

René Cassin responds to the Home Office's New Plan for Immigration – May 2021

Background

René Cassin, the Jewish voice for human rights, works to promote and protect universal human rights, drawing on Jewish experience and values. The following sets out our view on the [New Plan for Immigration](#), alongside our responses to the [consultation survey](#) on the proposals. We have prioritised responding to the chapters of the policy plan most relevant to our campaigns on immigration detention and modern slavery, and to amplify the responses of expert partner organisations like Hope for Justice, the Immigration Law Practitioners' Association, and Amnesty International.

Our response to the consultation process and the proposals as a whole

Throughout history, Jewish people have been forced to seek asylum from persecution many times. We believe that the British public, and the Jewish community, have an important stake in maintaining a domestic protection system for vulnerable minority groups, including refugees and asylum seekers. René Cassin works to promote and protect the rights of asylum seekers, especially those detained and deprived of their liberty for indefinite periods of time. As Jews and as British citizens, our experiences of displacement, migration, detention, and the traumas attendant to these experiences, compel us to contest the ineffective and punitive character of the policies proposed here, particular with regards to two-tiered asylum, the expansion of detention, and change in threshold for modern slavery grounds.

As 'speakers by experience' we believe the outlined plans, and the language used in this consultation, paint a prejudiced picture of a deceptive, threatening and unknowable 'asylum seeker' against whom these proposals are necessary to 'protect' the existing population of this country. This fear-mongering runs counter to substantive and evidence-based policy linked to the complex needs of refugees and asylum seekers and it stands against basic British values of fairness and compassion. We wholeheartedly reject the negative framing of these new proposals around finding a 'solution' to the 'problem' of 'disingenuous' versus 'genuine' asylum claims. Constructing this unevidenced binary serves only to justify proposed changes to immigration policy, which do immeasurable harm to migrants and asylum seekers.

We firmly reject the prejudicial and hostile approach to migrants and asylum seekers embedded in this consultation's questions, assumptions, proposals and general language. Not only is it deeply careless, but it also poses a threat to the everyday lives of those it depicts and to the tolerance of our society as a whole.

Our response to chapter two: against a two-tiered asylum system

It is well established that some of the most vulnerable people in the world are refugees, asylum seekers and stateless peoples. Fleeing conditions of great harm, they have lost everything apart from their humanity, and are left with no rights but human rights. It was following the Holocaust that the Universal Declaration of Human Rights (1948) was enshrined alongside the Convention relating to the Status of Refugees (1951 Refugee Convention).

René Cassin opposes the punitive measures outlined in the New Plan for Immigration, which look to penalise asylum seekers with successful claims because of the particularities of the perilous and traumatic journeys they have taken to arrive in the UK. In reality, this attempt at deterrence will not protect those fleeing persecution, oppression or tyranny. They will do nothing to prevent dangerous Channel crossings, nor undermine the efforts of traffickers and smugglers.

Not only will these proposals be ineffective in their stated mission of deterring the use of dangerous routes into the UK, but they will also do undue harm to the very people these measures seek to protect. The measures outlined by the government will only deepen and aggravate the economic instability, precariousness and social isolation that characterise seeking asylum. It is both ineffective and deeply harmful to penalise successful asylum applicants who have arrived in the UK via unsanctioned routes, with limited leave, fewer entitlements, and regular reviews for potential removal. It runs counter to the basic humanity we should afford asylum seekers, as well as their invaluable contribution to British society when provided the basic material tools to rebuild their lives.

It is also important to note that the way the questions are phrased in this section makes it impossible to present clear views, because the questions only allow you to tick a pre-prepared box to indicate strength of agreement or disagreement. This does not allow for a response that takes issue with the framing of refugee rights around 'safe' and 'legal' routes, nor the assumption that there are those with 'genuine' vs 'disingenuous' needs for protection. Answering these questions would imply that we agree with the very idea that these categories exist and predominate the system. It would legitimise assumptions underlying this New Plan that there is a significant cohort of asylum seekers somehow trying to 'cheat' the system, which lacks in any coherent evidence. For these reasons René Cassin declined to answer several questions in this section

We are particularly concerned by the probable harm to women and children asylum seekers as a result of the proposal to limit refugee family reunion for applicants who enter the UK via an unsanctioned route. Family reunion is currently the most accessed safe route into this country and 90% of the 29,000 visas granted between 2015 and 2019 on family reunion grounds were for women and children. These proposals, therefore, leave families, already separated by war and persecution, to resort to dangerous journeys in order to reach the UK and withhold stability and emotional support from refugees already in the UK.

In order to protect asylum claimants and family reunion applicants, both within the EU and beyond, the government should instead expand the number of safe routes available. The

proposed reforms will achieve the opposite, for example, by withholding family reunion resettlement depending on how people enter the UK.

Our response to chapter 4: we must protect the Refugee Convention and challenge the expansion of indefinite detention

René Cassin would strongly urge the UK Government to reconsider this change to a more rigorous standard for 'well-founded fear of persecution'. The Refugee Convention was established in 1951, following the Universal Declaration of Human Rights (1948) co-drafted by our namesake in the wake of the Holocaust, drawing on that legacy we seek to ensure those inhumanities are not forgotten, that they are not repeated and that the legacy of international commitments to freedom, justice, equality and peace are protected. Introducing a more 'rigorous' standard for testing 'well-founded fear of persecution' is not only unworkable but also, in contravention to the well-established international law standards set out in the Refugee Convention, it is unethical and contrary to Jewish values. We therefore echo the arguments of the Immigration Law Practitioner's Association, who clearly outlines three considerations to be taken into account as the Government considers this change:

Proposals Fail on Government's Own Terms. First, the Policy Statement does not set out any evidence as to why a "more rigorous" standard is required. The fact, in itself, that there are 109,000 asylum claims in the asylum system is not a basis for introducing a more rigorous standard, or for that matter a less rigorous standard. Secondly, the proposal for a more rigorous standard has no basis in any of the three objectives of the Policy Statement. It is irrelevant to deterring illegal entry. It is irrelevant to removing those with no right to be in the UK. It is precisely the importance of ensuring the fairness of the system which militates against any suggestion there is a need to introduce a more rigorous standard. The number of claims of a well-founded fear of persecution is irrelevant to the test to be applied for assessing this. Any approach to the contrary only epitomises unfairness.

Proposals for a Split Test are Unworkable: The so called first element of whether someone is experiencing a genuine fear cannot be separated from the second element and whether they are likely to face persecution. It is impractical for one standard of proof to be applied to one credibility assessment (whether there is a genuine fear) and another standard to another credibility assessment (whether they are likely to face persecution). Applying a split test means that uncertainties which are excluded at the first stage are not carried over to the second stage. This leads to a higher threshold being applied at the second stage by stealth. This cannot be right. In *Ravichandran v SSHD* [1996] Imm AR 97 Simon Brown LJ observed at p 109 that the question whether someone was at risk of persecution for a Convention reason "should be looked at in the round, and all the relevant circumstances taken into account". All the relevant circumstances cannot be considered if they are hived off into two separate parts with two separate standards of proof.

Proposals Unlawfully Diverge from Refugee Convention

The Policy Statement sets out that consideration of opportunities the person had to claim asylum in other countries will be a factor weighing against the first element on the balance of probabilities. But neither primary nor secondary legislation can subvert the UK's obligations under the [Refugee Convention](#), to which the UK is a signatory and has been incorporated into UK law such that it has "primacy" (s2 Asylum and Immigration Appeals Act 1993). The [Vienna Convention on the Law of Treaties](#) confirms the principle of general international law that a treaty, "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Art 31(1)). It should be given a "generous and purposive interpretation, bearing in mind its humanitarian objects and purpose" (*Roma Rights*, §18). The "more rigorous standard for testing the well-founded fear of persecution" advocated by the Government is self-evidently contrary to the generous and purposive interpretation of the Refugee Convention demanded by the Vienna Convention.

There is an equally strong presumption that Parliament does not intend or authorise conduct that would place the UK in breach of its international obligations: *R v Lyons* [2002] UKHL 44 [2003] 1 AC 976 per Lord Hoffmann at, §27. The proposed "more rigorous standard" is inimical to the purposive intention and humanitarian objectives of the Refugee Convention. It is directly contrary to the stated "pride in fulfilling our moral responsibility to support refugees fleeing peril around the world." Based on these considerations, in particular regarding the UK's adherence to the Refugee Convention, René Cassin is deeply concerned by the Government's plans. By attempting to contravene the Refugee Convention, it threatens the human rights commitments that Jewish people, like all people, protect and humanise us at our most vulnerable.

Urging the government to end not expand indefinite detention

Drawing on Jewish experience of internment in the UK in the 1940s, including on the Isle of Man, René Cassin is deeply concerned at the proposals in this chapter to expand the government's asylum estate through new asylum 'reception centres', potential offshore facilities, and fuller use of existing immigration bail powers. Instead, we campaign for a 28-day time limit on detention, and a move towards humane and [effective support within the community](#).

The expansion of immigration detention runs counter to evidence that community-based alternatives to detention are cheaper, more humane and more effective. René Cassin has welcomed previous government pilots of alternatives to detention, particularly following the abuse and misconduct towards detained women documented at Yarls Wood. We also welcomed the commitments to preventing the detention of children. The plans outlined in this chapter forego previous commitments to reduce numbers of people in detention, disregard alternatives and, with the planned women's removal centre in Hassockfield, maintain the possibility that children will be detained or separated from their parents.

René Cassin is deeply concerned by the government's refusal to set a time limit on these conditions, instead outlining vaguely that detention takes place within 'reasonable timescale.' In addition to the human rights imperative for reform, there is an important economic argument to be made for an effective 28 days' time limit. The expense of current policy is overwhelming - £523.5 million of public funds was spent on detaining people for immigration reasons between April 2013 and March 2017 alone, with over 50% of those detained eventually released back into the community. Over the past five years the Home Office has paid in excess of £21 million in compensation to migrants that have been unlawfully detained. We also note with alarm the government's suggestion to develop the capacity for offshore asylum processing, where it is far harder to scrutinise conditions and ensure access to healthcare, legal advice and NGO support, as seen recently within the UK at Napier Barracks.

Post-Brexit, the UK has a unique opportunity to set the tone when it comes to progressing human rights and become a leader in its approach towards refugees, at the minimum by aligning itself to many countries that already have a time limit on immigration detention and alternatives to detention. Rather than go ahead with the expansion of the existing immigration detention system and surveillance outlined by the New Plan, we would encourage the government to re-commit to alternatives to detention, and a 28-day time limit.

Our response to chapter 6: Ensuring modern slavery survivors are recognised and supported

In 2017 Chief Rabbi, Ephraim Mirvis, wrote that "the foundations of Jewish belief stand on the principle that all people are created in the image of G-d and every single person, deserves to be treated with respect. That is why slavery demands our urgent attention." The proposals outlined in the New Plan for Immigration will not only fail to achieve what the government has set out; they will also endanger existing victims of trafficking and modern slavery (recognised by the Home Office through the [National Referral Mechanism](#)). The new plans will both make routes into the UK more perilous and create more barriers to support and safety once these individuals have arrived in the UK.

There is no evidence provided to support the need for the changes, many of which would, in the experience of first responders such as Hope for Justice, result in victims being discouraged from coming forward, and therefore not accessing the support they need, placing them at risk of detention and deportation. This defeats initial government intentions to increase prosecution rates.

Requiring first responders to assess the credibility of a victim is inappropriate, given that this role is already allocated to an existing decision maker, the Single Competent Authority, who has gathered information from across agencies before making a decision. Further evidence from first responders suggests that victims, including children, can often be wrongly disbelieved, due to misunderstood responses to trauma and its impact on how victims may verbalise their experience. While the Crown Prosecution Service is aware, for example, that

in criminal cases trauma memory may lead to fragmented and inconsistent responses, there is no evidence to suggest this understanding applies in the case of the New Plans. The likely manifestation of common trafficking experiences, such as sleep deprivation and aggression, mean that many will fear coming forward. This could delay the necessary safeguarding measures being put in place, increasing the chances of re-trafficking, modern slavery, and sexual exploitation.

Increasing the thresholds for reasonable and conclusive grounds decisions is likely to be harmful, ineffective and render human rights protections null and void. As explained in the Explanatory Report to the Council of Europe Convention (ECAT), paragraph 131

*“Even though the identification process is not completed, as soon as competent authorities consider that there are reasonable grounds to believe that the person is a victim [of trafficking], they will not remove the person from the territory of the receiving State. **Identifying a trafficking victim is a process which takes time. It may require an exchange of information with other countries or Parties or with victim-support organisations, and this may well lengthen the identification process. Many victims, however, are illegally present in the country where they are being exploited. Paragraph 2 [Article 10] seeks to avoid their being immediately removed from the country before they can be identified as victims. Chapter III of the Convention secures various rights to people who are victims of trafficking in human beings. Those rights would be purely theoretical and illusory if such people were removed from the country before identification as victims was possible.**”*

Finally, the conflation of immigration, asylum and modern slavery policies is likely to do considerable harm to potential victims of trafficking. For example, the plans state that ‘an individual may be removed to a safe third country that they travelled through’ and the Home Office is clear that this ‘safety’ is determined by the UK. Yet, many trafficked people experience dangerous situations unique to them, which deem being sent back to a seemingly ‘safe’ environment as actually very harmful.

For these reasons, René Cassin reaffirms its commitments as part of the [Free for Good Campaign](#), to an expanded and more effective approach to victim support for positive grounds cases of modern slavery, and against a change in the threshold for a conclusive grounds’ decision. As part of the Free for Good coalition of human rights and modern slavery campaigns and first responder organisations, René Cassin campaigns for victims to automatically be provided with discretionary leave to remain once they receive a positive conclusive grounds decision, as reflected in [Lord McColl’s Victim Care Bill](#). This should include recourse to public funds, access to work and the right to apply for long term status to reduce risks of re-exploitation.

ENDS