

# IMMIGRATION REFUGEES AND IDENTITY CONSULTATION PAPER

## RESPONSE FROM LIBERAL DEMOCRATS FOR SEEKERS OF SANCTUARY

### OVERALL APPROACH

- The Liberal Democrat Constitution's Preamble includes the statement "we are committed to fight poverty, oppression, hunger, ignorance, disease and aggression wherever they occur and to promote the free movement of ideas, people, goods and services". The tone of the consultation paper needs to reflect the idea that *freedom of movement is a liberal good, not a necessary evil*.
- Similarly, we would urge against the use of terminology such as "illegal immigration" e.g. in [1.1.5] of the consultation document. The picture is often complex, with some immigrants entering legally and then overstaying their visas, referred to on page 7 as overstaying a "legitimate visit"; others enter without legal authorisation and subsequently apply for (and receive) asylum – seeking asylum is not "illegal immigration" even if the persons seeking it enter the state illegally (for reference, see Article 31 of the Geneva Convention relating to the Status of Refugees).
- For completeness, the document should refer both to International Human Rights Law and to International Refugee Law in [1.1.5] of the paper.
- More generally, the document needs to have a glossary of terms and terminology, such as those explained in LD4SOS's "Let's get the names right".

## **APPLICABLE LEGAL FRAMEWORK**

- [7.1.1] of the paper notes that “under the United Nations Geneva Convention on Refugees, to admit persons with a ‘well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, who are outside the country of his/her nationality and who are unable, or owing to such fear, unwilling to avail themselves of the protection of that country’”. The accurate reference here should be to the “1951 Convention relating to the Status of refugees”.
- The legal framework is incomplete, however: as long as it is a member of the EU, the UK is also bound by the **EU Qualification Directive**, which instantiates *in addition to refugee status* a “persons eligible to subsidiary protection” status, to be granted to a “person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that, if returned to his or her country of origin, he or she would face a real risk of suffering serious harm, comprising (according to Article 15 of the Directive) one of the following: death penalty or execution; torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; 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. We should urge the UK to retain subsidiary protection status and the ensuing protections in UK law even if it leaves the EU.
- Moreover, we should reiterate our commitment to the **European Convention of Human Rights** (under intermittent attacks by the Conservatives) and especially Article 3 thereof which prohibits *refoulement* to countries where the person faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment.

## **THE ASYLUM PROCESS**

### **NEED FOR RADICAL OVERHAUL OF HOME OFFICE PRACTICES**

- Recent high-profile cases reported in the media of mistreatment of long-term UK residents who cannot prove their status are only the tip of the iceberg. We do not hear of those who may not have been here as long, who have not got a 100% record of working and paying taxes and are not as “deserving” in the public eye. Thousands of people will have been removed or felt they had no other option, who have never been brought to public attention.
- A culture change must come from the top, with the civil servant in charge of “immigration” being someone with a track record of humanity and common sense, a requirement which should apply to everyone in charge of a Home Office Department. Recruitment and training of officials must be in line with this expectation.
- The continuous presumption of “guilt” in all immigration and asylum claims must be scrapped.

### **HOME OFFICE DECISION-MAKING**

- 2016 data reveals that, in the UK, 40% of first instance asylum decisions are overturned ([http://www.asylumineurope.org/sites/default/files/report-download/aida\\_uk\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2016update.pdf))
- The Home Office needs suitably qualified and trained decision-makers; it should implement its guidance and rules consistently with international standards. We must ensure that asylum seekers are treated with compassion, humanity and dignity during the entire application process.
- One of the unjust causes of refusal of a claim is inconsistencies in what is said at the initial interview versus what is said later in the application process. It is crucial that an opportunity is given for the full case to be made initially, and support given for doing so. When the initial interview takes place, the person is often still traumatised from their experiences *en route* to the UK. Moreover, gender-based crimes often take time to uncover in interviews.

### **To improve the quality of decision making, and consequently to increase trust in the system, the following steps are needed:**

- It must cease to be a highly politicised system that allows enforcement to take precedence over protection. As a previous Liberal Democrat asylum policy stated, “posturing on asylum to please public opinion has created a culture of rejection in which real life and death matters have become a political football.” The system should not interfere with the UK’s international commitment to human rights.
- A decision to “take the politics out of asylum and give responsibility to an independent agency” has never been more pertinent. More work needs to be done to explore the potential for an independent decision-making body, appropriately resourced to make high quality and efficient decisions, separate from the politicians. The independent body needs to be transparent and accountable to Parliament.
- There must be a better public service ethos of accountability at all levels.

- Quality should be embedded in the system, and overseen and checked by an independent body such as the United Nations High Commissioner for Refugees (UNHCR).
- An accurate and up-to-date understanding of relevant Country of Origin Information (COI) must be used in decision-making. Those seeking asylum must not be returned to countries where they are in danger of torture and death. Monitoring on a continuous basis of individuals who are returned would give more up to date and accurate information. It should be the Foreign Office or its equivalent, not the Home Office, that draws up information about COI.

### **TRAINING OF DECISION-MAKERS**

- There needs to be better operational leadership and management; and there must be investment in people and resources so that caseloads are manageable and case workers are better trained and more competent.
- Additional training is also needed for those who deal directly with more vulnerable groups such as victims of torture/trafficking, sexuality issues, gender-based violence, mentally ill people, pregnant women and children. Training is particularly needed regarding the use of strip searches. European Court of Human Rights guidelines must be adhered to, and internal instructions fully implemented.

### **BURDEN OF PROOF AND CULTURE OF DISBELIEF**

- The “culture of disbelief” must be acknowledged and addressed by the government at all levels. We would like to see the presumption of the benefit of doubt apply to all asylum applicants.
- At present, there is an inappropriately high standard of proof and insufficient examination of all the facts before reaching negative credibility conclusions. We want to encourage the full truth to be told by those seeking asylum and not, for instance, allow them to use a script a people-smuggler gave them containing what they think will get the people they are smuggling admitted. The newly arrived could be advised that not telling the truth may make them unable to receive long term permission to stay.
- Credibility shortcomings contribute to significant numbers of cases being rejected at first instance. A focus on addressing the standard of credibility assessment will have a significant impact on improving the quality and consistency of asylum decision-making.

### **THE INTERVIEWING PROCESS**

- The process should provide safeguards, and in particular allow flexibility in interviewing those who are more vulnerable (as listed under Training of Decision-makers above); greater care must be taken in identifying victims of torture and trafficking.
- Proper notice should be taken of medical evidence, with reasonable time for seekers of asylum to get the evidence needed of what happened to them.
- Interviewers need to understand the culture that asylum-seekers have come from, and this needs to be reflected in questions asked to identify credibility of claims.

- Ditto for faith – meaning the Home Office needs to be familiar with, and apply, the recommendations of the All Party Parliamentary Group on Freedom of Religion and Belief, <https://appgfreedomofreligionorbelief.org/asylum-report/>, on Faith Issues for asylum seekers.
- The correct interpreters for those seeking asylum should always be provided at every stage it is needed, as well as provision of better translation facilities, and transcription of interviews.
- In general, the approach at the initial interview stage needs to be more sensitive, and ways of making interviews less stressful looked at, including them being held in less hostile environments.
- Childcare whilst a person is being interviewed is crucial, especially where women are having to explain gender-based violence.

### **INTERPRETATION SERVICES**

- Interpreting to nationally recognised standards in the language of the asylum seeker is needed at all stages to speed up the process and save money. Not only is it right that the exact meaning of what a person seeking asylum says is interpreted to the interviewer, but the asylum seeker being interviewed needs to understand exactly what is being asked of them.
- Court cases have been abandoned because an interpreter with the necessary dialect has not been provided.

### **PROCESS LENGTH**

- The asylum process must be delivered in a way that allows for the best decision-making. While we recognise the need for people not to be left in limbo for extended periods while awaiting a decision, we do not want the process to be so fast that evidence cannot be gathered and considered adequately. At present, the process often takes far too long and constitutes a form of mental torture.
- Whilst decisions are being made, and appeals taking place there is a cost to the taxpayer in accommodation and financial support; savings on these would be better put to support for much better initial decision making.
- Getting decisions right first time must be the priority. This allows legal representatives and decision makers to discuss what might be necessary to enable a good decision to be made and get on with obtaining that. The reduction in legal aid in many circumstances makes getting it right all the more necessary.

### **ASYLUM APPEALS**

- Appeals are currently handled by a Ministry of Justice Immigration Tribunal, which removes an incentive for the Home Office to get the initial decision right.
- If appeals are to be funded by the Home Office, it will increase the chances of “getting it right”.

### **REMOVALS**

- The recommendations of the National Independent Commission on Enforced Removals (NICER) should be implemented to ensure humane and more efficient deportations.

**IDENTIFYING VULNERABLE GROUPS (corresponds to Question 5)**

- Work with the independent United Nations High Commissioner for Refugees (UNHCR) who will have an independent overall view.

## **RIGHTS AS AN ASYLUM SEEKER**

### **DETENTION (corresponds to Question 53)**

- We reiterate that The UK is the only EU country which retains indefinite detention. In 2012, UNHCR published detailed “alternatives to detention” (<http://www.unhcr.org/afr/505b10ee9.pdf>), which are very helpful.
- Detention without trial (and without appeal) is contrary to the principles of British justice, is incompatible with Liberal views, and is unacceptable.
- A fair application of the criteria set out by Parliament, means that detention for administrative convenience would never be required, as the applicant would either meet the criteria or not as the case may be.
- Detention pending deportation should be subject to judicial oversight.
- We still support the policies in “Making Migration Work For Britain”.
- We have worked closely with *Detention Action* for many years, and an LD4SOS Council member represents us on the Detention Forum. We agree with their suggestions on policy around detention, and alternatives to it. We very strongly urge the working party to liaise with *Detention Action* on the exact detail of our new policy.
- We should not overlook the detention of those who are refused entry at Heathrow and Gatwick. Even if they are cannot be classified as immigrants or asylum seekers, they are here on UK soil, and their conditions are bad. The Independent Monitoring Boards have made recommendations as part of their reports on both Heathrow and Gatwick, and these need to be looked at and included in our policy.

### **DISPERSAL**

- The paper notes [1.8.2] that “57% of asylum seekers are housed by the government...in the poorest third of the country.” We need to make sure that existing dispersal areas have the necessary support, including from the voluntary sector, to provide the right environment for asylum seekers. New dispersal areas must have access to medical facilities, public transport, and support services.

### **HOUSING OF ASYLUM SEEKERS (question 66)**

- The contract for housing asylum seekers from September 2019 for 10 years has just been drawn up and is in the process of being tendered for, so will be in operation by the time of the next election.
- Be radical – say we will intervene in whatever way we can, immediately look again at these contracts and withdraw them where we find people being forced to live in situations which compromise their dignity, and where the spirit as well as the letter of the contracts is not being complied with.
- Future contracts will not allow the sharing of bedrooms with other adults against their will. Every effort will be made to support local authorities wanting to eradicate forced bedroom sharing in their area.
- Future contracts should be capable of being broken down to local authority level, so that they can compete for the contract on a level playing field, where they wish.

- There need to be much better inspections of how the contract is being implemented, which should be independent of both the Government Department and provider. These reports should be transparent, after taking out details which personally identify people, and the results made available for public scrutiny by the equivalent of the Home Affairs Select Committee as well as relevant NGOs.
- Disputes as to how the contract is interpreted should be dealt with by an independent arbitration panel, speedily and effectively (for instance the contract will say that a duvet has to be provided, and there is a dispute as to whether a very thin duvet given out in the middle of winter is sufficient).

### **RIGHT TO WORK (corresponds to Question 54)**

- The UK is currently the most restrictive country in the EU in terms of access of asylum seekers to the job market, imposing a 12 months restriction. The UK has opted out of the EU Reception Directive (which sets a 9 months upper limit. Many countries have a lower bar, most commonly 6 months.
- Asylum seekers should be given permission to work in any job for which they are suitable rather than only in shortage occupations, if they have been refused but cannot return through no fault of their own, or if they have been waiting for 6 months or more for an initial decision.
- Asylum seekers are eager to integrate and to contribute to our society. To that end we will ensure that ESOL classes, other relevant training and volunteering opportunities are available. This significantly reduces the cost of asylum support, as well as giving asylum seekers dignity and reducing deskilling.
- Many asylum seekers have good skills and qualifications and should be allowed to put them to use.
- However, it must be borne in mind that many asylum seekers will not be able to work, full time anyway, after 6 months, as they will still be recovering from the trauma they have fled from or encountered on the way.

### **SUPPORT FOR ASYLUM SEEKERS**

- We would make sure that all supported in the asylum system receive cash payments, as happens with those on section 95. Currently those on Section 4 are issued with a card they can only use in places that accept it, which rules out payments such as bus fares or to many market stalls.
- Support should be administered by the DWP and not the Home Office, and the level of support should be raised in line with other benefits, after being reviewed to be of a sufficient level for it to be lived on decently.

## **POST-RECOGNITION, FAMILY UNIFICATION AND INTEGRATION**

### **DESTITUTION**

- The Refugee Council report ([https://www.refugeecouncil.org.uk/assets/0003/7935/England s Forgotten Refugees final.pdf](https://www.refugeecouncil.org.uk/assets/0003/7935/England_s_Forgotten_Refugees_final.pdf)) reveals that end-to-end support is required, from first arrival in the UK to when a person EITHER has leave to remain and has had chance to claim and receive benefits or find employment, OR has to leave the country.
- We support the policy as outlined in “Making Migration Work For Britain” (Policy Paper 116).
- Time to leave accommodation and end all support needs to be extended from 28 days to 50 (City of Sanctuary and Refugee Council).

### **DATA SHARING ON HEALTH ISSUES**

- There is deep concern about the Home Office having access to patients’ data. There are concerns about the public interest, inadequate consultation, patient confidentiality, and the disregard for Public Health England’s advice. The Commons Health Select Committee revealed dying migrants are too scared to see a doctor in case they are deported (<http://libdemfocus.co.uk/ld4sos/archives/1014>).

### **VISA OVERSTAYERS (corresponds to questions 42,43)**

- There should be a grace period for overstayers to take into account circumstances that might have prevented them from honouring the terms of their original visa.
- Other countries such as Sweden (<https://www.migrationsverket.se/English/Private-individuals/Visiting-Sweden/Extend-a-visit.html>) have formal arrangements allowing those who realise they will overstay to apply for an extension. The UK too should have straightforward arrangements to allow individuals to regularise their position if their circumstances change while in the UK.

### **HOSTILE ENVIRONMENT (corresponds to Question 47)**

- Home Affairs Select Committee Report (Immigration Policy: Basis for Building Consensus):  
<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/500/50003.htm>
- The “climate of fear” is deterring people from accessing services such as health care, despite having nothing to worry about.

### **THE FATE OF YOUNG PEOPLE REACHING THE AGE OF 18**

- Those who arrived in the UK as unaccompanied children must have full support in enabling them to regularise their status, and apply for refugee status here, rather than the presumption that they can be sent back to countries where they would be still in danger, and often have no living family there. We need to make provision for them to receive legal advice and for extending the deadline period for an unaccompanied asylum seeking child to appeal an asylum decision as in Lord Roger Roberts’ Private Members Bill <http://libdemfocus.co.uk/ld4sos/archives/1067>

## **FAMILY UNIFICATION (corresponds to Question 58)**

- Adult refugees have a legal right under UK and international law to be reunited with their partner and children (under 18) (<https://www.refugeecouncil.org.uk/assets/0003/9780/ja-together-again-refugee-family-reunion-uk-280217-en.pdf>).
- The current rule causes distress for split-up families. For instance, if the father has come to UK to seek asylum, leaving behind wife and children; by the time the leave to remain is granted at least one of those children may be 18. It means a child not seen for 10 or more years can never be seen again, and whilst still a teenager is left in a dangerous country on their own. There needs to be more flexibility if other family members are still overseas.
- We support bringing about legislative change as proposed in the Refugees (Family Reunion) (no. 2) Bill which passed second reading in the House of Commons on 20<sup>th</sup> February 2018, similar to Baroness Hamwee's Refugees (Family Reunion) Bill.
- More generally, we oppose the continuation of the arrangement whereby "The current minimum earning threshold for a British or settled sponsor wishing to bring a spouse to the United Kingdom is £18,600".

## **PROMOTING INTEGRATION**

We refer to our Policy motion "Local Communities welcoming refugees":

<http://libdemfocus.co.uk/ld4sos/archives/836>

As in Jeanette Sutherland from ALDC's talk at conference 2 years ago:

- At a Councillor level – take your share! Find out when they will arrive and what preparations have been made.
- Promote the City of Sanctuary resolution. Join your City of Sanctuary movement and if you haven't one – start one.
- Encourage your local school to become a School of Sanctuary or your business to be one.
- Publicise opportunities for voluntary work with asylum seekers or provide volunteer placements for suitably qualified asylum seekers or refugees.
- Offer be-friending or advocacy for asylum seekers.
- Offer English tuition to asylum seekers ineligible for state funded classes.
- Host short or longer-term accommodation to homeless asylum seekers.
- Raise money for your local organisations supporting asylum seekers.
- Consider appointing refugees to positions of responsibility in your community.
- Invite refugee groups to your community events.
- Display a "We welcome asylum seekers and refugees" outside your building, place of worship or office.
- Hold a "Thank you" event so that asylum-seekers can say thank you to the host community.
- Promote a manifesto for refugees and asylum seekers.
- Most importantly – get involved, get knowledgeable and get campaigning.