are considered separately at section 13 of the Guidance. Disbursements are assessed on the basis of determining whether they were reasonably and proportionately incurred and are reasonable in amount subject to any prior authority granted." Legal Aid Agency, "Cost Assessment", April 2018, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737499/Costs_Assessment_Guidance_2018_-_Version_1.pdf.
- 331.** See UK Government, Civil Aid Remuneration Regulation, March 2013, available at <http://www.legislation.gov.uk/uksi/2013/422/schedule/1/part/1/made>, Table 4(a).
- 332.** It is possible to apply for the upper cost limit to be extended on application of a CW3C form. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470798/cw3c-checklist.pdf. See Guidance on supporting separated and unaccompanied children to access legal aid in immigration cases (July 2019), available at http://refugeechildrenconsortium.org.uk/wp-content/uploads/2019/07/NGO_briefing_Legal_Aid_provision_Nov19_FINAL.pdf.
- 333.** All the fees and disbursement are current as of January 2021; see the Civil Law Legal Aid Remuneration Tables, updated 2013, available at: <http://www.legislation.gov.uk/uksi/2013/422/schedules/made?view=plain>.
- 334.** See, amongst many others, the assessment of the new scheme by the Bach Commission on Access to Justice, in its interim report "The crisis in the justice system in England & Wales", November 2016, available at <https://fabians.org.uk/publication/the-crisis-in-the-justice-system-in-england-wales/>. See also "The Right to Justice. The Final Report of the Bach Commission", September 2017, available at http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf. See also <https://sirhenrybrooke.me/2017/10/08/the-bach-report-13-exceptional-case-funding/>.
- 335.** Legal Aid Statistics to December 2019, available at <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-october-to-december-2019>.
- 336.** *Gudanaviciene and ors v. Director of Legal Aid Casework and the Lord Chancellor* [2014] EWCA Civ 1622. A further challenge to the scheme was brought in 2016; see IS (by way of his litigation friend, the Official Solicitor) v. Director of Legal Aid Casework and the Lord Chancellor [2016] EWCA Civ 464.
- 337.** A notable example in this regard is the Public Law Project's training and resource development around the subject; see <https://publiclawproject.org.uk/exceptional-case-funding>.
- 338.** Legal Aid Statistics Quarterly: January to March 2020; Table 8.2: Exceptional Case Funding (ECF) by category of law; available at <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2020>.
- 339.** Legal Aid Statistics Quarterly: January to March 2020; Table 8.2: Exceptional Case Funding (ECF) by category of law; available at <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2020>.
- 340.** See Legal Aid Statistics Bulletin: January to March 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895088/legal-aid-statistics-bulletin-jan-mar-2020.pdf, at p. 16. In the 2019-2020 financial year, immigration matters constituted 67.3% of the total number of ECF applications and approximately 79.3% of the overall number of successful ECF applications. See *ibid.*, Table 8.2: Exceptional Case Funding (ECF) by category of law; available at <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2020>.
- 341.** See chapter 2.
- 342.** See, e.g., BRC, *Not So Straightforward* (above n. 3). Of the 91 applicants for RFR considered in the report, 51% were exposed to security risks in the country in which they were living (of which



- 97% were women or children), and of the 67 cases involving children, 36% (24) were made on behalf of children in uncertain living arrangements, without a permanent carer and in unsafe economic, social and physical conditions.
343. Interview with Financial Inclusion caseworker, Refugee support charity, 24 June 2019. Although there were sponsors interviewed who had left the process of application for several years, most had applied within six months of being granted refugee status.
344. Ministry of Justice, Proposals for the Reform of Legal Aid in England and Wales, CP12/10, November 2010, p. 68, para 4.202.
345. The BRC initially responded to LASPO with a report, published in 2015, on the need for qualified legal support in family reunion. The report studied the experience of 91 sponsors in refugee family reunion cases. Its conclusions included the fact that almost two thirds of the applicants needed English language support with their applications, almost three quarters of the applicants were missing at least one form of documentation and one third relied on witness statements which were produced by legal advisers. Almost one quarter of applications involved children who were either de facto adoptions, or younger siblings. See BRC, *Not So Straightforward* (above n. 3), p. 8. See also GMIAU, Briefing Paper (above n. 3).
346. UNHCR, Family Reunion in the United Kingdom (above n. 4), p. 3.
347. The BRC has recently published a revised edition of their guide to RFR, which is meant to be a how-to manual to help people make the RFR application on their own. The booklet runs to 63 pages and takes the applicant/sponsor step-by-step through the process, including by providing practical guidance on how to prepare an electronic bundle and what to do if you have missed your appointment. The BRC is however clear that, due to the complexity of the process, the guide does not replace the need for legal support. See BRC, *Applying For Refugee Family Reunion: A Guide to the Family Reunion Process* (updated 1 July 2020), available at <https://www.redcross.org.uk/-/media/documents/get-help/get-help-as-a-refugee/guide-to-refugee-family-reunion--version-for-most-countries-2020.pdf>.
348. Community Legal Service (Funding) Order 2010.
349. See, e.g., Refugee Action, Refugee Family Reunion – Policy Briefing, February 2016, available at <https://www.refugee-action.org.uk/resource/refugee-family-reunion-policy-briefing/>; Refugee Council, The Importance of Refugee Family Reunion (Briefing for Backbench Business debate on 21 June 2018), June 2018, available at <https://www.refugeecouncil.org.uk/information/resources/briefing-refugee-family-reunion-backbench-business-debate/>.
350. See <https://www.redcross.org.uk/about-us/what-we-do/how-we-support-refugees/family-reunion-integration-service>.
351. Interview with Operations Manager, BRC RFR Project, 27 July 2019. Of these, the first four are core locations of the project, whilst the one in Manchester is an additional position funded by the Families Together programme.
352. <https://www.plymouth.ac.uk/courses/undergraduate/llb-law/refugee-family-reunion>.
353. Interview with Policy Officer, Families Together Partnership, 19 June 2020. See <https://www.justrightscotland.org.uk/our-work/scottish-refugee-migrant-centre/scottish-family-reunion-service>.
354. Interview with Policy Officer, Families Together Partnership, 19 June 2020.
355. Interview with Operations Manager, BRC RFR Project, 10 June 2020.
356. Interview with Operations Manager, BRC RFR Project, 27 July 2019.
357. Interview with Operations Manager A, BRC RFR Project, 27 July 2019.
358. The North West of England is the largest dispersal area in the UK, with approximately 9,381 dispersal places. See Northwest Strategic Migration Partnership, Quarterly statistics, December 2019, available at <https://northweststrmp.org.uk/statistics/>.
359. GMIAU Briefing Paper (above n. 3).
360. Interview with GMIAU Director, 20 February 2019.
361. See <http://asylumjustice.org.uk/>. Interview with caseworker, Refugee support charity, 2 July 2020.
362. See <https://rmcentre.org.uk/get-help/>.
363. Interview with caseworker, 17 February 2021.
364. Interview with Operations Manager, BRC RFR Project, 11 June 2020.
365. Interview with Service Coordinator, BRC Refugee Services, South West, 11 February 2019.
366. Interview with Financial Inclusion caseworker, Refugee support charity, 24 June 2019.
367. "I think that's where the charity sector comes into its own – the sponsor would be supported by the charity and you'd think about moving towards arrival and the needs of the family when they get here, looking for new accommodation and things. But as a solicitor, it is just "don't call us, we'll call you" (Interview with OISC regulated adviser, 28 April 2019).
368. UNHCR, *Family Reunion in the United Kingdom* (above n. 4), p. 8.
369. See <https://www.lawcentres.org.uk/about-law-centres/set-up-a-law-centre>.
370. Law Centres: Written question – 273435, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-07-04/273435/> (11 July 2019).
371. "Law Centres on Google maps", Law Centres Network [online] (at 6 June 2020), <https://www.lawcentres.org.uk/about-law-centres/law-centres-on-google-maps/geographically>
372. Source: data collected from Law Centres websites, followed up with phone calls.
373. The 2019 Annual Report of the Islington Law Centre provides an account of the challenges faced by Law Centres: "The work has become increasingly challenging due to the cuts to legal aid, which means that many people (for example those that are referred to as the 'Windrush generation') who are no longer entitled to get free legal advice. Over the last few years we have sought to ensure that we continue to provide legal advice to such people. However, to compound matters, hostile environment policies mean that our clients are now facing multiple barriers"; Islington Law Centre, Annual Report 2019, available at <http://www.islingtonlaw.org.uk/wp-content/uploads/2019/05/Islington-Law-Ctr-AR-2019-final-low-sp.pdf>.
374. Interview with solicitor, Law Centre, 30 March 2020.
375. Interview with solicitor, Law Centre, 30 March 2020.
376. The Islington Law Centre opened 72 immigration cases in 2019, but only a handful of those were RFR cases. Source: Annual Report 2019, above n. 374.
377. Law Centres Network, "Doing Justice in Dark Times", LCN Annual Review, 2018-2019, available at <https://www.lawcentres.org.uk/policy-and-media/papers-and-publications/annual-reviews>.
378. See <https://www.newcastlelawcentre.co.uk>.
379. Source: interview with immigration expert, Citizens Advice UK, 28 May 2020 (They are: Barnet, Bolton & Bury, Bradford & Airedale, Bristol, Kirklees CA and Law Centre, Reading, Rotherham, Royal Courts of Justice, Sheffield CA & Law Centre, Southend, Southampton, Southwark, Staffs North and Stoke, Swindon, Waltham Forest, York).
380. Citizens Advice Bureaux, Introducing immigration advice clinics, February 2016, available at <https://wearecitizensadvice.org.uk/introducing-immigration-advice-eedf7e742b5c>.
381. For example, at the University of Kent Immigration clinic, 34 cases were opened in 2016/2017 (and 9 continued from the previous year). The clinic also provided second-tier advice in 77 matters. Source: Kent Law Clinic Annual Report (2017), available at <https://blogs.kent.ac.uk/kentlawclinic/home/>, p. 44.
382. Sheffield Hallam University, Refugee Family Reunion Project, see <https://www.shu.ac.uk/about-us/academic-departments/law-and-criminology/about-us/refugee-family-reunion>.
383. D. Gilchrist, F. Ridout and J. Dunn, "Immigration University Clinics and Regulation, A Working Case Study", *International Journal of Clinical Legal Education*, vol. 3 (2018), p. 135, at p. 139, available at <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/770/1145>.



- 384.** Interview with supervisor, University law clinic, 21 October 2019.
- 385.** See Public Law Project, *Public Law and Clinical Environments*, May 2018, available at <https://publiclawproject.org.uk/wp-content/uploads/2018/04/Public-Law-and-Legal-Advice-Clinics-Final.pdf>, p. 11.
- 386.** Data sets from the immigration statistics, June 2020 available at: <https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-march-2020#asylum-and-resettlement>; "Asylum and Resettlement - Family Reunion visa grants"; Table Fam_D01.
- 387.** Interview with OISC Head of Operational Regulation, 8 June 2020.
- 388.** Source: OISC Annual Report and Accounts: 2018 to 2019 (July 2019), available at <https://www.gov.uk/government/publications/oisc-annual-report-and-accounts-2018-to-2019> and OISC Annual Report and Accounts: 2019 to 2020 (July 2020), available at <https://www.gov.uk/government/publications/oisc-annual-report-and-accounts-2019-to-2020>. The number of not fee-charging organisations does not include the Citizens Advice Bureaux which are exempted from registration at Level 1. See section 6.1.2 above on CABs.
- 389.** Source: OISC Annual Report and Accounts: 2019 to 2020, available at <https://www.gov.uk/government/publications/oisc-annual-report-and-accounts-2019-to-2020>, p. 13. This number does not include 352 Citizens Advice Bureaux which can give immigration advice at Level 1 due to a blanket exemption granted by the OISC.
- 390.** Ibid., p. 14.
- 391.** A recent report exploring avenues for increasing immigration advice found that the project had "the promise of boosting lower-level immigration advice capacity in the sector significantly, particularly in advice deserts, for a relatively small project intervention". See C. Hutton and J. Harris, *Methods of Increasing the Capacity of Immigration Advice Provision*, May 2020, <https://www.phf.org.uk/publications/methods-of-increasing-the-capacity-of-immigration-advice-provision>, p. 53.
- 392.** This work has been largely successful and the number of not fee-charging organisations registered with OISC has risen from a low of 208 in March 2016 to 236 in May 2020; see OISC Annual Report 2018/2019, p. 21; OISC Annual Report 2015/2016, p. 18, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583681/10574-OISC_Annual_Report_2016_Accessible2.pdf. For discussion of the impact of LASPO on the immigration advice sector, see section 5.3 above.
- 393.** CAF, *Charity Landscape 2019*, available at <https://www.cafonline.org/about-us/publications/2019-publications/charity-landscape-2019>.
- 394.** For an initial assessment of the impact of the COVID-19 crisis on the charitable sector, see CAF, *Charity Coronavirus Briefing*, May 2020, available at https://www.cafonline.org/docs/default-source/about-us-publications/caf-charity-coronavirus-briefing-june-2020.pdf?sfvrsn=b1e17047_2.
- 395.** Their share of the sector's income has almost continuously grown from 38% in 2000/01 to 54% in 2017/18. See NCVO, *UK Civil Society Almanac 2020*, available at: <https://almanac.fc.production.ncvocloud.net/financials>.
- 396.** Institute for Government, "Cuts to local government", 10 March 2020, available at <https://www.instituteforgovernment.org.uk/explainers/local-government-funding-england>.
- 397.** As a proportion of all income from government, local government income fell from 53% in 2007/08 to 46% in 2017/18, its lowest proportion since 2004/05. See NCVO, *UK Civil Society Almanac 2020* (above, n. 396).
- 398.** *Methods of Increasing the Capacity of Immigration Advice Provision* (above n. 392).
- 399.** See <https://www.thelegaleducationfoundation.org/articles/justice-together-initiative-to-support-people-to-access-justice-in-the-uk-immigration-system-2>.
- 400.** See <https://frontlinenetwork.org.uk>.
- 401.** OISC Annual Report 2018/2019, p. 18 available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816147/OISC_-_Annual_Report_2018_Text_WEB.pdf.
- 402.** Interview with Project Manager, Family Reunion Integration Service, British Red Cross, Glasgow, 25 July 2019; Scottish Government, *Scottish Welfare Fund Family Reunion Crisis Grant*, May 2018, available at www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2018/05/scottish-welfare-fund-family-reunion-crisis-grant-guidance/documents/00535442-pdf/00535442-pdf/govscot%3Adocument/00535442.pdf.
- 403.** The creation of an online community of practice is one of the solutions indicated also in a recent report exploring avenues for expanding the capacity of the immigration advice sector. See *Methods of Increasing the Capacity of Immigration Advice Provision* (above n. 398).
- 404.** See <http://www.asaproject.org/about/asylum-support-advice-network>.
- 405.** Staff from the Home Office and local authorities are expressly excluded from membership.



List of Organisations Interviewed

- Amnesty International UK
- Asylum Justice
- British Red Cross, Dublin Project, London Office
- British Red Cross, Policy Team, London Office
- British Red Cross, Refugee Family Reunion Integration Services, Glasgow Office
- British Red Cross, Refugee Family Reunion Project, London Office
- British Red Cross, Refugee Services, Birmingham Office
- British Red Cross, Refugee Services, Bristol Office
- Central England Law Centre
- Families Together Coalition
- Families Together Programme, BRC
- Greater Manchester Immigration Aid Unit
- Independent Chief Inspector of Borders and Immigration
- Islington Law Centre
- Just Right Scotland
- North East Law Centre
- Nottingham and Nottinghamshire Refugee Forum
- Nottingham City Council, Community Cohesion Team
- Nottingham City Council, Portfolio Holder for Communities
- Nottingham City Council Resettlement Team
- Office of the Immigration Services Commissioner (OISC)
- Plymouth University Law Clinic, Refugee Family Reunion Project
- RefuAid
- Refugee Council
- Refugee and Migrant Centre
- Refugee Family Reunion Clinic, Sheffield Hallam University
- Refugee Legal Assistance Project (RLAP), University of Bedfordshire
- Safe Passage
- UNHRC, United Kingdom
- Wilsons Solicitors LLP



Glossary and Acronyms

Applicant	Family member of a refugee in the UK making the application
CAB / CABx	Citizens Advice Bureau/Bureaux
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CRC	Convention on the Rights of the Child
Disbursement	Money granted by the Legal Aid Authority to cover additional expenses in a case, for example expert reports, interpretation, translation, etc.
DMC	Decision Making Centre
ECF	Exceptional Case Funding
ECO	Entry Clearance Officer
EIN	Electronic Immigration Network
ECtHR	European Court of Human Rights
Family reunification	Process of bringing together members of refugee families, particularly children, spouses and other dependent family members
Refugee Family Reunion	Immigration route under Part 11 of the UK Immigration Rules
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IHS	Immigration Health Surcharge
ILPA	Immigration Law Practitioners' Association
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LOTR	Leave outside the Immigration Rules
Matter Start	Each case awarded under contract by the Legal Aid Authority is described as a matter start
NGO	Non-governmental organisation
OISC	Office of the Immigration Services Commissioner
RFR	Refugee Family Reunion
Sponsor	Individual with refugee status (or humanitarian protection) sponsoring the RFR application of the family members
SRA	Solicitor Regulation Authority
UASC	Unaccompanied asylum seeking children
UKVI	UK Visas and Immigration
UNHCR	United Nations High Commissioner for Refugees

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