New Plan for Immigration – Our Answers

**Foreword:** STRONGLY OPPOSE

**Chapter 1: Overview of the Current System**
**Q2**: Decline to answer

**Q3**: We have declined to answer the propositions in Q2 because they are based on assumptions we do not accept and framed in an opaque and misleading manner. We do, however, have views on these issues.

**A.** While safe and legal routes are vital for the resettlement of refugees, the question asked is whether 'strengthening' such routes, presumably with further legislation, will increase fairness and efficacy, deter illegal entry or facilitate the removal of those with no right to remain, to which the answer is Not at all:, The plans outlined provide little of substance and appear contradictory. For example, *'looking at the range of people accessing resettlement schemes including the potential for people to achieve better integration outcomes in the UK'* lacks any substance. While '*considering minority groups that are systematically persecuted for their gender, religion or belief'* may be a noble aspiration, this is a separate consideration to *prioritising resettling refugees, including children, from regions of conflict, rather than those who are already in safe European countries* – to use an example from the NPFI, Christians making their way to Europe due to feeling unsafe in Muslim countries.

**B**. The suggested reforms to legal processes will not ensure 'improved access to justice' but will seriously diminish access to justice, thus undermining the stated aims of fairness and efficacy. If the Government were serious about improving access to justice, they would be strengthening the legal aid scheme, providing adequate remuneration for lawyers representing asylum claimants rather than making legal aid firms unviable as businesses so only the least professional or those who subsidise their asylum work can remain afloat.

**C.** While everyone would like to see speedier outcomes to asylum applications – most crucially asylum applicants themselves – delays in the system are not the fault of the current legal processes but largely due to the unacceptable delays in Home Office decision-making (NPFI cites figures of 52,000 awaiting an initial decision at the end of 2020, most of whom had waited over a year. The courts are, in fact, empty with judges engaging in training courses to fill their unused time) and the poor quality of the decisions that are made mean that the judiciary have to grant permission to appeal or judicially review Home Office decisions because they are unsafe or unlawful. The obvious answer to this is greater investment in training of decision-makers and better funding of legal representation to ensure safe decisions are reached at an early stage.

**D**. 'Providing all relevant information at the earliest opportunity' as a measure of 'good faith' overlooks the realities of asylum applications. Applicants may not be able to access 'all relevant information' in line with stricter requirements to do so. This might be for psychological reasons relating to trauma – e.g., disclosing full information about sexual violence, or lack of knowledge – e.g., an unaccompanied

child explaining why a parent was persecuted. Or it could be to do with collecting evidence to support the claim – e.g., original documents still in the Home Country, commissioning expert reports evidencing torture or the situation of particular groups within a country. The Home Office and Department for Justice would need to support lawyers in assisting their clients to put evidence before decision-makers with less restrictive rules around disbursements when compiling a case. This, again, calls for better funding for legal representation as poor quality legal representation, as a result of underfunding, leads to mistakes in gathering and presenting evidence.

**E**. The Home Office has made serious errors in assessing who has and has not a 'right to be in the UK' – most recently during the Windrush scandal. Strengthening the ability of the Home Office to remove people on their database will lead, again, to serious miscarriages of justice. Enforced removal should occur only when the legal process is exhausted. The removal of rights to appeal, particularly where there have been manifest injustices, would risk breaching a claimant's human rights.

**F**. Some people will make repeated protection claims, not primarily 'to stop their removal' but to prevent them being returned to a country where they do not believe they will be safe. The Home Office is aware that it is unlawful under international law to return someone to a country where they are likely to be persecuted. Given the unreliable quality of decision-making and lack of access to good legal advice, opportunities for review must be given to applicants whom the current inefficient and underfunded system has not delivered a safe outcome.

**G**. It is simply not possible to prevent illegal entry to those determined to do so. The £168million of tax-payers money spent on juxtaposed controls in France and on security in Calais, have merely changed the behaviour of those determined to reach the UK and forced them into more dangerous routes. It is in the realms of fantasy to make Channel crossings in small boats 'unviable'. Furthermore, as the Home Office is aware, there is a legitimate defence for illegal entry if it is for the purposes of claiming asylum. Research by the Migration Observatory at Oxford University (https://migrationobservatory.ox.ac.uk/resources/commentaries/migrants-crossing-the-english-channel-in-small-boats-what-do-we-know/) shows that 98% of those who cross the Channel in small boats immediately claim asylum. This means of the 5,000 people who entered the UK this way in 2020 (Abi Tierney, DG of UKVI, in oral evidence to Home Affairs Committee 3/9/20), 4,900 did so with a legitimate defence.

**Chapter 2: Protecting Those Fleeing Persecution, Oppression and Tyranny**
**Q4–6**: Decline to answer.

**Q7** It is impossible to take a view on plans with no details. These statements are very muddled. Capacity in Local Authorities is not a static factor and can be built with proper resourcing. Outsourcing care for vulnerable groups at scale to community groups has serious safeguarding implications, imposes an additional burden on civil society which is more properly managed by local government and principally benefits central government funding. It is extremely difficult to measure one form of need for protection against another. Each case should be judged on its own merits on an individual basis, with properly resourced field workers and diplomatic missions. At present, the only safe and legal routes to the UK involve establishing

refugee status outside the UK before being resettled, or via family reunion. It is extremely difficult for someone afforded refugee status outside the UK to be resettled here. The UNHCR and IOM determine eligibility for resettlement in the UK based on criteria set by the UK Government and report that only 1% of those eligible are offered resettlement through these safe and legal routes. Changing these criteria in favour of those with better qualifications or higher levels of English would subordinate the need for refuge to other economic factors, precisely what the Government says it wishes to avoid (see Foreword statement concerning need and the ability to pay people smugglers). There is no orderly queue and most of those who meet the criteria will not be offered resettlement. Many refugees in UNHCR camps find themselves waiting for at least 5 years even after approval for resettlement (one local family waited in a refugee camp for 13 years before being resettled, with no work or educational opportunities for their children).

**Safe and legal routes, including Family Reunion.**

**Q8–9**: Decline to answer

**Q10–11**: As recently as December 2020, the Government rejected amendments to the Immigration Bill proposed by Lord Dubs, which would allow unaccompanied asylum-seeking minors in the EU to join their siblings. IOM statistics suggest that over 6,000 UASC have simply 'disappeared' in Europe. Some of them will be attempting to reach the UK by clandestine means, and will, therefore, be placed in highly dangerous situations. Safe Passage is currently challenging the HO in court for its rejection of just such a family reunion case involving a UASC in Greece and his brother in the UK. Safe and legal routes should be available to unaccompanied asylum-seeking children to rejoin family members, whether from within or without the EU. Currently, this is only possible in cases of first-degree relations and does not include siblings. Evidence, such as DNA evidence and birth certificates, is often disregarded or lost by the HO. The UK is still bound by the European Convention on Human Rights. These changes risk contravening this Convention and flouting human rights.

**Q12**: We have a moral obligation to the people stranded on the Aegean islands by EU agreements to which the UK was party. Turkey is not a safe country – its human rights record is a major factor in its non-accession to the EU. Refugees in Turkey are driven to attempt to find safety for their families in Europe because there is no possibility of establishing themselves in Turkey. Very few receive work permits and there is very little access to education for the children. Many Syrians have been living in camps with no work and no education for a decade. Leaving the EU should not mean abdicating our responsibilities to those refugees. The Government should formulate a relocation plan to enable some of them to make claims to asylum in the UK.

**Q13:** These proposals set out to delay or avoid granting asylum to many people already in the UK and will, therefore, make it impossible for their family members to join them. Those family members would be more likely to resort to dangerous journeys to reach the UK by other means.

**Q14:** No further observations

**Chapter 3: Ending Anomalies and Delivering Fairness in British Nationality Law**
**Q15–18:** We are not qualified to respond to this but Amnesty has done so. See resources.

**Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System**
**Q19:** Not at all effective

**Q20:** Not at all effective

**Q21:** This Plan sets up a false distinction between 'genuine' refugees and those seeking asylum who enter the UK through irregular routes. In reality, the majority of those who claim asylum after arriving in this way are found to be 'genuine' refugees. Treating them differently because their route to safety in the UK has not followed the very narrow channels available is contrary to the UK's obligations under international law. There are no mechanisms to return failed asylum-seekers to third countries so treating claims by those who arrive clandestinely as inadmissible is unworkable. There are many offences which could carry up to a year in jail, but which do not indicate a danger to the public. Processing asylum countries in a third country, such as Greece, would be welcome but it is not realistic to believe that someone fleeing persecution would remain at risk in their home country while an asylum application was considered. This chapter seeks to conflate people smuggling with people trafficking by organised criminal gangs. There is no evidence that the people attempting to smuggle asylum-seekers into the UK are involved in drug or gun crime. These are different entities.

**Q22:** It is not for the Home Office to redefine international law regarding the meaning of 'a well-founded fear of persecution'.

**Q23:** Decline to answer

**Q24:** Not at all effective

**Q25**: *Criteria, process and requirements to be followed:* There is already a framework for determining the age of people claiming asylum established by case law. The *'criteria, process and requirements to be followed to assess age'* should not, indeed probably *cannot,* be lawfully set by a putative National Age Assessment Board (NAAB).

Local Authority age assessments, in order to be lawful, must be conducted in accordance with established public law principles. A lengthy thread of case law, starting with *The Queen on the application of B v London Borough of Merton,* set out the considerations that local authorities must have in order to undertake lawful assessments. The Supreme Court in *R (on the application of A) (FC) (Appellant) v London Borough of Croydon* held that, although age assessments remained the responsibility of local authorities, in the event of a challenge by judicial review, it would be for the Court itself to determine, as a matter of judicial fact, whether the person is a child and how old he or she is. The role of local authorities would then be to decide how they assist a person found to be a child by the court in light of their duties under child protection legislation. Any changes to the system of age

assessment must take into account and abide by the law as established by the UK's highest court.

*'Up to date scientific technology':* The reference to *…including the most up to date scientific technology'* is particularly concerning. As the Home Office knows full well, *there is no scientific way of establishing the actual age of a person using biological measures.* Children mature at different rates which are influenced by many different factors. It is established, that full maturity of teeth or bones can be reached at any age between 15 and 25 years of age and therefore using markers of bone or tooth maturity to determine whether an individual is over or under 18 is not possible. For a comprehensive and detailed explanation of why this is the case, the Home Office should refresh its memory of the article published in the *British Medical Bulletin* by the former Children's Commissioner for England and paediatric endocrinologist Professor Sir Al Aynsley-Green (et all) *Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control.* https://www.dentalage.co.uk/wp-content/uploads/2014/09/aynsley_green_et_2012_brit_med_bulletin.pdf

Any attempt to introduce assessments of bone or teeth age as a proxy for the actual chronological age of a young person by the NAAB would be open to challenge in the courts where there is precedent rejecting such approaches. See for example *R (ZM and SK) v Croydon LBC [2016] UKUT 559 (IAC), R (FA) v Ealing LBC JR/12123/2016 , AS v Kent CC JR/11261/2016 (promulgated on 11 September 2017) .* There is also the small matter of the *Ionising Radiation (Medical Exposure) Regulations 2000 SI No 1059* which prohibit the use of such techniques where there is no medical benefit to the individual being irradiated.

*Proposed NAAB function– a first point of review for 'any local authority age decision'.* This implies that both decisions to accept a claimant's age as well as dispute a claimants age could be referred to the NAAB. It also implies that over/under18 decisions could be referred but also, for example, under/over 16 decisions. The only two purposes for such referrals could be: To confirm and therefore add 'ballast' to the local authority's decision in the event of a judicial challenge or 'upgrade' or 'downgrade' their decision. The proposed function can only undermine the independence and statutory role of local authorities as guardians of and gatekeepers to children's services which are already subject to judicial scrutiny.

*Proposed NAAB function - carry out direct age assessments itself where required or where invited to do so by a Local Authority.* If the National Transfer Scheme were to be made mandatory or re-established on a voluntary basis with new participating local authorities unfamiliar with accommodating UASC, there is likely to be a lack of experience and expertise in age assessment and therefore referring decisions to an NAAB may appear superficially attractive. However, an age assessment by the NAAB finding a person claiming to be a child to be over 18 would still, in law, be the decision of the referring local authority refusing services to someone claiming to be a child and they would bear the costs of any adverse judicial findings. Providing a central Home Office funded 'resource', presumably staffed by social worker trained

Home Office employees – as is the case currently with the social workers employed at the Dover Intake Unit – undermines independent local authority decision-making and may adversely impact on developing local and regional expertise in assessing age.
There is no need to create any additional requirement on local authorities who, if they suspect someone is not entitled to children's services, must make sufficient enquiries to establish whether or not their suspicions are correct. If they were *required* to refer to the NAAB, would it be the local authority or the NAAB who bore the costs of any adverse judicial decision to refuse service to someone found by the courts to be a child?

'Physical appearance and demeanour' , particularly where applied to older adolescents, are notoriously unreliable methods of establishing age and should not be used as a means of deciding whether someone should be routed into adult of children services or asylum routes. Immigration Officers routinely make errors of judgement, particularly when dealing with children at their point of arrival or shortly after. This has led in hundreds if not thousands of cases to children being either sent to adult dispersal accommodation or being detained as an adult. The Home Office has spent between £4 and £8 million of tax-payers money every year for the past decade compensating unlawfully detained asylum-seekers, many of whom were children.

The reason why the Home Office guidance changed the standard from 'significantly over 18 ' to 'over 25 years of age' in the first place was to bring itself in line with the law established by the courts. The proposals will only increase the numbers of children being wrongly assessed as adults, leading to more litigation and more costs to the taxpayer.

The idea that social workers will be able to make 'straightforward under/over 18 decisions' fundamentally misunderstands the purpose of a local authority age assessment decision which is *not* to assist the Home Office in routing applicant correctly for their asylum claims but to establish whether a person is entitled to children's services. Such 'over/under 18' decisions by social workers would leave unanswered the question of whether someone found to be a child would be entitled to leaving care services on reaching 18.

Creating a statutory appeal right against age assessment decisions would appear to want to take one specific set of decisions made by a public authority out of the realm of public law and undermines a vital and important legal principle. It is also not clear what tribunal or court would have the jurisdiction to hear such an appeal. For example, the First tier (Immigration and Asylum) Tribunal could only hear an appeal against a decision by the Secretary of State for the Home Department or her officials – so would the social workers become Home Office employees? Who would then supervise them from a professional point of view and how would they be professionally regulated?

The Family Court would not have the jurisdiction as age assessments are not included in any family law legislation.

The solution is to improve decision making on age assessments and this requires investment in training of local authority staff and better use of multi-agency approaches, for example using the expertise of paediatricians who examine children entering care when they receive their 'looked after' medical examination. Given that age disputes can be protracted, it is vital that routine measurement of height by a medically qualified person are taken at the earliest possible opportunity after an asylum claim has been lodged by someone claiming to be, but disputed as, a child, so that later in the process it can be established whether growth has taken place. This would be valuable evidence that could contribute to the decision-making process. Other professionals with knowledge of the young person could also be utilised to gain their perspective on the person's age and maturity.

**Chapter 5: Streamlining Asylum Claims and Appeals**

**Q26**: Not at all effective

**Q27**: The first point: Fairly effective. All others: Not at all effective

**Q28**: This is already the status quo. The problem is the definition of 'good faith'. Agree with points 1 and 2.

**Q29–30**: Curtailing access to justice by removing the checks and balances provided by appeals and legal action will not make the system fairer. It will make it more prone to life-threatening errors.

Everyone would like the system to work more speedily, not least those within it who suffer from poor mental health as a result of its inefficiency and frequent mistakes.

This chapter makes several assumptions, which are not based on evidence. The assumption that 'bad faith' is at play when full disclosure is not made 'at the start' ignores the effects of fear of authority and trauma on asylum-seekers. People are not necessarily lying if they do not feel able at an early stage to state their homosexuality, often a secret which could have cost them their lives if revealed even to their own families. Nor are they necessarily lying if they feel too traumatised to discuss their rape, torture or abuse with a stranger in uniform, often through an interpreter. There is a great deal of research into the effects of trauma and PTSD on memory and behaviour, particularly in relation to trials involving witnesses who survived the Holocaust. It is, therefore, well known that trauma can affect memory as well as inhibiting the ability to talk about it. Neuropsychological research points to damaging effect of trauma on the hippocampus, necessary for the formation of memories. (See, for example: Golier J, Yehuda R. Neuropsychological processes in post-traumatic stress disorder. Psychiatr Clin North Am. 2002 Jun;25(2):295-315, vi. doi: 10.1016/s0193-953x(01)00004-1. PMID: 12136502.)

Cutting out judicial reviews, appeals and repeated applications will do nothing to speed up the Home Office's decision-making. The figure of 52,000 cases awaiting an initial decision has nothing to do with appeals or judicial reviews. Only better funding and training of decision-makers in the Home Office would improve this state of affairs. A panel of pre-approved experts would necessarily be seen as Government appointees, rather than independent witnesses, removing the choice of witness from the asylum-seeker's representatives and undermining the perception of impartiality. More generous legal aid – properly qualified and high quality – would be welcomed, as this would lead to improved representation and thus safer and fairer decisions at an earlier stage in the process. It is not clear that this is what is being suggested by 'advice'.

It is unclear how any of these measures will support the principle of visitors to the UK being required to leave on the expiry of their visa. It is already the case that those seeking protection should claim it as early as possible and it is already the case that there is a requirement to tell the truth. The interpretation of what is meant by 'good faith' is highly problematic. Psychological disorders, fear and memory loss should not count against an individual in decision-making.

**Chapter 6: Supporting Victims of Modern Slavery**

**Q31–32**: We do not feel qualified to respond to this but SolidariTee have consulted After Exploitation, a NGO which tracks outcomes for survivors of modern slavery, and provided possible responses. See resources.

**Chapter 7: Disrupting Criminal Networks Behind People Smuggling**

**Q33**: Not at all effective

**Q34**: Decline to answer

**Q35**: Don't know

**Q36**: This is irrelevant, except as a possible new revenue stream. Such proposals would make no difference at all to irregular entry to the UK and there already exists a system at passport control for identifying people banned from entry. It would introduce a new layer of bureaucracy into a system which aims at more streamlining.

**Q37**: Criminalising those who enter the UK by irregular means in order to claim asylum would contravene the Geneva Convention (Article 31), to which the UK is a founder signatory. There already exist penalties for those who do so for other reasons and increasing them is unlikely to deter those who undertake these journeys. The role of emergency workers and Border Force officers working with the Coast Guard carries some risk by its very nature, regardless of any response to small boat crossings. The principal role of the Coast Guard is to protect those in difficulties on the sea. It will be detrimental to the recruitment and retention of such officers if they are required to endanger lives by engaging in 'pushbacks' (redirecting vessels). Officers join such services to protect lives and these measures would render them

complicit in loss of life. Similarly, it is wholly inappropriate to deploy an armed military force, the Royal Navy, to engage with vulnerable civilians and is not what they train for or expect to have to do. UNCLOS Article 98 requires captains of vessels to render assistance to other vessels in difficulties or at risk. Any small boat in one of the world's busiest shipping lanes, without proper GIS or communications systems, is invisible to the large shipping in the Channel. They are, de facto, in danger and the duty of the Coast Guard is to render assistance. If this is changed, more people will drown. Hauliers are already well aware of the consequences of clandestine migrants being discovered in their vehicles. Those who do not collude in people smuggling already make efforts to check and secure their vehicles. Increasing penalties is unlikely to change the behaviour of either responsible or irresponsible hauliers. Those who profit from clandestine migrants are likely to become further embedded with criminal networks to mitigate the increased risk.

**Chapter 8: Enforcing Removals including Foreign National Offenders**

**Q38**: Not at all effective (all points)

**Q39**: Disagree

**Q40**: A minimum notice period before removal is necessary and this should reflect the time constraints in securing legal advice and representation and allowing the appointed legal representatives to assess whether the removal is lawful and, if not, to mount a challenge.

**Q41**: Expediting removals risks costly errors, both in human and financial terms. Removals should only occur once the legal process has run its course or the Home Office will face more Windrush scandals. It is up to the Home Office to improve its systems, making them more efficient and more transparent.

**Public Sector Equality Duty**

**Q42–44**: The government is under a legal obligation to conduct proper equalities impact assessments of its proposals. Open consultation is not an appropriate, effective or lawful way to do that. However, it is clear that the protected characteristics of Gender Reassignment, Sex and Sexual Orientation will all be disproportionately impacted by suggestions in Chapter 2, Chapter 4 and Chapter 5.

**Q45**: The asylum system requires improvement but the roots of the problems identified by the Home Secretary in this Plan are not weight of numbers or criminal gangs or 'unmeritorious claims'; they lie with the Home Office. The assumptions made by this Plan are not supported by the evidence of the Home Office's own statistics and it does not appear that the Home Office has consulted those with experience of the system, either as asylum-seekers or as their legal representatives. This year marks the 70$^{th}$ anniversary of the United Nations Convention on the Rights of Refugees. Acceptance of this Plan would be an appalling way to mark the occasion and would be a stain on the UK's reputation around the world. This Plan is unlawful

under international law by which the UK is bound, namely Article 31 of the Geneva Convention, Article 98 of the UN Convention on the Law of the Sea, and the European Convention on Human Rights.