

More Distinctions, Fewer Chances to Rebuild Livelihoods? The impact of Clause 10.5 of the Nationality and Borders Bill on Refugees

Wed, 3 November 2021, 13:00 – 14:30

1. Welcome and Introductions

Kate Osamor MP, Chair of the APPG on NRPF, and **Baroness Sarah Ludford** (Vice-Chair of APPG on Migration) welcome attended and introduce the event.

Kate Osamor (KO) welcomes attendees to the joint event of APPG on Migration and APPG on NRPF. She explains that the event is going to draw attention to Clause 10.5 of the Nationality and Borders Bill, which sets out that refugees will be discriminated against based on the method in which they arrive to the UK. The Bill sets out that limited services will be granted to refugees on this basis, and that those deemed to have arrived in what the Bill considers the wrong way are more likely to be subject to the No Recourse to Public Funds (NRPF) condition, have limited family reunion rights, have restricted access to indefinite leave. This would apply to any refugees where they did not travel from a territory where their safety was threatened. **KO** states that the panel of experts and those with lived experiences of NRPF present at the event will explain the intricacies and damaging aspects of the proposed policies, and that the event will be important for MPs to understand and scrutinise policy in the next phases of legislation.

Sarah Ludford (SL) introduces herself as the Vice-Chair of APPG on Migration, filling the shoes of Baroness Sally Hamwee, and expresses her interest in the subject of UK domestic asylum and nationality. She then proceeds to introduce each speaker:

Jonathan Featonby (JF) currently works as Policy and Advocacy Manager (Refugees and Asylum) for the British Red Cross. Previously, he served as Parliamentary Manager for the Refugee Council. He has provided Secretariat Support to the All-Party Parliamentary Group on Refugees' inquiries on the experience of new refugees in the UK (2017) and Immigration Detention (2015). He holds a master's degree in the theory and practice of Human Rights from the University of Essex.

Jennifer Blair (JB) is a senior legal protection adviser at the Helen Bamber Foundation, an organisation that provides specialised support to survivors of trafficking, torture, and extreme cruelty. She is also a barrister at No5 Chambers, where she engages in advice and representation in all areas of immigration, asylum, nationality, deportation, EU free movement and human rights law. Jennifer has previously delivered training nationally for the No Recourse to Public Funds Network and the Women's Resource Centre. She has worked as an MP's caseworker, and she is a founder of the Big Voice London youth legal project.

Kris Harris (KH), Policy Coordinator, Project 17, is responsible for Project 17's policy, parliamentary and research work. She was previously a Research & Policy Worker at Medical Justice. Kris has been working and volunteering in the migrant right's sector for a decade and is currently a volunteer with Akwaaba Community Project. She has a PhD from London School of Hygiene and Tropical Medicine.

Subsequently, **KO** sets out the format of the session, an interactive format with chairs asking tailored questions to the panellists for 45 minutes and then having testimonies from people with lived experiences of the NRPF condition for the last 10 minutes, followed by a Q&A session.

2. Questions to Panellists

KO starts the conversation by asking Jon Featonby (JF) to *briefly summarise why he is concerned about the suggestion of differentiating between groups of refugees and offering limited access to services.*

JF addresses the general concerns about differentiating refugees on the basis of route of arrival. **JF** begins by explaining Clause 10.5 of the Bill: the clause discriminates refugees according to mode of arrival and creates two groups of refugees: group one, includes refugees who arrive through regular routes (who are a minority); group two encompasses all other refugees, who will be the majority since there are not enough legal and safe routes to enter the UK.

In terms of why Clause 10.5 is problematic, **JF** claims that while the Bill is problematic in its entirety, apart from a few provisions in Part 1 that address historical wrongs on citizenship rights, Clause 10.5 is regarded as particularly problematic by the British Red Cross (BRC) and other organizations. According to BRC protection should be granted on the basis of need and not on the basis of mode of arrival to the UK. Moreover, in this case, restrictions apply to a group of individuals who have already been legally recognised as refugees by the UK government. Another problematic aspect of the Bill is that Clause 10.5 gives some examples of the restrictions that the government plans to introduce for refugees with NRPF, but most of the details of these restrictions will be set out through the immigration rules.

JF states that BRC would like to see a reduction in the unsafe and dangerous journeys to the UK, but there is no evidence that Clause 10.5 will limit dangerous journeys. This is because the clause does not address the reasons why people take on unsafe and dangerous journeys in the first place, such as the lack of legal routes. This is not only what policy experts believe, but also what people with lived experiences say. BRC supports The Voices Network, a group of people with lived experiences of going through the asylum and immigration system, who in a consultation with the Home Office made it clear that there is nothing that the Bill introduced that would have led them to make different choices in terms of how they decided to arrive to the UK. **JF** maintains that the support that is given to refugees does not reflect the reasons why people decide to go to specific countries, as shown by comparisons with countries like Australia where the evidence is clear that none of the introduced provisions have impacted on how asylum seekers arrive.

In terms of actions to take, there are debates about whether it is better to try and remove Clause 10.5 altogether or whether to remove/amend specific limitations under Clause 10.5. However, **JF** points out that is very hard to amend Clause 10.5. There was a useful debate on these issue in the Committee Stage of the Bill. The Minister for example clarified that the limitations of Clause 10.5 would not be introduced retrospectively or applied to someone with a live asylum case. There are also talks around raising amendments that would exclude

particular groups of refugees from these limitations, but this would be unfair to other refugees.

SL agrees with **JF** that the clause is pernicious and the whole Bill is very problematic. She is concerned that sections A to D of Clause 10.5 are only examples, but further limitations can be introduced through immigration rules and Home Office guidance, around which there is no parliamentary scrutiny.

SL proceeds to ask **JF** about why he is concerned about the proposal to limit access to family reunion (under Clause 10.5.d) based on his experience at the Red Cross.

After expressing his pride in BRC's support for more than 2000 families to be re-united, **JF** states that BCR is very concerned about the limitations to family re-union introduced by the Bill. This is because many of the families that have been re-united through the work of BRC would not have been able to reunite if the Bill was already introduced. Furthermore, **JF** pointed out limiting family reunion undermines one of the most common safe and legal routes to the UK. He explains that family re-union is one of the most used safe and legal routes to reach the UK, and that nine in ten family reunions are granted to a woman and a child, groups that the HO considers particularly vulnerable. **JF** also claims that limiting family reunion also creates a barrier for refugee integration, citing the case of Amar, a member of the BRC's Voices Network, and the negative impact that not being able to initially reunite with his family created for him. Moreover, **JF** again notes that the Bill doesn't provide detail on the limitations to family re-union, and other restrictions could be introduced later. Finally, **JF** argues that while the Home Office has tried to simplify the process of family re-union, this Bill complicates the process. In this context, he points out, is also important to re-introduce legal aid to help refugees address the impact of restricting family reunion.

SL echoes these concerns, further suggesting that the problem with asylum is the backlog and the wait period for refugees, and the priority of the Bill should be to simplify the process, instead of making more complicated and more open to legal challenge.

She poses a question to Jennifer Blair from the Helen Bamber Foundation on the *impact of offering a limited leave to remain - with limited access to routes to settlement - on the mental health, wellbeing and integration prospects of refugees who have suffered trauma in their country of origin, or on the journey to the UK.*

JB states that research suggests that people's mental health deteriorates in the first year after they are granted leave to remain due to the instability this causes. This new process would keep people permanently in that state. **JB** discusses the negative impact of unstable immigration status on people with past trauma, including the fact that clinicians will often decline to undertake trauma therapy for people in an unstable legal situation, which will prevent healing of past traumas; that even people with 30 months leave to remain are seen unattractive by landlords and employers who see them as legally precarious – and this creates long term precarity. **JB** also points out that granting only temporary leave for victims of trafficking creates further risks of re-trafficking, as people can fall into abusive situations given their unstable legal condition. **JB** argues that the process of repeated applications for leave to remain every 30 months is itself traumatic for refugees, who will have to revisit

past traumatic memories every couple of years. Noting that the people she works with are desperate to move on with their lives, she states that in her professional opinion, there will be people who won't be able to cope with this process and will fall into destitution, abuse, and further exploitation.

JB also highlights the negative impact of limiting routes to settlement. She explains that Indefinite Leave to Remain is important for people's mental health; loss of settlement means loss of belonging, perceptions of feeling unwelcome directly affect mental health. These provisions will make the prospect of refugees going back to education and rebuilding their lives also unrealistic, which in turn will have implications for racial justice, similar to the ramifications of Windrush. Finally, **JB** points out that having to renew application to remain every 30 months will not help with the Home Office backlog of asylum cases and legal aid capacity. She argues that the Bill is based on the assumption that all refugees are single men with no vulnerabilities, while instead the Bill has particularly damaging effects for vulnerable people, including women who have been victim of domestic violence (and will not be able to leave abusive relationships due to the NRPF condition they will have) and even British children. For example, she states that the GLA has recorded 200,000 undocumented children in the UK and we would see even more with the passing of the Bill as parents with precarious leave fail to effectively regularise children's leave; vulnerable women will be forced into homelessness and may fall back in the hands of their abusers.

JB maintains that while there is a provision for applying to lift the NRPF condition for people who are destitute, it is very hard to prove destitution, people don't know that NRPF can be removed, and they fear that it will undermine their immigration case and therefore do not apply to lift it. Finally, she points to high fees to renew protection (around £3000 per renewal) and the limited access to advisors, with private lawyers' fees regularly coming to around 3000 per application, which further contributes to risk of being re-trafficked for victims of trafficking who may face debt bondage to afford the payments.

KO comments by pointing out that MPs are a gateway to support these vulnerable communities in their constituencies given the limitation to legal aid. She then asks **Kris Harris (KH)**, Policy Coordinator at Project 17, *why it is problematic to impose a No Recourse to Public Funds condition on refugees offered Temporary Protection Status in her experience working at Project 17.*

KH explain that Project 17 helps families with NRPF to access a range of services – including healthcare – from local authority. She begins by elucidating the meaning of NRPF: NRPF is stipulated in immigration rules, and it refers to prohibition to access mainstream benefits. **KH** echoes JF's concern about the Bill introducing further limitations through the immigration rules. She then discusses latest developments on NRPF in the Bill Committee debate, explaining that the Minister clarified that NRPF conditions will not be applied to people who are receiving asylum support, as there is already an implied acceptance that the person is destitute. The government's position is that extending the NRPF condition is not problematic because refugees will be allowed to apply to lift the NRPF condition if needed. However, all the meat and limitations will be set out in the guidance and immigration rules. Subsequently, **KH** presents an account of the negative impact of NRPF on people based on her experience working at Project 17, arguing that the NRPF condition contributes to

homelessness, overcrowded accommodation, destitution; that it has direct negative impact on the children of families with NRPF; that it creates social exclusion, mental health problems, and children not having enough food to eat.

KH also claims that the government's offer to make an application to lift the NRPF condition is not enough. She points out that this condition is extended to refugees who already have recognised protection needs, who have already been in the asylum system and have not been able to work, who still suffer from trauma, and there is a likelihood that they will be returned to a place where they may face persecution. She also raises the point of the backlog that the making an application to lift the NRPF condition will create for the HO. Concluding that this condition has deep implications for people with lived experiences of asylum system, she passes the word to the first person with lived experience of NRPF, **Nike**.

Nike (woman with lived experience of NRPF)

Nike gives a powerful testimony of the devastating impact of having NRPF while her immigration application was still undergoing and was delayed over a long period of time. She recounts how during this time she was in an unsuitable accommodation for her and her children, which resulted in her ex abusive partner winning a legal battle over custody of the children. She points out how stressful and destabilising the situation was for her and how she was unable to access social services – including from mainstream charities – due to the NRPF condition. She feels that the NRPF and the fact that she had no right to work hindered any prospect of professional development. Based on her first-hand experience, **Nike** believes that extending the NRPF condition to more people will be disastrous. She reiterates that refugees are under a lot of emotional distress, that they have great difficulty in accessing support, especially when homeless, that there are long delays to access support, that they face being disbelieved by social services. She would like to ask MPs to oppose the extension of NRPF in the Bill.

KH comments on the long-term effects of NRPF combined with the limitations in trying to access section 17 asylum support. She then passed the floor to the second person with lived experience of NRPF: **Assiatu**.

Assiatu's testimony highlights the emotional and psychological trauma caused by being subject to NRPF, especially in undermining her confidence and self-worth as a human being. She recounts how having no money, no access to benefit or to public housing, resulted in her being homeless with a three-month-old daughter. In the end through the help of Project 17, the local council provided her with accommodation. However, she points out that for people without an advocate it is impossible to get support. She also mentions that she was afraid of complaining about severe mould problems in her accommodation because she believed it would undermine her asylum application. Finally, she concludes that while now she does have Recourse to Public Funds for 30 months, she still feels very precarious as she doesn't know whether this will be renewed or whether she would still be granted access to benefits. She pleads MPs to remove the NRPF condition, claiming that asylum seekers want to contribute to the economy, and this can be achieved if they are less stressed, and they don't have to constantly think about everyday survival and complicated legal issues. She claims that the current system is a recipe for a mental health crisis and the UK has too

hostile immigration system. She concludes by stating that the NRPF violates people's human rights.