Why is it so hard getting immigration numbers down?

Stephen Webb

Foreword by The Honourable Alexander Downer AC

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Policy Exchange

About the Author

Stephen Webb joined the civil service in 1991. He started in HM Treasury, joining the Northern Ireland Office in 1995 working on political and security policy around the Good Friday Agreement. In 2002 he moved to the Home Office working on organised crime policy. At director level, he led finance for the crime and policing area, was Director of Corporate Services at the National Crime Agency and headed major projects in the law enforcement and biometrics area. In 2020 he moved to the Cabinet Office to work on borders issues post Brexit. Stephen is now Head of Government Reform and Home Affairs at Policy Exchange.

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The Honourable Alexander Downer AC

The issue of immigration has become one of the most contentious in the Western world. Increasingly all Western countries are wrestling with how best to manage the huge demand there is from potential migrants. So far, few countries have managed the issue well, though I believe the policy framework we put in place in Australia has stood the test of time pretty well. But the British immigration system is a particular legal shambles.

An effective immigration policy needs to apply three basic principles. First, some migrants are welcome because skilled migrants in particular can substantially add to the dynamism and productivity of an economy. Secondly, the government should decide who comes to the country and the circumstances in which they come. That is an essential component of national sovereignty. Thirdly, all Western countries should be willing to provide protection for genuine refugees but protection is not the same thing as migration.

In recent years people smugglers, seeing advantage in making great fortunes from people wishing to migrate, have learned how to game the refugee system. Added to that, few governments have calculated the appropriate number of migrants to absorb every year. They have been driven by not wishing to appear uncompassionate when dealing with asylum claims on the one hand and being urged by businesses, universities and the health sector to increase migration numbers. What is more, government economic departments urge ever increasing immigration numbers because they contribute to GDP growth – although not to per capita GDP.

The incapacity to manage migration numbers has led to concern and even serious social disruption amongst voters . They feel immigration is starting to change and distort the cultural traditions and way of life of their country. While most people can understand the value of a steady and managed migration program, uncontrolled migration has become deeply unpopular.

My experience in coming from Australia to the UK is that Ministers are extraordinarily deferential to the civil service, who are ruled in turn by a maximalist interpretation of the law. On the basis of the decisions the court have made so far, our asylum policy won't fly.

As a result, in the UK, long an attractive destination for migrants, the public have become deeply disillusioned with the incapacity of major

political parties to manage the migration program.

The problem has been one of weak Ministerial authority. The civil service is guided by the courts, who in turn are guided by the ECHR. There's nothing in itself wrong with that – you can't ask the civil service to break the law, but Ministers can *change* the law. I repeatedly told successive Home Secretaries that Ministers aren't active enough in pressing legislative change.

This robust but thoughtful paper by Policy Exchange clearly articulates changes which could be made to ensure the UK has an immigration program which meets its economic needs while at the same time ensuring that migration numbers are sensibly managed and that migrants are able to integrate seamlessly into British society.

For that to happen, a future British government needs to do three things. First, it needs to set a cap on the different categories of migrants. Skilled migrants should be capped according to the capacity of the society to absorb them. There also needs to be a cap on family reunion migration and a fixed figure for the refugee intake. A cap means the government taking into consideration not just the availability of jobs but also school places, rental and owner occupier housing and the capacity of the health service to deal with increasing numbers.

Secondly, the government should make sure illegal immigration is brought to a halt. That means setting in place some tough rules for people who try to circumvent immigration laws. For example, anyone trying to get to the UK by paying a people smuggler to make a dangerous crossing of the Channel will be refused permanent residency in the UK for the rest of their lives. What is more, processing of people who come illegally should be done offshore. For those found to be refugees, they must be protected at an offshore location and not added to the refugee quota set by the government. This is what we did in Australia under Operation Sovereign Borders and the numbers of crossings fell away almost immediately.

Thirdly, immigration is a fundamental part of a country exercising its national sovereignty. Foreign courts such as the European Court of Human Rights should not determine who can and cannot stay in the UK, and certainly not in accordance with the extraordinary rulings the paper outlines. The UK should endeavour to get the European convention amended to take that principle into account. If it cannot get an amendment then the UK will have to leave the ECHR. Some liberal conservatives have reacted as if the Rwanda scheme conveyed the wrong tone, and have felt impelled to declare that they would never withdraw from the ECHR. But you cannot look at the position we have now reached with Strasbourg rulings, described in this paper, and think the status quo is satisfactory.

This paper by Policy Exchange canvases all of these issues and more and is an essential contribution to a debate which too often is laden with emotion rather than common sense.

The paper sets out the current stark predicament we find ourselves in. But it also proposes practical routes out. Some critics, especially Tories, suspect the civil service will seek to block the measures needed. Yes, civil

servants are mainly liberal. But they will respond to political direction – Ministers need to have the courage to demand action.

A British government will have sooner or later to get control of the immigration program. If they fail to do so, we can be sure populists and extremists will get elected who promise to do it.

The Honourable Alexander Downer AC, Former Minister for Foreign Affairs of Australia

I: Executive Summary

Immigration continues to rank as a top voter concern. Debate rages on whether it has been a net benefit to the UK or not; whether there are still marginal benefits from more immigration even at the current high levels, or if most of the benefits come from a small subset of highly skilled migrants, with higher numbers beyond that representing a net drain.

These are important issues, and the paper briefly reviews them. Doing this is hampered by the appalling quality of UK statistics in this area. Straightforward facts about the fiscal contribution of migrants or the relative levels of crime committed by people from different countries, which are readily available for countries like Denmark and the Netherlands, are unobtainable in the UK – or when the information exists, departments choose not to publish it.

But, whatever interpretation of the evidence is taken, in a democracy, the voters' clear expectations should be respected, and politicians' promises honoured. The public's reasons for wanting reductions will vary. In addition to economic issues, they may place more weight on public services, social cohesion or crime and security. The onus is on those who believe that immigration at its current level is beneficial to the country to win the popular argument, not to question the legitimacy of public concerns.

So, if the public have consistently demanded lower immigration, and successive Governments have promised, but failed, to deliver this, the question is why? And what would it take to drive numbers down?

This paper looks at the barriers. It shows how almost all major players have a structural interest in higher migration, leaving the Home Office outgunned in the Whitehall debates and heavily dependent on support from the Prime Minister. The benefits of immigration tend to be privatised – enjoyed by businesses, universities and other employers – but the costs are socialised – borne by the public and the wider taxpayer. The incentives throughout the system are skewed, with the Home Office usually alone making the case within Government for control.

It examines the size and power of the pro-immigration lobby. It estimates there are arguably up to 5000 people whose work involves promoting or facilitating liberal immigration policies. These range from 4000 immigration lawyers, an academia which is almost monolithically in favour of liberal policies, to NGOs with approaching 200 full time campaigners. Nearly a third of members of the House of Lords have an arguable interest in higher migration. While the Government has its own lawyers making the opposite case in the courts, they will not take

public positions, and across the whole of society, the number of 'full time equivalent' roles working on the public case for tighter immigration is probably fewer than 20.

None of this is to suggest that any individuals have acted improperly, or that a vested interest in higher migration necessarily implies that a person will promote it further, but to simply set out the structural pressures that tend to favour a high immigration regime.

The paper describes how the European Convention on Human Rights (ECHR) has been transformed over time by activist judges in Strasbourg in ways that would have astonished the original signatories and are not widely understood by the public even now. Strasbourg and UK court rulings have driven up the rate at which asylum claims are approved, reducing the ability to remove those in the country unlawfully. In particular the courts have introduced such a broad interpretation of article 3 (prohibition of torture) and article 8 (right to privacy and private life), that anyone in the UK while making an asylum claim would be unlucky ever to be removed, whatever the risk they pose to UK citizens. For all the high levels of concern about immigration, the real legal situation is probably even worse than the public realise.

Contrary to popular belief, this is not because the UK complies with the ECHR, and other European countries do not. Recent gains by populist anti-immigration parties in elections have shocked continental governments and led to promises of tough action on immigration, similar to those that UK Ministers have repeatedly made over the years. Governments like Italy's have taken tough measures including impounding NGO vessels rescuing migrants in the Mediterranean, agreements with authorities in Libya and Tunisia and offshore processing of asylum claims in Albania. Governments like Denmark are even looking at Australia's offshore immigration facilities. The paper sets out the challenges these initiatives are facing. As it stands, our research suggests that, on many measures, the situation is at least as bad for our European neighbours as it is in the UK.

There does not seem to be anything in the current UK government's plans to tackle the small boats by 'smashing the gangs' that will increase the deterrent and reduce the numbers arriving illegally, a point said to have been made internally by the newly appointed head of the government's own Border Security Command.[1]

Until the problems with the human rights law framework can be fixed, we not only have minimal power to control the border against small boats, but also have limited power in practice to remove those already in the country who are in breach of immigration rules. While small boats are important, small boat arrivals accounted for only a little over a quarter (28%) of the total number of people claiming asylum in the UK in the year ending September 2024, with the rest entering through other legal or some other clandestine routes.[2]

This, along with the wider costs that immigration can impose, means real caution is needed with the numbers granted visas in future. The Government should aim for a low, and strictly enforced, cap on visa

1. LBC 18/9/24: Link
2. Government statistics: Link

numbers covering work and study visas in particular.

Fundamentally we need a total reset in incentives. This means:

- Giving employers and universities a greater incentive to think hard before asking for visas;
- Stronger incentives on migrants to leave when their visa requires it;
- Stronger incentives on third countries to cooperate in returning their nationals who are illegally in the UK; and
- Stronger disincentives on UK based employers or landlords who profit from illegal immigration, undercutting law abiding businesses and imposing costs on society in the process.

This means in turn:

- Statutory caps for work and study visas, with visas allocated by auction to ensure they are allocated to the areas that need them most. The auction price will better reflect the full value of the work visa to the employer, capturing a higher proportion of this for the taxpayer on whom the wider costs of migration fall;
- The proceeds of auctions for health care visas to be retained in the health sector, and those for student visas by the university sector. The proceeds of other auctions to contribute to higher wages for social care workers, with the care visa abolished;
- A new system of 'sureties' for visa holders which ensure a financial penalty if they do not leave the country when their visas expire;
- A statutory duty to curb UK aid and visas to countries which do not cooperate on returns, requiring explicit Parliamentary approval for any mitigations; and
- Much tougher provisions requiring employers and renters to prove they have confirmed the right to work status of those they employ or rent to, with significantly higher penalties for breach.

The paper then looks at ways of reforming the human rights law framework, without which returning individuals actually in the country becomes hugely difficult.

There is a growing sense across Europe that the ECHR as it stands is not working. There should be scope for a coalition seeking fundamental reforms, in particular enabling returns to be made much more easily. This needs to go much further than the minor undertakings secured in the 2012 Brighton Declaration on the ECHR, which meant little change in practice. The required reforms will be controversial and are likely to be strongly resisted by the Court.

If an agreement cannot be reached, the Government should consider working with the same group of states to create an alternative 'Reformed ECHR' based on the same text as the original ECHR, but with much tighter drawn interpretation of Convention rights, a newly established court with

a stronger duty to respect the prime role of signing members' Parliaments and constitutions in making trade-offs between conflicting rights. If this proves politically untenable, then the UK should leave the ECHR altogether. In parallel with either of these reform options, changes to the Human Rights Act and the immigration tribunal system will be needed.

Finally, the paper revisits earlier Policy Exchange work on small boats in the light of the reversal of the Rwanda scheme. The paper returns to Policy Exchange's original proposal of an immigration reception centre on Ascension Island (with the Falklands as an alternative option). Nobody arriving illegally in the UK should have any prospect of staying in the UK. They should be transferred to Ascension where their case would be processed by British officials. Those not found to be genuine refugees would be returned to their home country. Those found to be genuine refugees could either remain until it is safe for them to return, or be transferred to a safe third state.

We believe this is practicable, justifiable under our international obligations now (and certainly under the proposed reforms), and, while expensive, very good value for money compared to the extraordinary cost of the current system. With a secure immigration reception centre in place, the incentive to arrive illegally in the UK and claim asylum should reduce dramatically. At this point, the UK should be able to offer an agreed capped number of asylum places for those in genuine fear of persecution, inviting them to the UK directly from refugee camps as proposed in the earlier Policy Exchange paper *Safe and Legal*.[3]

Recommendations

Main Recommendations	
1.	Government should set a low cap for long term work visas, and allocate these through an auction process, also introducing an auction process for student visas.
2.	Government should set a cap for NHS visas which should be allocated through an auction process. The proceeds of the auction should be recycled into the health service. On realistic assumptions about recruitment needs given future funding constraints, there should not need to be more than about 5000 visas for doctors and 8000 for nurses allocated annually in this way.
3.	The Government should abolish the Graduate Visa (post-study work visa) route.I
4.	There should be sureties for those arriving on work, student or visit visas, ensuring significant financial penalties for individuals who fail to leave at the end of their visas.
5.	Government should introduce tougher penalties for those employing illegal labour or renting to illegal immigrants, including granting legal status to illegal migrants who testify against illegal employers or renters.

3. Policy Exchange: *The Future is Safe and Legal* (Oct 23); Link

6.	There should be a statutory duty on the Home Office and other agencies to collect proper data on the impact of migration on the economy, finances and criminal justice.
7.	Government should publish examples of the sort of cases where deportation is being blocked by human rights law, in order to inform the debate about reforming or leaving the ECHR.
8.	The Government should form a coalition of states with an aim to achieve radical reform of the ECHR, in particular restoring the interpretation of 'torture' (article 3) and 'respect for private life' (article 8) to their original meaning in the Convention.
9.	The Government should make it clear that, in the event of these negotiations not succeeding, they will seek either to establish a Reformed ECHR with other willing countries, or leave the Convention entirely.
10.	In parallel, the Government should undertake reforms of the Human Rights Act and the immigration tribunal system to deliver much tighter definitions of grounds for asylum.
11.	Government should toughen the Nationality and Borders Act to impose a duty on the Home Secretary to curb visas from countries that do not have a returns agreement to the UK. The application of this duty could only be postponed for periods of a year at a time subject to a confirmatory Parliamentary vote.
12.	The International Development Act 2002 should be amended to prohibit any UK aid being paid to a country that does not have a returns agreement with the UK. This too should require an affirmative resolution order to suspend, requiring FCDO Ministers to justify to Parliament why the continued failure to cooperate on returns should not lead to a suspension of aid.
13.	The Government should establish a reception centre on Ascension Island, and should establish a rapid independent review, outside the department, to assess costs.
Other Recommendations	
14.	Parliament should enact legislation requiring the Government to set out its short and medium term targets for net migration levels, details on how this is to be delivered, and statutory caps on individual routes. This will hinder special interest groups lobbying to be allowed to exceed informal targets without the formal agreement of Parliament.
15.	Government should ensure all its advisory bodies represent the full range of opinions and expertise on migration issues, which will mean reaching out beyond just universities given the near uniformity of ideology present in university departments.
16.	Government should make it clear to UK Research and Innovation that it expects the spectrum of projects that it funds dealing with contested issues like migration and integration to reflect the principle of diversity of thought.

17.	While a single net migration target number is not realistic, as many of the component elements are outside the Government's control, statutory caps should be imposed in the areas where this is practical.
18.	Government should set a simple salary cap for all work visas, abolishing all exemptions, and automatically index this to average earnings so it does not fall behind in real terms.
19.	Government should reintroduce the requirement for jobs to have been advertised for British workers before an employer applies to sponsor visas for overseas workers
20.	The Government should abolish the route for care worker visas, but instead fund higher wages in the sector. This could be funded in whole or in part by proceeds of the work visa auctions.
21.	Employers or universities sponsoring more than 20 visas should be required to provide a sufficient quantity of housing units. For universities these should be new build projects reserved for student accommodation.
22.	Savings required to qualify for family resettlement visas should continue to be available to support the couple over the coming five years. The Government should consider introducing a new escrow facility, as in Denmark, with funds released in stages over the five-year period
23.	The Government should follow Denmark in introducing a minimum age of 24 for family resettlement for marriage, if need be changing primary legislation to ensure that this policy is not defeated in the court.
24.	The Government should indicate its readiness to introduce an annual quota for asylum seekers who will be entitled to enter the country through safe and legal routes. This policy should only be implemented, however, once successful controls on the borders have reduced illegal migration numbers dramatically.
25.	The Government should extend the period required for eligibility to Indefinite Leave to Remain from 5 years to 7 years, and review the rules about which years count for eligibility, disregarding years during which the individual is in receipt of benefits, for example.
26.	Parliament should enact legislation imposing much tougher penalties on persons or businesses that employ illegal labour. Repeat offending businesses should expect an automatic ban from any sponsorship and fines of a significant proportion of turnover.
27.	Prime contractors should be liable for compliance with right to work checks throughout their subcontractor chain, as well as the eligibility of those working for them in the gig economy (eg Deliveroo).
28.	Legislation should be tightened to make it clear that renting to illegal immigrants is a criminal offence and rental income resulting constitutes proceeds of crime for the purposes of the Proceeds of Crime Act and should all be liable for seizure.

29.	In the event that a landlord claims they cannot pay fines for illegally renting, we recommend creating a power to put a lien on the property. This would guarantee that the funding was repaid, with interest, at the point that the property was next disposed of. The imposition of a charge would also be notified to the mortgage lender to consider whether this constitutes a breach of the mortgage terms
30.	The Government should consider offering illegal immigrants visas of between 1 year and potentially Indefinite Leave to Remain in return for successfully testifying against illegal employers or renters could have a dramatic impact on employers' and landlords' readiness to break the law.
31.	The Government should invite Parliament to enact legislation requiring employers and renters to obtain proof of entitlement to rent and work from everyone, including UK citizens. The Government should consider what incentives might be offered to British citizens to secure the necessary proof, notably a time limited subsidy or free entitlement to first time passports. Introducing enhanced proof of identity requirements for those working and renting does not in itself require a new digital ID system
32.	The Government should resist pressure to break up the Home Office and create a separate border department.

Key Facts

c. 500 academics working in university units specialising in migration, units that are tilted towards a liberal immigration policy.

£11m pa. The research, analysis and lobbying budgets of NGOs with a focus on migration issues.

160 The number of staff working on policy/lobbying in organisations campaigning for liberal immigration rules.

77%. The proportion of open UKRI grants (worth over £30m) addressing 'migration', 'immigration' or 'integration' that have a clear tilt towards supporting liberal immigration policies.

30% The proportion of members of the House of Lords with a potential interest in high immigration levels

>2% of the population arrived through net immigration in the two years to Sept 2024 alone – the fastest level of migration in Britain's history[4]

34 MILLION The number of people worldwide who would like to migrate and have the UK as their first choice destination[5].

4. Migration Observatory Briefings: *Long Term International Migration Flows To and From the UK:* Link
5. Esipova, Neli, Pugliese, Anita, and Ray, Julia. 2018. 'More Than 750 Million Worldwide Would Migrate If They Could'. Gallup.Com. 10 December 2018. Link

55 percentage points: The reduction in the proportion of asylum claims that are rejected – from 88% in 2004 to 33% in 2023

47%: The proportion of rejected asylum claims where the decision is overturned in the UK courts to Q1 2023 (most recent figures) – up from 21% for 2005 cases

49% drop in enforced removals between 2012 and the year ending Sept 2024 and 64% since 2004[6]

18% the ratio of removals to total asylum claims in the UK in 2022 – actually higher than the Netherlands (10%), France (9%) and Germany (5%).[7]

13 asylum cases per 10000 people in the UK in 2023 – compared to 25 per 10000 people in the EU[8]

6. Government statistics: Link
7. Statista (25 August 2023), Which EU Countries Deport the Most People?, Link; European Council on Refugees and Exiles (14 April 2023), 2022 Update AIDA Country Report: Netherlands, Link ; European Council on Refugees and Exiles (5 May 2023), 2022 Update AIDA Country Report: France, Link ; Asylum Information Database and European Council on Refugees and Exiles (10 August 2024), Overview of the main changes since the previous report update: Germany, Link. UK numbers Home Office (29 February 2024), How many people do we grant protection to?, Link; The Migration Observatory (14 February 2024), Deportation, removal, and voluntary departure from the UK, Link
8. House of Commons Library Briefing (Dec 2024): Link

II: Introduction

Recent increases in net migration have been historically unprecedented. Official statistics are now showing net migration of around 2.5m for the previous Parliament[9]; over 1.6m for the two years to June 2024 alone. Contrary to claims, England has not historically been a nation of large-scale immigration. Recent numbers, in proportionate terms, dwarf the Huguenots, the Norman conquest, nineteenth century European immigration or the Windrush generation. Net immigration for the last two years of the previous Parliament is proportionately higher than net Irish migration into Great Britain in the *fifteen years* after the Famine (which led to a net increase in the Irish born representing ca 1.8% of the population over a 15-year period to 1860)[10]. This is a massive societal shift on which the public has never been consulted.

The argument over the economic benefit of immigration rages. Arguments on the fiscal impact suggest the net impact is, at best, marginal. A 2018 study sponsored by the Migration Advisory Committee (MAC) found non-EEA migrants cost a net £9 billion a year, with European Economic Area (EEA) migrants only contributing the relatively modest net sum of £4.7 billion. In both cases the financial contributions migrants made were closely linked to their age, education and number of dependents, with young, single, well-educated and recent migrants the only major contributors and other categories often imposing a net burden[11].

In recent analysis, the Office of Budget Responsibility (OBR) has also acknowledged that a very significant proportion of migrant workers (let alone non-working dependents) are likely to be a lifetime net burden on the economy[12], and some Home Office analysis, e.g., the impact assessment of recent visa restrictions, have similar findings[13]. There is much higher quality data available from some European countries, and at a much more granular level. This suggests a consistent pattern that asylum seekers, family settlement and students from non-EU countries represent a lifetime fiscal burden, and even those coming for work, only the better qualified are net contributors compared to the average citizen.

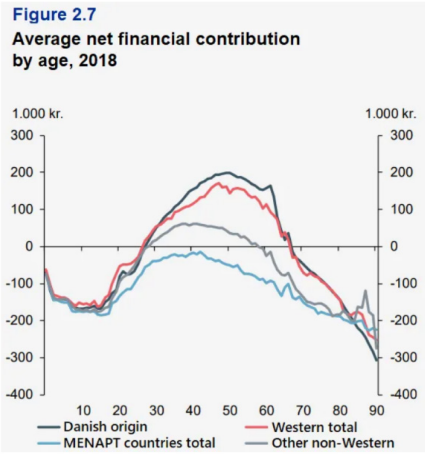
9. Migration Observatory Briefings: *Long Term International Migration Flows To and From the UK:* Link
10. Swift, Roger: *The Outcast Irish in the British Victorian City* Irish Historical Studies , Volume 25 , Issue 99 , May 1987 Link
11. Ibid, Link
12. OBR, *Fiscal Risks and Sustainability Report*, Sept 2024 Link
13. Home Office *2024 Spring Immigration Rules Impact Assessment:* Link

Figure 1:[14] Average net contribution of migrants to Dutch public finances, by immigration motive and region, including the cost for the second generation (rounded to multiples of €10,000).

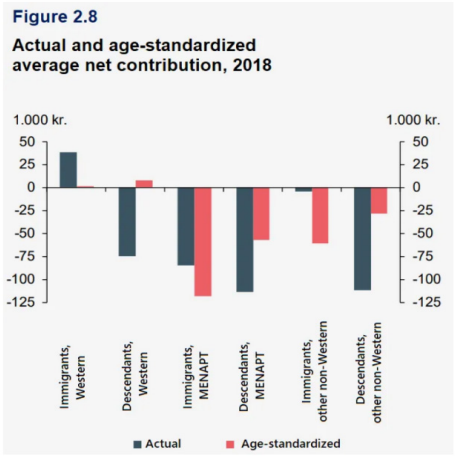
Migration motive		Amount
Labour immigration	+	€125,000
Study immigration	–	€75,000
Family immigration	–	€275,000
Asylum immigration	–	€475,000
Region		**Amount**
Western average	+	€25,000
Japan, North America, Oceania, British Isles, Scandinavia and Switzerland	+	€200,000
Central and Eastern European EU countries	–	€50,000
Other EU countries (excl. British Isles, and Scandinavian EU countries)	+	€50,000
Former Yugoslavia and the former Soviet Union	–	€150,000
Non-Western average	–	€275,000
Southern Africa (*de facto* RSA)	+	€150,000
Israel	+	€50,000
Morocco	–	€550,000
Horn of Africa and Sudan	–	€600,000
Immigration motive combined with region		**Amount**
Labour immigration from Japan, North America and Oceania	+	€625,000
Asylum immigration from Africa	–	€625,000
Study immigration from the European Union (including UK)	+	€75,000
Study immigration from Africa	–	€250,000

There is similar work produced by official agencies in Denmark[15]. These suggest that the negative net contribution for many categories continues into the second generation, while immigrants from some areas represent a net burden even at their peak earning age.

Figure 2: Average net contribution of migrants to Denmark by age, and on age standardised basis



The average net financial contribution of immigrants in Denmark by age and broad nation-of-origin category.

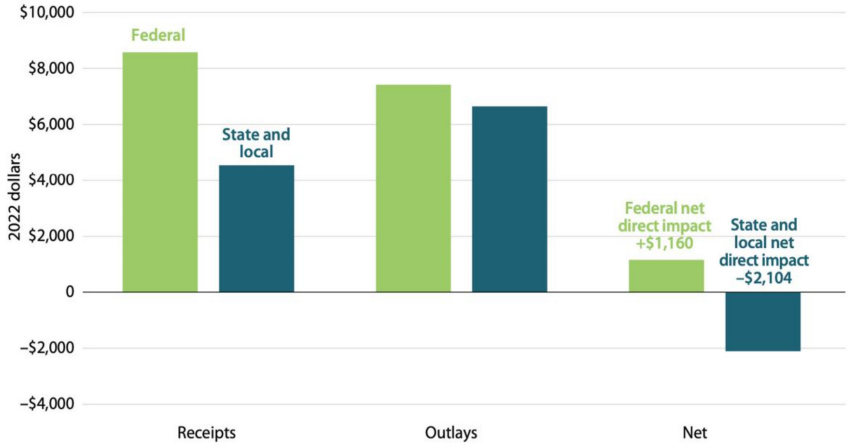


The actual and age-standardized average net contributions of immigrants and their descendants in Denmark by broad nation-of-origin category.

There are similar findings in the US. Brookings/Hamilton[16] and Goldman Sachs[17], neither traditionally seen as sceptical about immigration, have produced studies suggesting respectively that recent immigration has been a net fiscal drain and that the recent immigration surge has put downward pressure on wages, particularly for lower skilled workers.

14. Van de Beek, J H et al: *The Borderless Welfare State (2021)*: Link
15. Danish Statistics Office: *Immigrants' net contribution to the public finances in 2018*: Link
16. Ederberg, W and Walton, T: *A More Equitable Distribution of the Positive Fiscal Benefits of Immigration*, Brookings 2022 Link
17. Peng and Mericle: *Has the Immigration Rebound Helped to Solve the Inflation Problem?* Goldman Sachs May 2024 Link

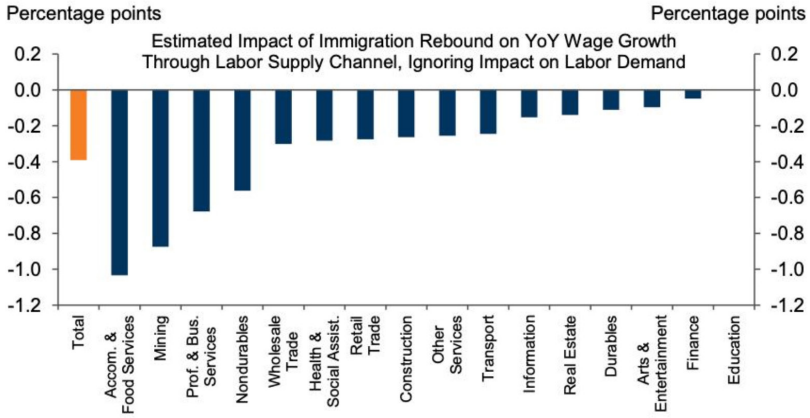
Figure 3: Direct Fiscal Impact of Immigrants and their Dependents in 2013, Reported in 2022 Dollars



Source: National Academies of Sciences, Engineering, and Medicine (NASEM) 2017; Bureau of Economic Analysis (BEA) n.d.; authors' calculations.

THE HAMILTON

Figure 4: Impact of recent high levels of immigration to US on wage growth



Source: Department of Labor, Transactional Records Access Clearinghouse, Goldman Sachs Global Investment Research

As for the UK, there are strong arguments that cheap low productivity labour may be reducing productivity and capital investment[18]. This may be reflected in the fact that while GDP growth has resumed in recent years, the UK's GDP per capita has actually been falling. There is also evidence that increased immigration drives down wages among lower earners[19].

It is right to point out the significant role that migrants have played over the years in the NHS and more recently in social care. But significant rises in the recruitment of health and social care staff from overseas – over such a short period of time – has created significant additional challenges for the Government in ensuring their effective integration into the health system and the maintenance of high standards.

Earlier this year, reports emerged that hundreds of nurses were being investigated for fraudulently completing Part 1 of the procedure to gain

18. The Migration Advisory Committee (MAC) discussed this in the context of EU Freedom of Movement; the same arguments apply to subsequent immigration. See MAC Annual Report, December 2022 pp24-25: Link

19. Dustmann, Christian, Kastis, Yannis and Preston, Ian: *Inequality and* Immigration. IFS Deaton Review on Inequality, Nov 2022 Link

registration with the Nursing and Midwifery Council (NMC). Poor English language skills have also been identified as contributory factors in errors of care[20]. Some of the recent increase in overseas workers has been based on recruitment from 'red list' countries (which the World Health Organisation defines as having the most pressing health and care workforce challenges) – 12% of new registrations with the NMC between 2019-22 were trained in these countries[21], meaning the UK is putting strain on the health systems of some of the world's most vulnerable countries

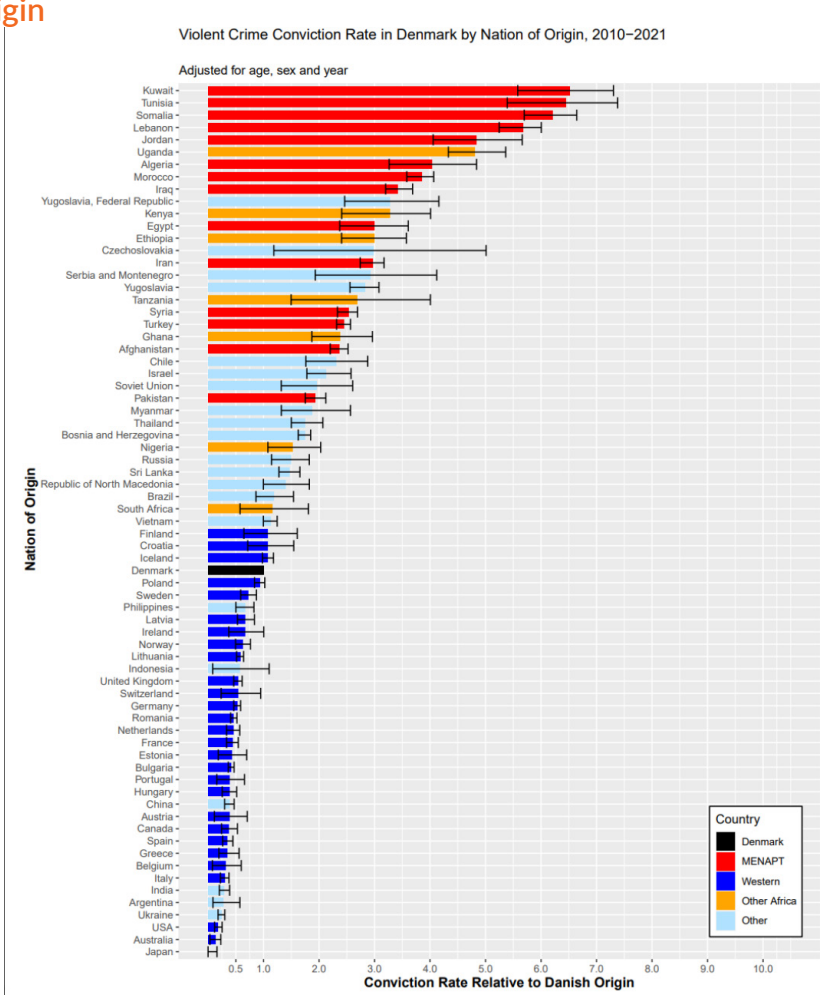
On the care side, in March 2024, David Neal, former Independent Chief Inspector of Borders and Immigration, published a report noting problems with care visas. In one case, 275 certificates of sponsorship had been granted to a care home that did not exist; in two of eight inspections he found care workers working illegally and visa caseworkers felt they had no basis to refuse an application even when there were concerns about modern slavery.[22]

Vetting is not feasible in many of the source countries, meaning there are fewer assurances about past conduct than exist for UK employees.[23]

As for other implications of immigration, other countries are also readier to collect and publish data on other social issues like crime and justice, which for countries like Denmark and the Netherlands suggest that some migrant groups are also responsible for a disproportionate share of crime[24].

20. For an explanation of the process for how overseas nurses and midwives are registered to practice in the UK, see here. For reporting on instances of examination fraud, see: here. See also a recent hearing of the Nursing and Midwifery Council Investigating Committee:
21. See article here
22. Independent Inspector of Borders and Immigration: Inspection of the Immigration System as it relates to the Social Care Sector: Aug 2023-Nov2023: Link
23. See here
24. Patterns in Humanity substack analysis of official Danish crime statistics, Link

Figure 5 Violent Crime Conviction Rate in Denmark by Nation of Origin



There is good evidence that high levels of migration have a negative effect on host countries' levels of trust. Studies from across Europe, for example, have shown that support for redistributive taxation falls as immigration increases[25]. Academics such as Robert Putnam argue that trends like declining social trust can be overcome with time and effort. But 'in the short to medium run', he accepts, 'immigration and ethnic diversity challenge social solidarity and inhibit social capital'[26]. This has been confirmed by multiple studies[27].

Lack of control over the border holds out obvious national security threats too. William Shawcross noted in his 2023 independent review of the Government's Prevent programme:

> *"In 2017[28] 2018[29],2020[30],and 2021[31] Britain suffered Islamist terrorist attacks committed by individuals who had come to this country in recent years and sought or were granted asylum. There is good reason to think that those who have travelled from conflict zones, or from parts of the world where extremist ideologies have a strong presence, are more likely to be susceptible to radicalisation. This can be the case especially if they are deeply disappointed by their reception in the UK."*[32]

25. Collier, P, The Future of Capitalism: Facing the New Anxieties (2018), p.197
26. Putnam, Robert. (2007). E Pluribus Unum: Diversity and Community in the Twenty-First Century – The 2006 Johan Skytte Prize Lecture. Scandinavian Political Studies. Link
27. See this meta-review. Dinesen, Thisted, Schaeffer, Merlin and Sonderskov, Kim Mannemar: *Ethnic Diversity and Social Trust: A Narrative and Meta-Analytical Review, Annual Review of Political Science, Vol. 23, pp. 441-465, 2020* Link
28. Report Link
29. Report Link
30. Report Link
31. Report Link
32. Report Link

Subsequently we have also seen the terrorist murder of Terence Carney in Hartlepool in October 2023 by an asylum seeker[33].

The push factors for migration are only going to increase. Legal and illegal migrants arriving in the UK are not the most impoverished people in their home countries. The cost of legal migration through visas charges, university fees etc is considerable. The costs of illegal migration are high too, combined with physical risk and the danger of exploitation. The potential opportunity to earn and send remittances home means, however, that the incentive to reach the UK remains very high. Gallup polling from 2021 suggests that, worldwide, 900m people would like to migrate if they could. Of these, 34m individuals named the UK as their first choice destination[3435].

Moreover, research suggests this demand for migration grows as developing countries become wealthier: '"emigration from a country tends to rise until it reaches a level of income equivalent to about $10,000 per person at purchasing-power parity".[36] As developing countries continue to get richer, more of their citizens will have the resources, knowledge and incentives to contemplate legal and illegal migration. The total population of low and low medium income countries defined by the World Bank approaches 4 billion.[37]

For migrants from riskier countries the chances that if they reach the UK they will not be removed is very high Two thirds of the world population outside the EEA and the other G7 countries live in countries that the UK does not official consider 'safe' for asylum purposes.

The trends are, therefore, only going to increase further.

Both the main political parties, Labour and Conservative, have accepted these numbers are unsustainable and need to be reduced. The Labour manifesto declared:

> *"We have seen net migration reach record highs; more than triple the level than at the last election in 2019. The overall level must be properly controlled and managed. Failure to do so reduces the incentives for businesses to train locally. So, Labour will reduce net migration. We will reform the points-based immigration system so that it is fair and properly managed, with appropriate restrictions on visas, and by linking immigration and skills policy. Labour will not tolerate employers or recruitment agencies abusing the visa system. And we will not stand for breaches of employment law. Employers who flout the rules will be barred from hiring workers from abroad".*[38]

However, neither main party at the recent election had compelling plans for how the numbers would be brought down in practice. Migration was not one of the Labour government's five missions, or one of the six 'milestones' in the Prime Minister's most recent speech. This suggests the Government is apprehensive about its prospects of meeting any target set. Why is it so hard to get back to historically precedented levels?

33. R v Ali, 17 May 2024, Link
34. Gallup (2021) Link
35. Esipova, Neli, Anita Pugliese, and Julia Ray. 2018. 'More Than 750 Million Worldwide Would Migrate If They Could'. Gallup.Com. 10 December 2018 Link
36. Clemens, M, *Does Development Reduce Migration?*', Centre for Global Development Working Paper 359 (March 2014) Link
37. World Bank, 'GDP per capita, PPP (current international $) Link
38. Labour Party Manifesto, 2024: Link

III: The blockages

Demand side lobbying

While the general public consistently feels immigration is too high, pretty much all the major institutions of the country are committed to high levels of immigration. This is driven by deep rooted structural incentives, and, in some cases, ideology.

Lobbying for high immigration levels has a long history. Immigration in the 1950s from the Indian subcontinent was steered towards Lancashire and Yorkshire textile areas in order to seek to restore the competitiveness of British industry through low wages. For a while, the plentiful labour force enabled a third night shift to be put in, and there was a very brief revival. But by the late 50s decline had set in again, and during the 60s and 70s one mill closed in Lancashire almost once a week. By the 80s, the textile industry was almost extinct. The businesses who had called for immigration had disappeared, but the immigrant population continued to suffer high structural levels of unemployment even decades later[39].

Healthcare professional trained overseas have frequently formed a large part of the NHS workforce. As early as 1964, 40% of junior posts in hospitals across England and Wales were filled by overseas doctors[40].

Business associations have engaged in fierce lobbying ever since the ambition of reducing immigration to the 'low 10,000s' was first introduced under the Coalition in 2010. Intra-company transfers were exempted from the limit, as were migrants earning over £150,000 in concessions to multinational companies and the financial sector respectively[41].

Once scoping for the new immigration system began in 2017, industry again lobbied ferociously, particularly for low salary thresholds. Twice the matter was referred to the MAC, and twice the committee declined to recommend a low threshold. After the second consultation in 2018, the four major employer associations, alongside over thirty leading trade associations, joined forces to write an open letter to the Home Secretary, suggesting that a minimum salary threshold could only work if adjusted to skill levels.[17] The Johnson government capitulated, ignoring the MAC's recommendation and lowering the salary threshold to £25,600, with a possibility of accruing a skilled visa with earnings as low as £20,480.

The more immigration rose, the more insistent the lobbying seemed to become. Fears of major labour shortages after Brexit and during Covid saw another round of lobbying on behalf of the health and social care sector as well as other sectors like HGV drivers. HGV drivers were one of the few areas where the pressure was resisted – though 'cabotage' rules

39. BBC website: *Boom to Bust, the Decline of the Cotton Industry*, 24 Sept 2014. Link

40. Simpson, J and Esmail, A :*Writing migrants back into NHS history: Addressing a 'collective amnesia' and its policy implications* Journal of the Royal Society of Medicine Oct 2010: Link

41. The Guardian, (15 February 2011) Link

were relaxed allowing EU drivers to do more jobs in the UK. Out of this lobbying came new, ever more liberal, policies on health and social care visas, including the decision to extend the previous Health and Care visas, with its entitlement to family accompaniment, to eligible workers in the social care sector.

Universities have faced, for some time, financial pressure, with fees from UK students falling behind in real terms. This gave them a strong incentive to lobby for more foreign students to help plug the financial gap. They successfully lobbied for more foreign students, leading to a government strategy in 2019 setting a target of 600,000, an increase of more than 30%[42]. Actual numbers reached 750,000 in 2023[43]. This route was made even more attractive by the ability to bring dependants, and a 'graduate route' allowing students to work for two years after their course is completed. Significant further increases in foreign student numbers are now baked into universities' forward business plans, with a risk of financial difficulties if the process goes into reverse, to which recent decisions to restrict dependents seems to be leading[44]. Universities rely on fees from foreign students for 20% of their income, in some cases as high as 30%[45].

The Home Office tended to stand alone in these debates, arguing against expanded numbers, with every other government department representing the interests of the sectors for which they were responsible, with Health, DEFRA (agriculture), Education (universities) and BEIS/DBT (business) obviously the most vocal. Departments with responsibility for foreign relations and trade also lobbied for generous visa allocations. In the absence of a strong lead one way or the other from the Prime Minister, the cabinet committee system tends to work on a 'write round' basis, with Ministers looking to initiate a change writing round colleagues to seek their approval. Proposals to toughen the immigration system typically face a wall of opposition from other departments.

The Treasury has for many years pressed for high levels of immigration. The department is mainly focused on the public finances and tends to have short term time horizons. Additional people in the labour force increase the level of GDP even if potentially reducing GDP by capita. The longer-term financial burdens they may involve are matters for a future spending review. In addition, while it is not clear how commonly this view is held in the Treasury, it is worth noting the former Treasury Permanent Secretary and Cabinet Secretary Gus O'Donnell's comments from 2011:

> *"When I was at the Treasury I argued for the most open door possible to immigration… I think it's my job to maximise global welfare, not national welfare."*[46]

Of the 778 members of the House of Lords with active registers of interest at the time that this research was completed, 346 had a potential interest in high immigration, equivalent to 44.5% of those studied.

232 (29.8% of the total) had a strong interest, (defined as senior academic or health sector management roles, owning farms, multiple properties to rent or an interest in property development).

42. HMG International Education Strategy (2019). Link
43. HESA student statistics 2022-23. Link
44. Public Accounts Committee: *Financial sustainability of the higher education sector in England* (June 2022). Link
45. The Guardian (July 14 2023). Link
46. Quoted in Goodhart, David. (2017). "Ch. 1. The Great Divide". The Road to Somewhere: The Populist Revolt and the Future of Politics

The most common kind of interest was property rentals, in which 140 peers (18%) had an interest. This was followed by university positions (125 peers or 16%), agriculture (71 peers or 9.1%) and property development (55 peers or 7.1%).

This does not, of course, mean that the peers in question will always support high level of immigration, merely that the incentive is there.

The Immigration Lobby

While polling consistently shows a strong public concern about immigration numbers, there is almost nobody in 'civil society' or academia representing this view. On the contrary, in addition to the financially driven lobbying for more immigration discussed above, there is also a huge lobby for more open borders, partly funded by Government itself.

During the last Parliament, 21 organisations submitted written evidence to the Joint Committee on Human Rights' inquiry into the Safety of Rwanda Bill, opposing the Government's plans[47]. 251 organisations signed a letter to PM Sunak protesting against the Rwanda scheme[48]. More recently, 300 organisations signed a similar letter to the current Prime Minister[49]. An analysis of the accounts of the just over 400 organisations suggests at least 29 of them have material budgets for lobbying, amounting to at least £11m, with at least 160 full time equivalent people employed in full time research and campaigning for a more liberal immigration system.

As an example of the impact of this, note that Refugee Asylum and Migration Policy has spent money directly providing MPs of several parties with research on immigration issues, with around £200,000 donated through research services to Conservative MPs.[50]

A large number of these organisations also receive money from national or local government for various services provided to migrants, with this funding typically representing the bulk of the total organisational budget. While this is supposed to be ring fenced from political or lobbying work, and therefore this funding and staffing has not been included in this analysis, in practice the policy and lobbying work is likely to be supported at least to some degree by the wider service function.

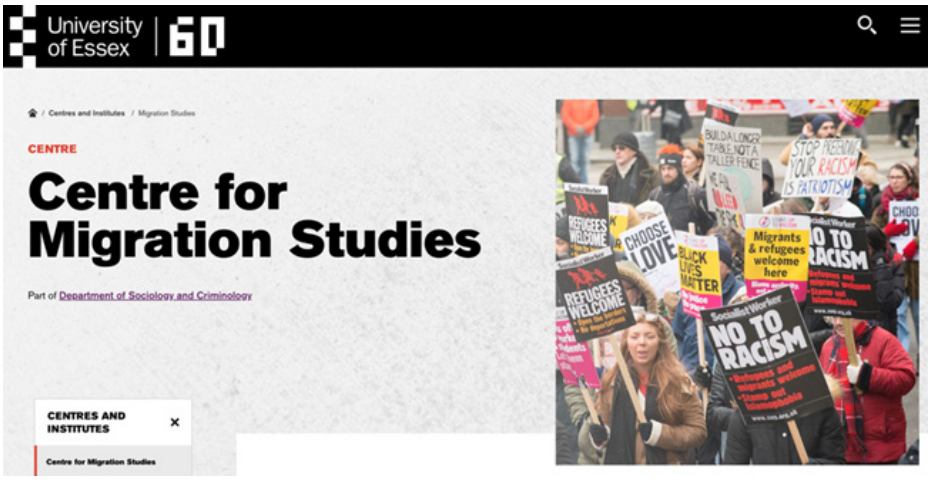
There are over 4000 Immigration Law practitioners[51] whose job is all about securing their clients' ability to remain in the UK, and who as a result have an understandable interest in liberal immigration policies. The Law Society makes significant income from its accreditation service for immigration advisors, and it has taken strong public stances against attempts to tighten the immigration regime[52]. None of this is to suggest that any individuals have acted improperly, or that a vested interest in higher migration necessarily implies that a person will promote it further, but to simply set out the structural pressures that tend to favour a high immigration regime.

The academic world is similarly overwhelmingly dominated by pro migration voices. We looked at the main 23 units specialising in migration issues. Of these, 17 demonstrated a clear pro migration preference, either through mission statements, the partners they preferentially work with,

47. Link
48. Link
49. Link
50. Daily Telegraph 29/06/2024: Link Source, Sky/Tortoise Westminster Accounts: Link
51. Link
52. E.g. here and here

the personal stances taken by senior management or the materials on their website. These units have up to 500 academic staff and members of their wider networks. There are a number of units which do produce high quality neutral work on technical matters around immigration, (e.g. the Migration Observatory at Oxford) but it is hard is hard to identify more than a handful of UK academics who have published literature questioning the benefits of immigration into the UK. And in one recent case, there have been allegations (denied by the university) that an academic had his post terminated as a result of publishing scholarly work that questioned the economic benefit of mass migration."[53]. A powerful article by Larry Elliot in the Guardian expressed unease at what might lie behind this decision[54]

Figure 6 Migration Units in UK Universities: Centre for Migration Studies website, University of Essex (09/08/24)



This impact is reinforced by the government's own direct funding of research, through UK Research and Innovation (UKRI). Policy Exchange has analysed the 69 UKRI grants which were open at the time of research (June 2024) and which included 'migration', 'immigration' or 'integration', in their themes[55]. These have total funding of over £40m. The vast majority (53, or 77%) of these have a clear liberal immigration policy tilt, whether through the explicit terms of the research, the publicly expressed preferences of academic leads, the proposed audience for the research or the nature of the organisations the researchers intend to partner with. Research titles include "Immigration Detention: Investigating the Expansion and Global Diffusion of a Failed Project", "Containing the 'bad body' Coloniality, violence, and migration in 'Fortress Europe'" and "Reconceptualizing the Climate 'Refugee' in International Law: Prioritising an Ecofeminist and Decolonial Paradigm".

Only one might be considered to look at the downside of immigration, considering issues with integration of certain communities over several generations.

This is hard to reconcile with the 'diversity' objective of UKRI in its most recent strategy[56], endorsed by Ministers, which specifically talks

53. Daily Telegraph 14/12/24: Link
54. Guardian 11/12/24: Link
55. See Annex A
56. UKRI Strategy 2022-27. Link

about the importance of diversity of thought, and the importance of 'broadening incentives in order to avoid homogenization and promote a diverse portfolio of research and innovation activity across the UK'.

UKRI is by far the largest funder for UK academia. But private foundations appear to deliver similar outcomes, with the two most recent Leverhulme Trust prize winners working in this field expressing similar opinions on migration issues.

Ella Cockbain has attracted considerable attention for her views on grooming gangs, and a recent submission to the Modern Slavery Act Parliamentary committee noted "Concerns highlighted here include the impacts of the 'illegal working offence', restrictive visa regimes (particularly post-Brexit), changes (now reversed) to require 'objective evidence' in initial NRM decisions, criminalisation of people arriving in the UK on 'small boats', the dismantling of the right to seek asylum in the UK, the Rwanda deportation plans and rhetoric vilifying Albanians"[57].

The other recent winner, Dr Sean Columb, describes his work as follows: "Increasingly organ sale is being presented as a gateway to asylum, which has resulted in a need for further examination, and explanation, of global responses to crime and immigration. Providing a conceptual reflection on how law generates violence, Seán's research is set to provide much needed further insight into how crime and immigration controls shape the illicit organ trade developed around migrant populations[58]".

Pro-migration groups and academic units receive funding from charitable foundations, several of which now have strongly pro-migration or open borders objectives. The Hamlyn Foundation recently announced its open borders initiative would disburse £5m pa.[59] Other foundations supporting multiple initiatives in this space include Philanthropy Unbound (a US-UK foundation focusing on open borders), The Tudor Trust, Esmee Fairbairn Foundation, Barrow Cadbury and Trust for London. In total these charities disburse over £100m pa, with migration work amounting to a substantial proportion.

They demonstrate evidence of how charities' purposes are evolving in a more liberal direction. The Tudor Trust website, for example notes "For most of the trust's existence the members of the Board of Trustees have been descendants of the original founder. Increasingly those trustees recognised that we live in a society that is shaped by inequity and that changes at Board level were needed to ensure the delivery of the changing purpose of the trust. In 2024 the membership of the Board of Trustees has moved from being rooted in family to being governed by trustees with a wider and more diverse range of experience, perspectives and leadership, closer to the social change we want to achieve."[60]

Trust for London has similarly moved a long way away from its origins managing the parish foundations within the Diocese of London. Founders who left money to support the poor of their parish centuries ago would have been surprised to know the money would eventually be used to lobby for more liberal immigration rules into the United Kingdom.

The disparity between the size of the pro migration lobby and the

57. UK Parliament Committees, May 2024: Link
58. Liverpool University website: Link
59. Link
60. Link

numbers working on the sceptical side is stark. There are highly unlikely to be more than 20 full time equivalent people working across the small range of organisations making the opposing case.

Clearly what we describe as the immigration 'lobby' is full of committed individuals who are acting in good faith and carrying out their jobs. They are perfectly entitled to do this, and their funders to support them. What the public, the Government and the media should note, however, is the remarkable disparity in resourcing and the impact this can have on the public debate.

It is generally commendable to seek expert input into policy. But this risks naivety when the field of 'experts' is so ideologically captured. The Chief Inspector for Borders and Immigration, for example, has an Advisory Board on Country Safety[61]. This group is supposed to help the Chief Inspector review the work of the Home Office in determining which countries can be added to the statutory list as safe for the purposes of considering asylum claims. The group is overwhelmingly dominated by those supporting liberal immigration policies. This includes the chair, who also chairs the Brighton 'City of Sanctuary' committee, and four academic colleagues with a record of strong pro migration and asylum messages in their work. The committee also includes two representatives of the UNHCR and two immigration law practitioners. There are two UK judicial representatives, who are required to be impartial and nobody with any record of scepticism on the asylum area. Whatever the merits of the individuals involved, this is simply not a credibly balanced group. It should be possible to source experts on the institutional strength and political climate of countries from a wider field, including the private sector.

The Legal Backdrop

Formally, immigration law is set by statute and the immigration rules.[62] For all the efforts governments have made to tighten rules up over the years, in practice the biggest driver for change is not legislation passed by Parliament, but the constantly changing interpretations of the ECHR's human rights provisions. There is little in the text of the ECHR that anyone would object to. Nobody thinks their government should engage in torture, for example. But since the late 1970s, Strasbourg judges have decided that the Convention should not be interpreted in accordance to what its drafters meant or intended, but it should instead be treated as a 'living instrument' – meaning the judges are essentially taking upon themselves the power to make up human rights law as they go along.

The Human Rights Act in 1998 incorporated ECHR into domestic legislation. This requires the caselaw of the European Court of Human Rights (ECtHR) to be taken into account but also in practice allows it to be developed further by domestic courts. Section 3 of the Human Rights Act then requires other legislation to be read and given effect, so far as is possible, consistently with "Convention rights" – which the courts have deployed to rewrite the clear terms of parliamentary statutes.[63]

61. Link
62. i.e. rules promulgated by the Minister pursuant to statutory authority that guide decision making by other officials
63. For examples, see Policy Exchange (2024), *The Impact of the Human Rights Act in 25 cases:* Link

Most impactful on practice has been the evolving interpretation of article 3 (torture and inhumane treatment) and Article 8 (privacy and family life).

On article 3, the initial (and plain) meaning of the provision was an absolute bar on states committing torture. The court has, however, massively expanded the scope of this. Now article 3 involves an absolute bar not just on a state committing torture itself, but also an absolute requirement to avoid actions which increase the risk of an individual suffering ill treatment even by others[64].

Chahal v UK[65] gave a definitive ruling that amounts to this: an expelling state is liable under article 3 even if:

- it is in no way complicit in any possible torture or inhuman treatment inflicted by the receiving state;
- whatever the gravity of the risk to its people which the state seeks to avert by someone's expulsion; and
- whatever attempts it has made to secure assurances from receiving states that there will not be torture or inhuman treatment.

When the UK sought to push back on this interpretation through an intervention in the later case of *Saadi v Italy*[66] (2008), the court confirmed its position.

The ECtHR has claimed that all aspects of article 3 rights are 'absolute'. So rather than states being able to balance the competing claims of, say violent foreign criminals and its own citizens, the ECtHR has made it clear that, irrespective of the harm an individual has done and is likely to do in the UK, this cannot override the risk to the individual from being deported. As the *Chahal* ruling said, the deportees' actions "however undesirable or dangerous, cannot be a material consideration."

In some cases, the very disgust that a criminal's behaviour would attract is used by the courts to block his removal from the UK– for example an Afghan individual accused of indecent exposure had their deportation blocked because of the outrage their conduct might attract in their home country[67].

Another recent case saw a Jamaican convicted rapist avoid deportation after he claimed to be bisexual and face persecution in Jamaica as a result[68]

The ECtHR and domestic courts have stretched the meaning of article 3 even further, by treating the potential loss of health care as equivalent to inhuman and degrading punishment. In 1997, the ECtHR held that the UK would be violating article 3 if it returned to his home country (St Kitts in the West Indies) a previously deported drug dealer who, having contracted AIDS, unlawfully came back to the UK without leave, simply for the purpose of committing further serious offences here[69]. While in detention for crime and then for deportation processes, he had received elaborate and expensive medical treatments unavailable in St Kitts.

Initially, the ECtHR sought to restrict the availability of this defence to 'very exceptional circumstances'. In the *Paposhvili* case[70], the Court

64. See Policy Exchange (2021): *Immigration, Strasbourg and Judicial Overreach.* Link

65. *Chahal v. United Kingdom* (1997) (22414/93)

66. *Saadi v Italy* (2008) (37201/06) 24 BHRC 123

67. The Telegraph, (10 April 2024), Link.

68. Upper Tribunal Immigration and Asylum Chamber (2024) AA v Secretary of State for the Home Department Link

69. *D v UK* 24 EHHR 423, (30240/96) 2 May 1997 (Chamber)

70. *Paposhvili v Belgium (2016) 41738/10*

broadened this considerably. The ruling noted

> *The Court considers that the "other very exceptional cases" …. should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed [a]to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or [b] to a significant reduction in life expectancy.*

In the *Zimbabwe*[71] case in 2018, the UK Supreme Court decided it should adopt this interpretation, the breadth of which may help explain the very large number of decisions being made daily in immigration tribunals blocking removals on the grounds of underlying health conditions and the unavailability of equivalent health care in the home country.

In one case, for example, an illegal migrant who raped a woman at knifepoint avoided deportation after a tribunal found he would "experience genuine difficulties being able to access a regular supply of his necessary medications", and be at "real risk of social isolation and stigmatisation"[72].

Just recently another case saw a Ugandan man who had clubbed a man to death in the back of a London ambulance avoid deportation on the grounds that this would be 'inhumane' as Uganda does not have the required facilities to treat his mental health[73].

The scope of Article 8 has also expanded massively, with the effect of court rulings being to make deportations more difficult and 'chain migration' of dependents easier

In *Quila*[74], the UK Supreme Court deployed article 8 of the ECHR to strike down (by a 4:1 majority) an immigration rule introduced in 2008 (with wide parliamentary approval) to combat forced marriages by denying a foreign spouse leave to enter for so long as either spouse is under 21.

In *ZH (Tanzania) (2011)*,[75] neither the need for fair and firm immigration control, nor the applicant foreign mother's record of immigration frauds, dissuaded the Supreme Court, from finding in favour of the applicant, through a focus on the "best interests of the [citizen] child".

As Daniel Thym, an leading academic in this field, has noted, the Strasbourg rulings on which the UK courts draw represent "a 'hidden agenda' of the Court to protect the long term residence status of second-generation immigrants". Thym notes the "crucial innovation" was the Court "broadening the protective reach of Article 8 ECHR to the network of personal, social, and economic relations that make up the 'private life' of every human being."[76]

Thym is clear that these newfound article 8 rights against expulsion – even in cases of misconduct and even to perfectly safe states – effectively "protect [the] long-term residence itself" of illegally resident non-citizens, and that this "human right to regularize illegal stay" is "a direct challenge to the concept of state sovereignty".

In a recent case, a Turkish man who was jailed for 16 years for plotting

71. *AM (Zimbabwe) v Home Secretary* [2020] UKSC 17
72. Upper Tribunal Immigration and Asylum Chamber, (2023), Joachim Cardos v Secretary of State for the Home Department, Link
73. UI-2023-003248 ZM v Secretary of State for the Home Department, Link
74. *R (Quila) v Home Secretary* [2011] UKSC 45,
75. *ZH (Tanzania) v Home Secretary* [2011] UKSC 4
76. Thym, Daniel, "Residence as De Facto Citizenship? Protection of Long-term Residence under Article 8 ECHR" in Rubio-Marín, Ruth (ed.), *Human Rights and Immigration* (Oxford: Oxford University Press, 2014)

to supply heroin across the UK, won the right to remain in the UK on the basis that it would breach his article 8 right to respect for his family life, even though he had an extra-marital affair with a woman in Turkey who he married to "preserve her honour".

The 70-year-old drug dealer, who was granted anonymity, also claimed that as an Alevi Kurd he would be persecuted if he was deported to Turkey. However, the immigration tribunal was told that he had returned to his homeland eight times since he came to Britain without facing any persecution[77].

There are areas where the ECtHR rulings pose even more problems for signatories who are EU members than for the UK. For example, the court has said that:

> *"Where (a) there is "a major impediment" to the resident non-citizen returning to his or her homeland, and (b) allowing his or her child (left behind in the homeland for years) to enter to join or rejoin his or her (perhaps new) family would "be the most adequate way in which the family could develop family life", then (c) the Court may well hold that 8 is violated if the state fails to authorize that entry."*

Article 8 here is being used effectively to require dependents to be allowed to immigrate- evidence of one area where the ECHR is even more restrictive for other European countries than for the UK.

If the deportation of a non-EU national on grounds, say, of his or her serious criminal offences in the deporting state would in practice "risk" resulting in the departure of that national's minor children, who happen to be EU citizens, the deportation of the non-EU adult outside the EU "would deprive the children in question of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union."[78] This is yet another block to deporting foreign national offenders, at least from EU member states.

The last piece of the jigsaw is the role the courts take in being the ultimate arbiter of immigration decisions. The Human Rights Act effectively replaces the traditional 'unreasonableness' test for judicial review, which meant that the immigration official's decision will only be unlawful if the High Court can conclude that no reasonable official would make this decision, with a proportionality test, which invites the Court to decide for itself what decision should be made.

The proportionality test is a "much more exacting test" than a reasonableness test, that "more obviously" involves "an examination of the merits" of an executive decision by a judge- so that in substance the judge is retaking the original decision according to their own assessment of how competing facts are to be balanced and the importance to be attached to different policy objectives. On a typical formulation,[79] the proportionality test requires a judge to consider:

(i). whether the objective of a policy or decision is sufficiently important to justify the limitation of a fundamental right;

77. Daily Telegraph 18/12/2024. Link

78. *Tuquabo-Tekle v Netherlands* (60665/00) (2005)

79. This formulation is adapted from that outlined by Lord Sumption in *Bank Mellat v Her Majesty's Treasury* [2013] UKSC 38 para 20.

(ii). whether the policy or decision is rationally connected to this objective;

(iii). whether a less intrusive measure or decision could have been used; and

(iv). whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.

As Carol Harlow points out, these questions clearly invite a "court deep into political territory".[80] They constrain executive decision-making powers, granting the ultimate decision over some policy issues instead to judges who end up taking what are essentially operational decisions while lacking knowledge of the context, financial or social implications and the precedents their decisions are likely to set, and obviously lacking any democratic accountability for the judgements they are making.

In principle even under the Human Rights Act, Parliament ought to be able to legislate to make clear how it wishes the law to be interpreted. The courts have, however, been reluctant to have their judgements prescribed even by primary legislation. In 2017, the Supreme Court, in *MM (Lebanon) v Home Secretary*[81] held that article 8 considerations.. cannot be fitted into a rigid template provided by the rules, so as in effect to exclude consideration by the tribunal of special cases outside the rules. As is now common ground, this would be a negation of the evaluative exercise required in assessing the proportionality of a measure under article 8 of the Convention which excludes any "hard-edged or bright-line rule to be applied to the generality of cases" of cases. This suggests that, even if Parliament specified in some detail how it thought article 8 should be interpreted in particular cases, the Supreme Court might resist that.

The practical consequences of the human rights regime are that refusing asylum is increasingly difficult, removing anyone from the country is exceptionally hard irrespective of the reasons, and even refusing entry in the first place isn't without problems. The more people who come into the country and the longer they stay, moreover, the higher the likelihood that they can make claims to remain in the UK based on family and other links, or health conditions as well as asylum.

The fact that both the merits of the case and the policy applied in it can be – indeed are required to be – reassessed on a case by case basis produces a system in which every applicant thinks they can claim to be a special case, outcomes become unpredictable, and unacceptable delays and inefficiencies abound. The system is massively opaque to the public, with rulings from the first-tier tribunals not even published.

There is no reason to think that the regime is going to get any easier to operate in the foreseeable future. Indeed, the trend in ECtHR rulings has been to extend the boundaries of human rights further. The recent ECtHR ruling on climate change *Klimaseniorinnen v Schweiz* breaks remarkable

80. Harlow, Carol, '*Judicial Encroachment on the Political Constitution?*' in (eds.) Richard Johnson & Yuan Yi Zhu, *Sceptical Perspectives on the Changing Constitution of the United Kingdom* (Hart, 2023)

81. R (MM) (Lebanon) v Home Secretary [2014] EWCA Civ 985; also quoting Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41, [2009] AC 1159, para 12.

new grounds. As the British member of the Court, Judge Eicke, said in a dissenting ruling, the Court

> *"has created a new right (under Article 8 and, possibly, Article 2) to "effective protection by the State authorities from serious adverse effects on their life, health, wellbeing and quality of life arising from the harmful effects and risks caused by climate change" (§§ 519 and 544 of the Judgment) and/or imposed a new "primary duty" on Contracting Parties "to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change" … none of which have any basis in Article 8 or any other provision of or Protocol to the Convention*[82]*."*

Baroness Hale described the exceptionally broad range of the 'living instrument' approach to the Convention. Its limits were "not set by the literal meaning of the words used. They are not set by the intentions of the drafters, whether actual or presumed. They are not even set by what the drafters definitely did not intend".[83]

Contrary to the impression its supporters give that the ECtHR is motivated purely be legal factors and follows the intellectual logic of its own jurisprudence, there is plenty of evidence that the court is aware of the political environment within which it operates, and at times slows down the expansiveness of its judgements as a result. The court is well aware of the growing political concern about migration across Europe.

The *Hirsi Jamaa* case[84] (2012) was about the legality of 'pushback' operations conducted by Italy in the Mediterranean. The ECtHR ruling, however, included arguments heading to the conclusion that there is expulsion wherever – even far from its shores -- a state "exercise its jurisdiction" with the "effect" that it "prevents migrants from reaching the borders of the State" (para. 180) and so prevents "detailed examination of the individual circumstances" of everyone in the group.

In subsequent cases, NGOs sought to build on this to argue that entry clearance processes seeking to prevent people from boarding planes to claim asylum were a form of 'expulsion', as was pushing back people seeking to storm the fences on the border of the Spanish enclaves in Morocco. Two ECtHR rulings on this *MN v Belgium*[85] and *ND and NT v Spain*[86] disappointed NGOs in rejecting their arguments. The court rulings are arguably inconsistent with *Hirsi Jamaa*, but probably reflect a concern about the backlash the Court might face if the internal logic of their judgements were developed further. Nonetheless the risk of further adverse rulings making borders even harder to enforce remains like a sword of Damocles.

The net result of this has been a massive increase in the number of convicted criminals who cannot be removed from the UK on human rights grounds.[87]

82. Verein Klimaseniorinnen Schweiz and others v. Switzerland *(Application no. 53600/20)*: Link

83. Baroness Hale in: *"What are the limits to the evolutive interpretation of the Convention"*Dialogue Between Judges (Council of Europe, 2011) 18. Link

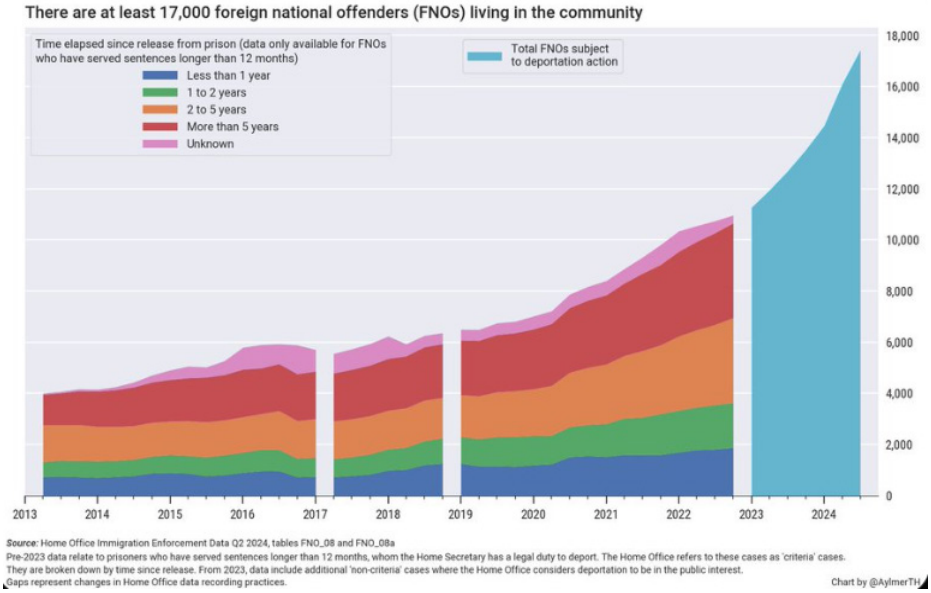
84. *Hirsi Jamaa v Italy (2012): . 55 European Human Rights Reports 21 (27765/09)*

85. MN v Belgium, 3599/18,, 5 March 2020

86. ND & NT v Espagne, 8675/15 and 8697/15, 3 October 2017

87. X post by 'AylmerTH' Link

Figure 7 Number of Foreign National Offenders living in the UK



The Dysfunctional Machine

The cumulative effect of the human rights law framework combined with the ever growing complexity of the immigration rules has been:

- a massive increase in initial grants of asylum by Home Office caseworkers,
- a significant increase in the rate at which refusals by Home Office caseworkers are then overturned by domestic tribunals, and
- a major reduction in the removal rates for the (small subset) of claimants whose claims are rejected and the rejection is then upheld at appeal.

Figure 8: Refusal Rate for Initial Asylum Decisions

Notes: 1. Figures are for main applicants only. 2. Initial decisions do not necessarily relate to applications made in the same period. 3. Some people refused asylum at initial decision may be granted leave to remain following an appeal. 4. These figures exclude withdrawals since those are not cases of decisions being made.
Source: Home Office, Immigration Statistics, year ending June 2024, table Asy_D02

The initial refusal rate peaked at 88% in 2004, dropping to 24% in 2022, increasing slightly to 33% in 2023.[88]

88. House of Commons Library Briefing: Link

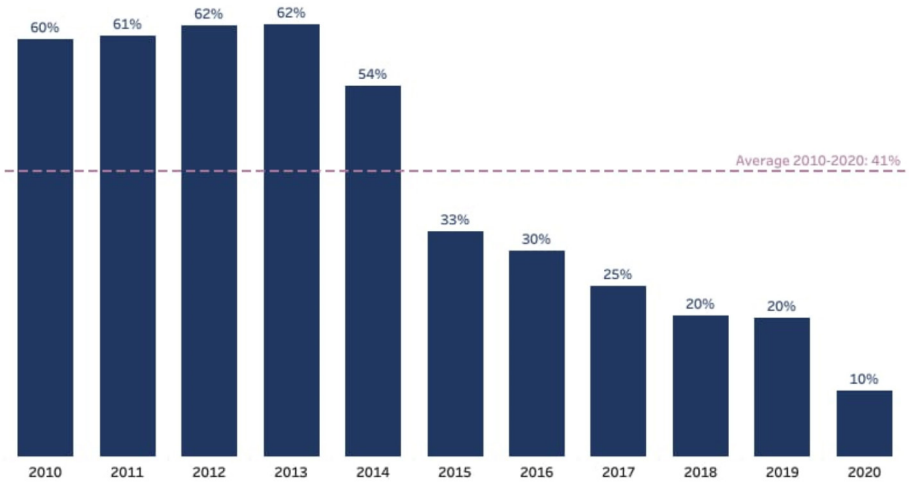
Figure 9: Appeal Outcomes of Asylum Applications made in each year

Appeal outcomes of asylum applications made in each year
As of June 2023

				Appeal outcomes					
Year	Main applicants	Initially refused asylum, HP or DL	Appeals lodged	Appeals allowed	Appeals dismissed	Appeals withdrawn	Appeal outcome not known	Appeals lodged as % of refused	Allowed as % of known appeal outcomes
2004	33,960	27,273	21,284	3,950	16,507	766	61	78%	19%
2005	25,712	19,243	14,277	3,032	10,599	523	123	74%	21%
2006	23,608	16,473	11,589	2,567	8,416	497	109	70%	22%
2007	23,431	14,932	10,660	2,292	7,583	415	370	71%	22%
2008	25,932	15,207	12,184	3,168	8,237	507	272	80%	27%
2009	24,487	15,450	13,254	4,000	8,582	509	163	86%	31%
2010	17,916	11,597	9,324	2,500	6,240	445	139	80%	27%
2011	19,865	11,556	9,189	2,529	5,906	629	125	80%	28%
2012	21,843	12,132	9,057	2,712	5,595	627	123	75%	30%
2013	23,584	13,023	9,801	3,121	6,071	532	77	75%	32%
2014	25,033	12,693	10,204	4,044	5,557	497	106	80%	40%
2015	32,733	17,633	14,497	6,202	7,394	828	73	82%	43%
2016	30,747	17,792	14,104	5,858	7,616	582	48	79%	42%
2017	26,547	14,882	11,499	4,798	5,990	626	85	77%	42%
2018	29,504	11,620	8,354	3,414	4,138	585	217	72%	42%
2019	35,737	8,555	5,164	1,896	2,224	558	486	60%	41%
2020	29,815	4,972	1,020	278	332	148	262	21%	37%
2021	50,042	353	73	9	30	6	28	21%	20%

Source: Home Office, Immigration Statistics, year ending June 2024, table Asy_D04
Notes: These figures are from an earlier version of the dataset used to produce the tables in the previous section, so they reflect a snapshot of the outcome of these cases at an earlier point in time. The Home Office did not publish an updated version of these appeal figures in its latest update to this outcomes data.

Figure 10: Percentage of refused asylum applications that resulted in a return from the UK. By year of asylum application as of 30 June 2022



Source: Migration Observatory analysis of Home Office data, Outcome analysis of asylum applications, Asy_D04.
Notes: The Home Office has not published this information beyond 30 June 2022. Includes both enforced and voluntary returns. Percentage is calculated by dividing the total number of returns by the number of refused applications. Numbers are for applications, not individuals. Data from before 2010 is not comparable.

There are legitimate criticisms that can be made of the Home Office's handling of asylum and immigration cases. Productivity fell dramatically after 2016 and though recovering is still well down on its 2016 peak.[89]

A very high proportion of HO caseworking decisions get overturned on appeal[90]. To be fair, it is hard to know if this reflects poor quality decision making or the vagaries of the tribunal system itself which is often accused of pushing the protections of the ECHR ever further, in a highly inconsistent manner. The fact that HO is frequently not even able to get a presenting officer to make the case in front of tribunals (in around 10% of cases) certainly does not help[91].

Many immigration sceptics believe officials in the department are personally committed to high immigration and do not want to implement government policy. This is overstated, however.

In making caseworking decisions, Home Office officials are steering a difficult course between Ministerial and public expectations of rigour and the precedents being set in the tribunals. The rate at which decisions are being overturned is both high and stable or rising, which doesn't suggest a very liberal caseworking practice. Only perhaps in asylum cases granted on grounds of sexual orientation has there been a major uptick with grants increasing from 22% in 2017 to 72% in 2022[92].

Home Office caseworking functions look like a depressing place to work judging by the reports of the Independent Inspector of Borders and Immigration. The department's own data showed that, in November 2023, the average rate of **monthly** attrition for asylum decision makers between April and October was 32.8%, compared to 45.41% for the whole year 2021-2022 and 27.57% for 2022-2023.

Analysis of data provided by the Home Office showed, moreover, that, while 32% of decision makers who left the role between January 2021 and October 2023 had been promoted within the Home Office, 24% had moved to another government department, 29% left the Civil Service entirely. An additional 5% had been downgraded from the DM role to an administrative grade.[93]

While anonymous and anecdotal, and thus unverified, there are some interesting claims on the internet from people claiming to have been asylum caseworkers, noting the challenges contesting claims, as well as the practical impact of increased performance targets for case completions. One Reddit user claimed in 2023[94]

> The job is aggravating because asylum seekers have all been prepped in the two or so years between claiming asylum and the interview they have with you. For example every Turkish or Iranian claim is the same; supporter of a political party, spotted putting up anti government posters, chased, escape, go to uncles while the authorities raid their home, then get stuffed in a lorry and taken out the country. Every. Single. One.
>
> Then there's the Eritreans. If they prove they are Eritrean, and not for example Ethiopian, then they automatically get granted because nobody can legally leave Eritrea and they will be imprisoned upon return. Same for the Iraqis; every Iraqi needs a CSID card in Iraq or they will get questioned at checkpoints. Every single Iraqi claims they have lost their CSID, so they automatically get granted Humanitarian Protection because if they return to Iraq without it they will be stopped and tortured at the airport.
>
> Re the targets; a grant takes about half a day to write, a refusal a full day. This is not considered when the week ends and your total is totted up. So what you'll get is a case that you want to refuse but you'll be missing your target if you do so you'll find a reason to grant it. That's basically how the PM is trying to clear the backlog; raising the targets so you have no choice but to give them asylum.

89. Migration Observatory, *The Asylum Backlog* 3 May 2024: Link
90. Government statistics. Link
91. Daily Telegraph, 13/04/24. Link
92. Government statistics. Link
93. Independent Chief Inspector of Borders and Immigration *Report on Asylum Caseworking* Feb 2024 Link
94. X post by Maxtempers: Link

Given the legal constraints, a really firm grip of numbers and knowing where migrants are is all the more necessary to maximise the limited opportunities the Home Office has for taking enforcement action. But the Home Office has a poor record of forecasting the impact of changes to the immigration rules, knowing where people are, or even how many migrants are in the country. The recent, massive underestimate of the numbers of EU citizens entitled to settled status suggests the mistakes of the early 2000s in estimating the number of EU citizens who would come to the UK after EU enlargement have not been absorbed.

There is certainly a problem with civil servants' reluctance to implement policies which they fear might contravene international law, on which Policy Exchange has already commented[95]. The main civil service union, PCS, threatened strike action on the Rwanda scheme, while the union for senior civil servants, the FDA, before the election initiated judicial review proceedings because of its concern that implementing the Safety of Rwanda Act risked a conflict with the Civil Service Code's requirement for civil servants to uphold the law. Policy Exchange has already recommended[96] an amendment to the code making it clear that civil servants are only required to follow domestic law, and that compliance with international law is a matter for Ministers.

There are also legitimate concerns, for example, about the limited number of countries the UK is prepared to certify as 'safe' for the purposes of asylum claims. Excluding EEA and other G7 countries, less than one third of the rest of the world's population live in 'safe' countries according to the Home Office list (see also next section).

In general, however, criticising officials for their decision making looks like displacement activity. With the Human Rights Act in effect requiring UK courts to follow Strasbourg case law and the Strasbourg jurisprudence constantly evolving, the room for manoeuvre in casework decisions is limited. There is limited scope to tackle this through operational decisions absent major changes to the legal framework, which are discussed below.

Given all of this, it is hard to see scope for major change even if the capability and quality of officials, processes and technology were completely transformed. Too much pressure on efficiency and productivity also risks being counterproductive. Officials will react to the incentives set, and a strong target to increase casework completion and reduce backlogs on past record will lead effectively to amnesties as happened on various past occasions. This may already be happening.

Are Things Better in Europe?

Some argue that the UK's problem is that we are too scrupulous in interpreting our international obligations, and that other European countries manage much better. This is a comforting, but perhaps unjustified, theory. It suggests that the problems we are facing are due to 'the blob', and all that is needed is a strong Ministerial steer to take a much less risk averse legal line on casework.

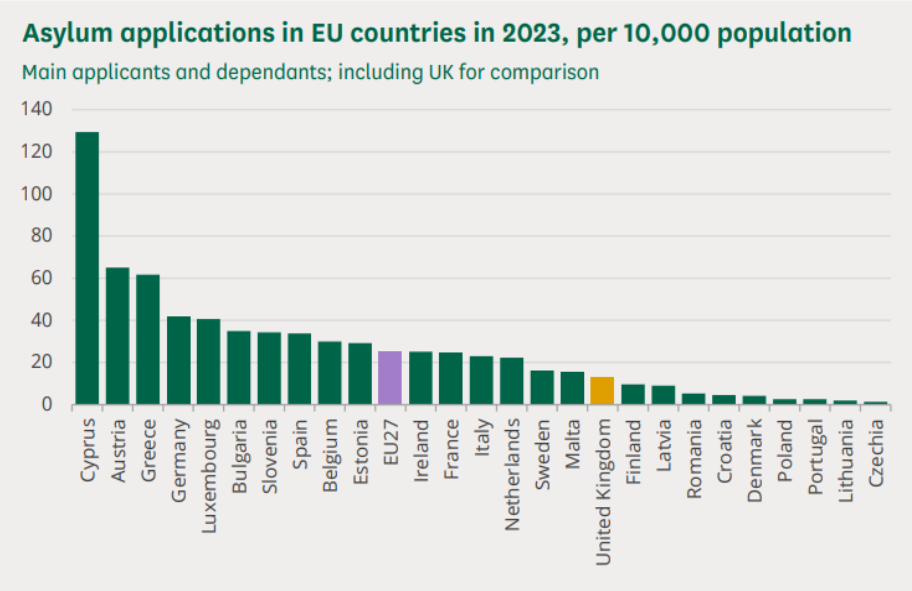
It is doubtful that the claim is factually correct. First, the UK receives

95. See, for example *Getting a Grip on the System* (July 2024). Link

96. Policy Exchange: *Getting a Grip on the System:* July 2024 Link

per capita considerably fewer asylum claims than the EU average.

Figure 11: Asylum applications in EU countries in 2023, per 10,000 population



Notes: 1. Figures are for main applicants and dependants. 2. Population is for 1 Jan 2021.
Source: Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data [migr_asyappctza], Population by age and sex [demo_pjan]

The EU external border is more vulnerable even than the UK's. Despite hardening rhetoric against illegal migration, Italy, for example, saw a 50% increase in migrant landings in 2023[97], though there have been significant improvements in 2024.

On the grant of applications, different figures are quoted depending on the exact starting point taken, but on the whole the UK approval rate for asylum claims at first instance is higher than the EU average, but not massively so (and indeed the most recent statistics show the UK grant rate for the year to September at 52%, very close to the EU average in this slightly earlier period[98]).

97. Schengen News, 4 January 2024. Link
98. Government statistics: Link

Figure 12: First instance decisions on asylum applications: EU27 countries and the UK, 2023

First instance decisions on asylum applications

EU27 countries and the UK, 2023

Country	Grants	Refusals	Grant rate	Total
Austria	23,195	14,095	62%	37,290
Belgium	12,455	15,400	45%	27,855
Bulgaria	5,790	2,950	66%	8,740
Croatia	45	90	32%	140
Cyprus	3,075	7,480	29%	10,550
Czechia	335	715	32%	1,050
Denmark	990	580	63%	1,570
Estonia	3,880	115	97%	3,990
Finland	1,275	1,075	54%	2,350
France	41,660	90,980	31%	132,640
Germany	135,275	82,155	62%	217,430
Greece	24,950	15,305	62%	40,255
Hungary	25	10	71%	35
Ireland	3,200	645	83%	3,845
Italy	21,890	24,180	48%	46,070
Latvia	120	150	44%	270
Lithuania	405	145	74%	545
Luxembourg	910	430	68%	1,340
Malta	325	785	29%	1,110
Netherlands	14,485	3,425	81%	17,910
Poland	4,635	1,880	71%	6,520
Portugal	310	125	71%	435
Romania	965	5,220	16%	6,185
Slovakia	75	90	45%	165
Slovenia	130	165	44%	295
Spain	52,630	37,260	59%	89,895
Sweden	5,250	13,900	27%	19,155
United Kingdom	63,010	31,700	67%	94,710
EU27	358,280	319,340	53%	677,625

Source: Eurostat, First instance decisions on applications by citizenship, age and sex: quarterly data [migr_asydcfstq]. Figures have been rounded to the nearest 5.

As for the courts' role in overturning asylum decisions on appeal, we have seen the increasing rejection rate in British courts. But this too is a phenomenon everywhere. In Germany, for example, the rate at which asylum decisions are overturned increased from 8% in 2017 to 31% in 2020[99].

Even if claims are rejected, this does not necessarily mean individuals are removed. The table below shows that the UK has actually designated more states with a larger combined population as 'safe' than almost any EU state.

99. Deutscher Bundestag. Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. – Zur ergänzenden Asylstatistik für das Jahr 2020, BT-Drs. 19/28109.

Figure 13 Proportion of International Population living in countries deemed safe to return by various EU states

State	States of origin declared safe[100]	Number	Combined population of safe states	Total asylum claims in 2023 (EUAA)[101]
Britain	Albania, Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, Kosovo, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, South Korea, Serbia. Safe for men only: Ghana, Nigeria, Gambia, Kenya, Liberia, Malawi, Mali, Sierra Leone	17 (+8 safe for men only)	1.98 billion	67,337 claims for 84, 425 individuals[102]
France	Albania, Armenia, Bosnia, Cape Verde, India, Kosovo, North Macedonia, Mauritius, Moldova, Mongolia, Montenegro, Serbia	13	1.4 billion	167,002
Germany	Albania, Bosnia, Ghana, Kosovo, North Macedonia, Montenegro, Senegal, Serbia, Georgia, Moldova	10	73 million	334,109
Italy	Albania, Algeria, Bosnia, Cape Verde, Ivory Coast, Gambia, Georgia, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Nigeria, Senegal, Serbia, Tunisia, Bangladesh, Cameroon, Colombia, Egypt, Peru, Sri Lanka	22	834 million	136,138
Belgium	Albania, Bosnia, Kosovo, North Macedonia, Montenegro, Serbia, India	7	1.4 billion	35,248
Netherlands	Albania, Armenia* Bosnia, Brazil*, Georgia*, Ghana*, India*, Jamaica*, Kosovo, North Macedonia, Morocco*, Mongolia*, Montengero, Senegal*, Serbia*, Trinidad & Tobago*, Tunisia* (asterisk denotes partially safe)	17	1.7 billion	39,550
Ireland	Albania, Bosnia, North Macedonia, Kosovo, Montenegro, Serbia, Georgia, South Africa, Algeria, Botswana	10	129 million	13,000
Austria	Albania, Armenia, Bosnia, Georgia, Kosovo, North Macedonia, Montenegro, Serbia, Algeria, Benin, Ghana, Namibia, Morocco, Senegal, Tunisia, Mongolia, South Korea, Uruguay	18	244 million	58,686

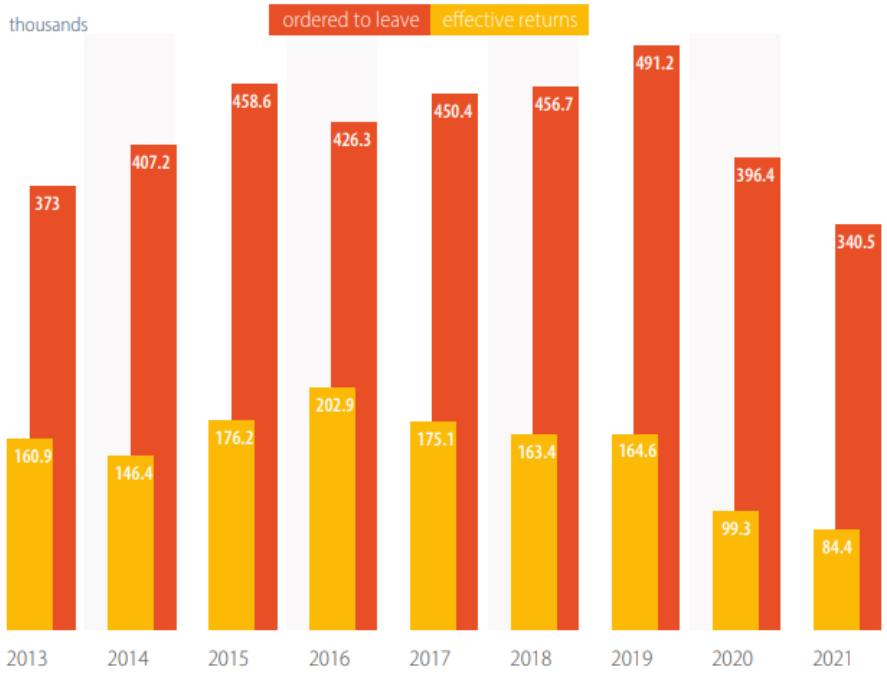
In 2022 the UK processed 14,771 removals whilst receiving 81,130

100. Asylum in Europe, Asylum Information Database: Link
101. European Agency for Asylum figures: Link
102. House of Commons Library briefing: Link

asylum applications, a removal-application ratio of 18%[103]. In contrast the Netherlands, in the same period, had a removal-application ratio of 10%, France of 9% and Germany of just 5%, processing 13,130 removals whilst receiving 244,132 applications[104]. Of course, some of the removals will be for overstaying or deportation at the end of a prison sentence rather than of failed asylum seekers.

A different way of looking at this is the proportion of those ordered to leave who ultimately do so. The numerator here will obviously be lower – as orders will only be made in cases where asylum claims have been rejected. The figures for the EU here suggest a significant reduction in the effective removal rate over recent years, with the rate hovering around 20% for much of the period.[105]

Figure 14: Third Country Nationals ordered to leave and effectively returned from the EU



The overall EU figures conceal some striking variances between individual member states, and statistics need to be handled carefully (for example, some courts may not choose to issue a removal order to countries deemed unsafe, which has the effect of flattering the statistics). Rates in 2021 (affected by Covid) varied, with some claiming a near 100% return rate (e.g. Estonia and Malta) and others at around 10% (e.g. Czechia, France and Italy all show a return rate of 9% in 2021, Cyprus and Croatia 14 %, Belgium 15 % and Portugal 16 %). 2024 figures suggest a return rate in the 25-30% range, with the exception of a couple of small countries (eg Estonia and Latvia) where the rates are higher. The countries accepting the largest number of returns are those generally seen as safe (Georgia Albania, Turkey, Colombia, Moldova)[106].

This suggests that EU states face very similar problems with the ECHR

103. Home Office (29 February 2024), How many people do we grant protection to?, Link; The Migration Observatory (14 February 2024), Deportation, removal, and voluntary departure from the UK, Link

104. Statista (25 August 2023), Which EU Countries Deport the Most People?, Link; European Council on Refugees and Exiles (14 April 2023), 2022 Update AIDA Country Report: Netherlands, Link ; European Council on Refugees and Exiles (5 May 2023), 2022 Update AIDA Country Report: France, Link ; Asylum Information Database and European Council on Refugees and Exiles (10 August 2024), Overview of the main changes since the previous report update: Germany, Link .

105. European Parliament: *Data on Return of Illegal Migrants:* June 2023: Link

106. Eurostat:*Returns of Irregular Migrants – Quarterly Statistics:* Link

and domestic human rights provisions to the UK. While Danish parties are relatively united in favour of strict migration laws, for example, the ECHR remains a problem. Fewer than half of foreign nationals given prison sentences in Denmark are issued with deportation orders because of human rights concerns, let alone actually successfully deported.[107] In 2021 the ECtHR also held that Denmark's 2015 policy preventing family reunification applications from asylum seekers before a 3-year waiting period was incompatible with the ECHR.[108]

There are isolated cases often quoted where EU countries have defied the ECtHR. French Interior Minister Gerald Darmanin defied an interim ECtHR ruling to deport an Uzbek national accused of having terrorist links. The ECtHR had previously rejected attempts to deport him on the basis that the man would face 'serious personal risk' in Uzbekistan. In spite of this the French government ignored the ruling and arranged his deportation to Turkey, from where he was then returned to Uzbekistan. Darmanin has repeatedly refused to comply with court demands that the man be allowed to return to France[109]. While striking, this is still only a single case and, as we have seen, overall French returns are low.

Similar issues with a broad definition of article 3 have been seen in recent French court cases. The French Supreme Court blocked the deportation of an Algerian man sentenced for sexual assault on a minor because he was undergoing gender reassignment and could face persecution as a result[110].

Switzerland is also cited as a country with a strong approach to immigration enforcement. Press reports have covered a recent case in which a young man from Kosovo, who had spent almost his entire life in Switzerland, was expelled after a violent attack in Zurich and for committing other criminal offences. The 22-year-old violently attacked a Serbian man at a bus stop. His upbringing in Switzerland – his schooling, friends, and almost two decades of living in the country – was not enough to save him from been expelled. The Federal Supreme Court upheld his expulsion in August, ruling that the safety of the public came first. It is worth noting, however, that even this expulsion was only possible to a country like Kosovo recognised generally as safe[111].

There is one case where resistance to the ECtHR's case law is more systematic. The ECtHR has criticised Hungary's designation of Serbia as a safe third country on the basis of its practice of pushing back migrants. Hungary's blanket designation of Serbia is at odds with the ECHR's position that all determinations on safety must be specific to an individual's asylum claim. *In Ilias and Ahmed vs Hungary*, the ECtHR ruled that the pushback of two Bangladeshi men to Serbia violated their rights under article 3[112]. But Hungary is obviously an outlier in many respects.

The EU has recently agreed a 'Pact on Migration and Asylum[113]' to improve cross EU coordination. This includes:

- a requirement to apply in first country you arrive at,
- a right to go straight to a country with which the migrant has family ties,

107. Ekstra Bladet 25/7/24: Link
108. European Commission, European Website on Integration, 09/07/21: Link
109. Euractiv (14/12/23); Link
110. Le Journal du Dimanche: 02/10/2024: Link
111. The Spectator (9/9/24): Link
112. Binetti-Armstrong, A: *Chutes And Ladders: Nonrefoulement And The Sisyphean Challenge Of Seeking Asylum In Hungary.* Colombia Human Rights Law Review (2019). Link
113. Link

- free legal advice for migrants,
- a 'mandatory but flexible solidarity' process through which the Commission proposes quotas for reallocation or, alternatively, financial contribution from member states,
- harmonising the processes, and
- a rapid process for those who destroy documents, come from a low risk country or are a threat to national security etc.

It remains to be seen how this "rapid process" will work when migrants are, or claim to be, coming from a country not deemed as safe.

The Labour government would like a much closer relationship with the EU in tackling the small boats problem, and some have suggested participating in this pact would be an option. The EU's opening position in any negotiation might be expected to be that the UK should at a minimum accept the same number as they would have been liable for under the Pact, or possibly more, if the UK were still an EU member state. It's not clear why the French government, for example, would accept an arrangement that saw a net reduction in flows to the UK if this meant an even greater refugee challenge in their own country.

Some argue that international cooperation has been damaged by Brexit, in that the Dublin Procedure to remove failed asylum seekers who have come through safe EU member states and onwards to the UK is no longer available.

EU legal experts note the Dublin procedure is simply not working for current EU members. Italy was supposed to take back 15514 applicants from Germany in 2023, but only 11 actually returned[114].

In practice, the Dublin Procedure did little or nothing to reduce numbers before the UK left the EU. The rules only applied in cases where an individual had already made an asylum claim in another EU member state and then sought to do so again in the UK. By far the larger number headed straight to the UK, passing through other safe countries but without making claims there. The actual number of cases received under Dublin was tiny, and in fact the UK was forced to receive more returns than were returned to the continent. In its final year, the UK accepted 882 incoming transfers, while only transferring out 105[115].

Indeed, German commentators on the most recent proposals to tighten up migration rules point to the Dublin regulations as one of the main obstacles to turning migrants back at the German frontier, and used this to justify using emergency procedures under article 72 of the Lisbon Treaty [116]

Another problem posed by EU rather than ECHR caselaw is demonstrated in a recent German case in which a European court judgement saw Germany blocked from expelling to Turkey a migrant wanted for murder.

The Court of Justice of the EU stated that a third-country national cannot be extradited by one Member State to his or her country of origin if that person is recognised as having refugee status in another Member State. The authority to which the extradition request was made must contact

114. Deutsche Bundestag, 20. Wahlperiode: Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion der CDU/CSU– Drucksache 20/10495 Link

115. Government statistics: Link

116. Thym, Daniel: *Verfassungsblog* 4 September 2024: Link

the authority that granted that status. As long as the latter authority has not revoked refugee status or withdrawn it, the person concerned cannot be extradited[117]. People granted refugee status in an EU country can get the right to move to most other EU countries if they've been living here "legally and continuously" for five years[118]. Similarly, while Denmark has brought in strict requirements for family resettlement, this can be circumvented by couples moving to Sweden for a couple of years after which they can move to Denmark under EU free movement provisions (colloquially known as the 'Sweden model')[119].

Recent election successes by anti-immigration parties across Europe have spurred governing parties into toughening their own lines. Germany has announced a limited suspension of Schengen[120], while senior CDU politicians have proposed radical measures including, if necessary, leaving the ECHR altogether[121]. The Netherlands have formally asked for an opt out from EU asylum rules[122]. Italy has started processing asylum claims in Albania, while Danish Ministers have been visiting the Australian immigration facility on Nauru[123], and the Dutch government is reported to be considering a Rwanda style agreement with Uganda[124]. The Polish President Donald Tusk has declared that he considers his suspension of the right to asylum as a 'significant personal achievement', noting that initial criticism has been replaced by interest in emulating Poland's approach[125].

In response the European Commission President Ursula Van de Leyen has expressed sympathy with demands for tougher rules, writing to the 27 member states with a commitment that "a stronger legislative framework in the area of returns will be one of the first major proposals of the new College,"[126] with a legislative proposal before the March 2025 EU summit. These are signs of a hardening of plans, though there is little evidence yet of firm policies.

117. Court of Justice of the EU: *Judgment of the Court in Case C-352/22* Link
118. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents: Link
119. European Commission Website on Integration. 21/1/21 Link
120. German Interior Ministry Press Release 15 September 2024: Link
121. Jens Spahn, interview in the Times 9/12/24: Link
122. Marjolein Faber, Dutch Minister of Asylum and Migration post on X Link
123. Ritzau (Danish news agency) 5/9/24. Link
124. Reuters, 17/20/24. Link
125. PAP (Polish press agency) 19/12/24. Link
126. EU News 22/12/24. Link

IV: The current Government Plans and what they mean in Practice

Following the shock at the escalating net migration numbers, the previous Government took steps to reduce numbers, increasing salary thresholds, limiting the ability of students and care workers to bring in dependents and restricting the family visa. They estimated this would have reduced 2023 migration by 300,000,

In the event, there has been a reduction in some areas, with, for example, a reduction in the number of 'Health and Care Worker' visas issued to main applicants by 84% between April and September 2024 compared with the same period in 2023. Dependant visas have also fallen by 74% over the same period[127]. Meanwhile, applications from Sponsored study visa main applicants in January to November 2024 (372,700) were 16% lower than January to November 2023[128].

Numbers have continued to increase in other areas, however, notably family visas, exceeding 90,000, up by 31% over the previous year[129].

Overall, ONS is now forecasting net migration to stabilise at over 300,000, which is, of course, 3-10 times higher than the Conservative target for most of the 2010s, and still significantly above the figures even in the later years of New Labour where it was typically around 250,000.

There are, however, plenty of uncertainties – how many students will leave at the end of their studies, and how many people will come through humanitarian routes like Hong Kong, for example. Past forecasts have routinely been wrong, usually understating the numbers.

Labour have announced that most of the changes made by the previous government to tighten up the system will continue. They have however announced a pause in the plans to increase further the salary threshold in the family immigration rules pending a review by the Migration Advisory Committee.[130]

Labour suggest bringing the Migration Advisory Committee into the skills debate to encourage skills development and over time reduce the need for migrant labour; this might have an impact over the longer term but is very high level. Similarly, the suggestion of a 'fair pay agreement in adult social care' could reduce the need for cheaper foreign labour in the longer term but is uncosted.

It appears, therefore that Labour is broadly content with the levels of net migration forecast by ONS. How plausible these figures are depends

127. Government Statistics. Link
128. Government Statistics. Link
129. Government Statistics. Link
130. Parliamentary statement by Home Secretary 17/7/24. Link

on the factors discussed above, but also the final decision Labour takes on salary thresholds on the family route and the ability of the Government to reduce the number arriving illegally.

It is worth noting that the previous Government's target of 300,000 pa housebuilding was based on 2016 analysis which assumed a net migration figure of around 165,000 pa. Angela Rayner's announcement that the housing target would be increased to 370,000 was portrayed as an increase in ambition. In practice, however housing experts suggest the number could need to be over 500,000 if current migration levels continue[131].

Meanwhile, the Rwanda scheme has been scrapped, and plans announced for the new Border Security Command, while the Home Secretary also announced on 19 July a 'new, huge expansion to the returns and enforcements unit' with 1000 additional staff. A priority will be to work on returns agreements with safe countries, continuing the policies of previous governments of both parties. Abolishing the Rwanda scheme loses any deterrence impact, though the extent of this is obviously now unknowable.

The manifesto suggested the £155m pa costs of a new Returns and Enforcement Unit and more caseworkers for asylum would be funded through lower hotel costs for housing asylum seekers. Hotel costs are, however, currently paid for out of overseas development budget which Labour is committed to retain and indeed increase in time. It is not clear if Labour believes it can fund these additional asylum caseworkers through the overseas development budget – if not, this is an unfunded pressure. Savings on hotel costs will feed through to more money elsewhere in the overseas budget, while the additional housing benefit costs, as a result of asylum seekers being granted settled status, will increase the pressure on the Department of Work and Pensions budget.

In any event, the Home Office Minister Angela Eagle accepted in a recent House of Commons debate that the number of hotels being used to house asylum seekers, far from reducing, has actually increased since the election from 213 to 220[132].

The one clear distinction between the parties is Labour's unequivocal support for remaining in the ECHR. While the Government, like all of its predecessors, stresses the importance it places on getting returns agreements, no change to the human rights regime means removals will continue to be blocked by the ever expanding interpretation of the Convention rights by domestic courts and Strasbourg analysed by Policy Exchange.[133]

The last Labour Government gradually came to see the serious problem the human rights framework posed. Looking back at his period in office in his biography, Tony Blair commented:

"most asylum claims were not genuine. Disproving them, however, was almost impossible. The combination of the courts, with their liberal instinct, the European Convention on Human Rights, with its absolutist attitude to the prospect of returning someone to an unsafe community;

131. FT 21/2/24. Link
132. Hansard 20/11/24. Link
133. Policy Exchange: *Immigration, Strasbourg and Judicial Overreach*, March 2021. Link

and the UN Convention of Refugees, with its context firmly that of 1930s Germany meant that, in practice, once someone got into Britain and claimed asylum, it was the Devil's own job to return them…the reality was that the system for asylum was broken, incapable, adrift in a sea of storms, and required far tougher action".[134]

It will be interesting to see if current Ministers reach similar views; how quickly, and what steps they take to tackle the problem that Blair identified without ever gripping.

134. Blair, Tony *A Journey* (2010) p205

V: What Is To Be Done?

The current forecast levels of net migration are still extremely high by historical standards. They represent a major social shift to the UK's population with no democratic backing. These numbers are highly unlikely to represent good value money fiscally or economically and involve major new pressures on housing which is already as unaffordable as it has been for 150 years. It also involves significant integration problems. We would argue the case for a far lower number.

The gridlock around removals affects not only illegal entrants like those in small boats. It also affects anyone coming originally through legal routes but who subsequently decide to overstay or claim asylum. In fact, while the small boats attract the most media attention, people arriving through this route only represented around one third of all asylum applications in 2023[135].

In practice, the current legal position means that the vast majority of asylum claims will continue to be granted, many – perhaps most – of those rejected will have the refusals overturned at court. Removals will only then be plausible for a fraction of the small minority of cases remaining. This means that the Government's options are extremely limited once a migrant is physically in the UK.

Tackling the very high immigration numbers, and the difficulty of enforcing migration law, requires a three-pronged approach.

- First, clarity and honesty with the electorate about how much net migration the Government is prepared to support, with a clear plan to show how this will be delivered – in stark contrast to previous governments which consistently failed to achieve the immigration numbers they had promised to the electorate and which have restricted massively the amount of data collected and published
- Secondly, changes to ensure that migrants themselves, those who sponsor or employ them and those in the wider economy like landlords are properly incentivised to ensure immigration law is upheld
- Thirdly, a fundamental look at the legal framework, including what reforms are needed to domestic and international human rights instruments to enable the UK once again to have a credible border.

135.House of Commons Library Research Briefing: Asylum Statistics 20/12/24. Link

Developing a Realistic Plan

Immigration is a quintessentially political question. It involves complex trade-offs between those who gain and those who lose out. It requires decision makers to look at economic and fiscal impacts, but also issues around social cohesion and security. Only Ministers have the authority to make this call, which is why proposals like those in the last Conservative manifesto to invite the independent oversight body the he Migration sory Committee to make recommendations on an appropriate cap for work and family visas were an abdication of responsibility.

> ***Recommendation: There should be legislation requiring the Government to set out its short and medium term targets, details on how the Government intends to deliver them and statutory caps on individual routes. This will prevent special interest groups lobbying leading to informal caps being exceeded without formal agreement of Parliament.***

Given the ideological monoculture that seems to prevail in UK universities (see above), Government needs to make a particular effort to ensure it is getting the full spectrum of views in its advice.

> ***Government should ensure its advisory bodies are properly representative of the varied views on migration issues, which will mean reaching out beyond universities alone.***

> ***Government should make it clear to UKRI that it expects it to make strenuous efforts to ensure the projects it funds dealing with contested issues like migration and integration reflect the principle of diversity of thought, and should seek to support projects reflecting both sides of the debate.***

Improving Immigration Data and Statistics

To make a plan like this, policy makers need excellent data on the actual scale of migration, overstaying and the impact of migration on the economy, the public finances, crime, security and social cohesion. The state of data and statistics on migration in the UK is appalling, far worse than other comparable European countries and actually getting worse. Data is not collected, collection is stopped with no clear sense of who made the decision, and data that is available is not published. The ONS is slowly attempting to pull together improved data through its Future Population and Migration Statistics (FPMS) project. But the state does not seem to be able to produce the data needed properly to track the economic, fiscal and social effects of legal immigration. Given how central this is to the debate, this is completely unacceptable.

As Neil O'Brien MP said in a recent Westminster Hall debate:

> *"These trends are quite difficult to get a handle on in the UK, because, while lots of other Governments are publishing more and more data, we in the UK are publishing less and less. The Department for Work and Pensions has stopped publishing data on welfare claims by nationality, and His Majesty's Revenue and Customs has stopped publishing tax paid and tax credits received by nationality. The Home Office will not answer questions on the immigration status of prisoners, such as whether a prisoner is here illegally—although it has the data, it does not publish it—and it does not collect data on the nationality or immigration status of those who are arrested.*

When asked basic questions such as how much it spends, on average, per night on hotel accommodation, the Home Office says such information is commercially confidential. When asked about spending programmes such as the refugee integration loan scheme, the Home Office says it does not know how much it has spent, it does not know how many loans it has made, and it does not know how many have been repaid. That is a pretty shocking way to handle taxpayers' money and it all breeds huge mistrust, meaning that we cannot have a sensible debate about the costs and benefits of different migration policies. The first question that I hope the Minister will answer is this: will she publish the data, so that we can at least have a sensible discussion about the facts?"[136]

> ***Recommendation: the ONS and departments should be statutorily tasked to produce data up to international best practice standards within a tight timeframe.***

> ***Recommendation: Until the UK is capable of producing its own data to a satisfactory standard, the Migration Advisory Committee should be instructed to craft its advice in the light of the excellent data which is now coming from the Netherlands, Denmark and Germany analysing the fiscal, economic and social impacts of immigration from different countries and on different routes, on the basis that the underlying position in the UK is unlikely to be radically different. Lack of evidence of impact should not be allowed to be presented as evidence of lack of impact any longer.***

Setting the Right Incentives

Currently, the entire responsibility for controlling the border is loaded onto Government, and specifically the Home Office. The Home Office sets the rules and is responsible for enforcement. Those requesting visas for their own employees have an obvious incentive, relatively low costs for the process and bear none of the social costs of high immigration. Other government departments accept in principle the need for control but press for maximally liberal policies for their own client sectors. Those subject to immigration control have next to no incentive to comply, and very little fear of sanctions should they not do so. Their home countries have no incentive to cooperate to facilitate their return. Even the general public

136. Hansard: Westminster Hall Debate on Illegal Immigration 20/9/24. Link

wants tougher immigration controls, but has at best a conflicted view about the black economy that facilitates illegal immigration and tighter identity requirements that might be needed to deter this.

This is a recipe for continuing failure. Shifting the balance of incentives is even more important given the huge legal barriers that currently stand in the way of a robust enforcement policy. Enforcement is not simply an issue for illegal migration – the availability of numerous approaches to avoid removal means the temptation for those coming on legal routes to overstay is significant and the ability to prevent them limited.

This paper sets out how a tighter control regime would work in practice. It also, however, looks at how enforcement of such a regime can work both for legal and illegal routes, particularly in the interim period before the fundamental reforms of the human rights regime which we are proposing can be delivered.

How to Curb Numbers – a cap on key routes

There are logically two ways of curbing numbers. The first is to calibrate the toughness of the rules, allowing entry for whichever applicant can demonstrate they meet the revised threshold. This is the traditional thinking behind the UK immigration system, and was the logic behind the 'Points Based System' brought in after Brexit.

This is a very hard approach to reconcile with any fixed number target.

Much depends on how accurately the system can forecast demand at whatever level the bar is set. The system's record for this has been poor. The Home Office proved famously inaccurate in its forecasts of immigration from EU enlargement states in the early 2000, as well as underestimating the actual number of EU citizens in the country by 2 million[137]. The worst example, however, was the DHSC forecasting there would be 6,000 applicants for the proposed new health and social care visas; the actual number in 2023 turned out to be over 146,000 with an additional 203,000 adult and child dependants[138]. With this degree of incompetence, the public can't be expected to have any confidence in forecasts from government departments about the impact of policy changes. All the incentives are to understate estimates in order to provide reassurance and get the policy approved.

An overall cap is only as robust as its weakest component. This was the problem with the coalition government's attempt to work towards a net migration target when they lacked control over many of the key aspects, notably EU migration, but also asylum, emigration and possibly family numbers. This is obviously exacerbated if the migration target is put on a statutory basis. What are the consequences if the target is missed?

The most impactful target in the short term is probably going to be a **gross** cap on new visas, applying to work, study, and potentially family. Emigration and hence net migration figures need to be closely scrutinised and reported on for all categories too, as the confidence the public can have that those arriving in the country will leave when they are supposed to is vital for their confidence in the border. But there are too many

137. BBC 29/6/21. Link

138. See D Neal *"An inspection of the immigration system as it relates to the social care sector" (August 2023 to November 2024):* Independent Chief Inspector of Borders and Immigration, March 2024

uncertainties about future emigration numbers, particularly given the very liberal regime of recent years, to make setting a robust target possible.

Policy Exchange in the *Compassionate but Controlled* paper[139] proposed setting a cap for asylum seekers coming from safe and legal routes. This does however require asylum numbers from illegal arrivals or from those here on other visas to be under control first. Family settlement and settlement for marriage might be covered by a cap, though there would undoubtedly be criticisms that this might lead to arbitrary delays for individual cases once the year's cap was exhausted.

Whatever happens, there are routes whose volumes are out of any government's control given binding commitments made by their predecessors. A good example would be Hong Kong residents. Another would be EU citizens with 'settled status' who may have left the UK but have the right to return unless they are absent for 5 years. In addition, large number of UK citizens in countries like Pakistan would be entitled to move en masse to the UK in the event of major local turmoil, and this would be reflected in overall net migration figures (though not in the gross migration numbers in the case of UK passport holders). There are an estimated 80,000 UK nationals living in Pakistan, and an unknown number with dual nationality.

Recommendation: A single net migration target number is not realistic, as some of the component areas are outside the Government's control. But statutory caps should be imposed in the areas where this is practical.

Even when a cap is agreed, there remains the challenging task of allocating visas within the cap when demand exceeds supply.

Work visa caps could be further broken down by particular routes or specialities. But even then there remain hundreds of higher education institutions, and thousands of NHS employers and employers in the private sector. Somebody has to decide who gets to sponsor a visa and who does not. The only alternative would be to allocate on a 'first come first served basis', which while providing a sort of rough fairness could lead to perverse consequences and long delays for high priority candidates.

There have been suggestions that the ability to sponsor visas could be tightened up and withdrawn e.g., from some lower prestige universities. But this risks being a blunt instrument. Some lower rated universities might, for example, have high value courses within their wider offering. And withdrawing sponsorship rights from some institutions wouldn't prevent the remaining ones exceeding the cap if they are no additional controls to prevent this. And it is hard to see how any such 'quality' approach could be applied to NHS or social care employers. A fixed cap would mean civil servants having to choose between different hospitals or social care employees to allocate a limited number of visas, or a first come first served basis with similar problems.

139. Goodhart, D: *Humane but Controlled Reframing Britain's Post-Brexit Immigration Debate*, Policy Exchange 2022. Link

A cap on work visas with allocation by auction

The logical approach is to auction visas on the work routes – for both private and public sector employees, and also for student visas[140].

At the top end, there is no doubt that work visas can bring in highly talented people who will make a huge contribution to the UK economy and life. At the lower end, however, we have seen a growing dependency on low skill, low productivity labour which is a net fiscal drain. An auction process will enable the most efficient allocation of a limited number of visas towards employers who really need them, either because of the value they can add, or because of the severity of the skills shortage they would address. This would replace the current rag tag of special arrangements for different skill areas, leaving only a limited number of categories not driven by economic needs (eg Ministers of religion, academics). An auction process would also give the taxpayer a larger share of the value a migrant adds. At the moment, visa fees are only supposed to cover the cost of administering the border. The actual social costs imposed by migration go wider than this, however (for example pressure on housing).

Separate safeguards are needed to ensure that visas are not abused to drive down UK wages. While the salary threshold has been increased to £38700, exemptions still remain. Workers can still be paid between 70% and 90% of the standard going rate if the job is on the Immigration Salary List or if various other exemptions apply.

In addition, previously, a sponsor licence holder had to advertise a job in the UK and conduct what was called the Resident Labour Market Test before being allowed to apply for a foreign worker visa, but this requirement was abolished on introduction of the Johnson government's Points Based System in 2021.

At the moment, employers lobby Government hard for more visas, pay very little for sponsorship (typically £1000 for the first year, with lots of exemptions), and secure the full productivity benefit of workers whose wages may even undercut those of British workers. At the lower skill end, demand for immigrant labour may well reflect local labour constraints and skill shortages. But it could also reflect poor local management. The worse employee retention rates are, the less competitive the pay rates and the fewer people being trained, the more demand there will be for visas, particularly if employers are still allowed to attract people on lower pay scales than they would have to pay to UK nationals.

Under an auction process, companies would bid for time limited work visas (possibly separate auctions for six months; one, two and three year visas, for example). The UK government would hold auctions every few months, in a rapid process with an equal number of visas sold at each auction. All participating employers will submit a sealed (blind) price for visas. The bids are ranked, and then the price is set by the bid winning the last visas on offer (so if the number of visas being offered is, say, 10,000, the cost for all visas will be set by 10,000th highest bid.

This means employers with a pressing need and a strong business case for a visa will bid very high to guarantee they secure one of the slots, but

140. There is an interesting discussion on the technical options in Optimising for our Openness The Economic Effects of Visa Auctions in the UK By Duncan McClements and Dr. Bryan Cheanghttps: ASI May 2023

they will not be bound by their sealed bid price, as everyone will pay the same amount for visas in a particular batch. At the same time, it will require employers to think carefully about the added value of the staff member they are looking to bring in on a visa, and how much it might cost to employ and train up a British candidate instead. If employers miss out on a visa by bidding too low, they will, of course, be free to bid in the next round three months later.

This proposed design does not seek to maximise the revenue from auctions by allowing employers to offer very low wages, because the salary cap is maintained. They should however massively increase revenue compared to the current system, providing a real incentive for employers to consider carefully if they really need foreign workers. It will also send a powerful market signal to the Government about the real need for foreign workers (as opposed to strident claims by lobby groups), allowing Government to decide whether to adjust the cap in the light of these signals.

In principle, there should be a single cap for all visas of the same length, allowing the market to decide where scarce visas should be allocated. There may, however, be a couple of categories (eg Ministers or religion or academics) where the wider social and cultural benefit to the UK goes beyond the salaries earned, and these might continue to be treated separately.

It is hard to forecast how much an auction like this might raise, and much will depend on the numbers planned to be allocated (more visas will not necessarily raise more money, as the price is set by the marginal bid, meaning that if a lot are allocated, the bid may be quite low, and high paying institutions will be able to bring the employees they are sponsoring for a fraction of what they bid). If we assumed the system will be looking to concentrate on top talent who are correspondingly well paid, an employer is likely to earn at least as much again from the member of staff as the total cost of their package, and we might expect them to be prepared to pay a reasonable proportion of that in order to secure the visa.

Recommendation: Government should abolish exemptions, imposing a flat salary cap for work visas, and automatically index this to average earnings to it does not fall behind in real terms.

Recommendation: Government should reintroduce the requirement for jobs to have been advertised for British workers before applying to sponsor visas for overseas workers.

Recommendation: Government should introduce a quarterly auction for long term work visas.

Visas for NHS Workers

Health and Social Care are often cited as areas where the public has sympathy for migration, though it is doubtful they understand the scale of the problems the system has faced in seeking to ensure that such a large number of new recruits are effectively absorbed. All parties agree that UK training pipeline for doctors and nurses needs to be expanded, and plans are in place to do this. Also, UK recruitment of medical professionals from WHO 'Red List' countries poses real threats to the health system in developing countries.

There have been significant increases in the size of the NHS workforce in recent years. Between 2020 and 2023 alone, total hospital and community health service staff increased by 13%, with a 13% increase in doctors and 11% increase in nurses[141]. With a constrained pipeline for training UK practitioners, immigration took up the slack when sudden increases in staff numbers were sought[142].

The recent NHS England Long Term Workforce Plan assumes further very large increases in the number of healthcare professionals trained and recruited to work in the NHS between now and the early 2030s. With full implementation over the longer term, the NHS total workforce would grow by around 2.6–2.9% a year, with an expansion of the NHS permanent workforce from 1.4 million in 2021/22 to 2.2–2.3 million in 2036/37, including an extra 60,000–74,000 doctors, 170,000–190,000 nurses, 71,000–76,000 allied health professionals (AHPs), and 210,000–240,000 support workers[143].

But this looks highly implausible given the financial climate. The Darzi report[144] and the Government's response imply that the priority for limited resource is capital expenditure, and significant productivity gains are required. The relatively low spend on capital projects has been identified for some time as a contributor to falling productivity[145]. With the current settlement for the NHS generous in the short term but then tight, and with above average pay settlements just agreed, even flat real or slightly real increases in funding are only likely to lead to flat workforce levels at best.

A Policy Exchange analysis of NHS data suggests that the domestic pipeline should be enough to get quite close to replace projected leaver numbers in the next few years **if we assume a broadly flat NHS workforce**. A shortfall of perhaps 5k pa in doctors and around 8k pa nurses could be accommodated through visas. On historical trends, other specialities should not require visas, and in the medium to longer term, plans to increase training places for doctors and nurses should bear down on the requirement in this area too.

141. The Kings Fund: *The NHS Workforce in a Nut-shell* (May 2024). Link
142. Policy Exchange: *Double Vision - A roadmap to double medical school places*. Link
143. NHS England: *NHS Long Term Workforce Plan* (June 23). Link
144. Darzi, Lord *Independent Review of the NHS in England* Link
145. Kings Fund. Link

Figure 15: Possible future requirement for visas for health care workers assuming steady state workforce

Staff group	Average All Leavers average 2020-23	UK joiners average 2020-23	Net requirement
HCHS Doctors	18,081	12,717	5,364
Nurses & health visitors	30,866	23,147	7,719
Midwives	2,432	2,644	n/a
Ambulance staff	4,510	4,920	n/a
Scientific, therapeutic & technical staff	18,300	18,813	n/a
Support to doctors, nurses & midwives	23,672	26,372	n/a
Support to ambulance staff	2,465	3,646	n/a
Support to ST&T staff	8,036	11,731	n/a

Charging employers in the health and social care sectors for visas will be criticised as reducing the amount available for health and social care treatment at a time of significant pressures. The proceeds from the auctions could however be recycled back into the health and social care budget, benefiting those health employers who manage to recruit, train and retain UK health staff at the expense of those relying on imported migrant labour.

Recommendation: There should be an auction scheme for NHS employers seeking to bring in foreign workers into the NHS. The proceeds of the auction should be recycled into the health service. On realistic assumptions about recruitment needs, there should not need to be more than about 5000 visas for doctors and 8000 for nurses allocated in this way.

On the social care side, there is no suggestion that the skills required for the work are not available in the UK. Migrant workers are only needed because of the very low salaries. It is very likely that government will need to inject additional funding into the sector if current salaries are not sufficient to attract UK workers. While the care worker visa route has secured large numbers entering the UK there have been concerns about fraud and care quality (see above). This suggests more structural problems in the sector that cannot be solved simply by ever more immigration.

The recent Cavendish Report[146] sets out a stark picture of problems in the sector, but also the opportunities if funders were prepared to move away from a 'piece work' approach to care and build up a more trusting relationship with providers.

Whatever happens, there will need to be higher pay. A £1 per hour

146.Social Care Reform: An independent review by Baroness Cavendish (Feb 22). Link

increase in the wages of care workers is estimated to cost around £1.5b – though the Cavendish report identified a number of areas where productivity in the care sector could be improved which might bring this number down. In addition, a proportion (maybe up to 40%) of the higher wage cost at the most junior grades might be recouped through lower Universal Credit payments. The care sector does not have large margins, so an increase of costs of this order will need either very ambitious productivity gains or an increase in charges to local authorities and private customers which will need funding. The end product could however be a better trained, better motivated workforce with the skills and ability to communicate with customers that the current workforce does not always have.

Recommendation: We do not recommend any special route for care worker visas, but that Government should fund higher wages in the sector. This could be funded in whole or in part by proceeds of the work visa auctions.

A cap on student visas allocated by auction

For universities, a charging regime will similarly create a market clearing approach to allocate visas. Universities with real pricing power should be able to recover the charge from the course fees. At the moment, universities are using foreign students to prop themselves up financially. In some cases, the value of the courses to students may be highly marginal. But the ability to work during the course (theoretically subject to some limits) and for two years afterwards, makes this route an attractive one for migrants who may not have the skills to qualify for work visas. The Government does not appear to have any current plans to abolish the student work visa route.

As with work visas, this is likely to involve periodic auctions, though much more heavily skewed towards one big allocation in time for the academic year and a few follow up ones in-between.

A curbing of student visas may well cause financial distress for some universities which have become dependent on the student route in the face of cost pressures and the declining real value of fees from UK students. Across the entire sector, some reporting suggested that 20% of funding in 2022 came from international students – at some specific universities it was as high as 30%.[147] This is a serious issue; but there is a general acceptance that relying on ever increasing numbers of foreign students is unsustainable, so this simply brings forward a need for restructuring which would happen anyway.

Recommendation: The Government should abolish the student work visa route.

Recommendation: The Government should put in place an auction process for study visas, with proceeds reallocated into the sector.

147.The Guardian 14/7/23. Link

Additional requirement for universities and employers to provide new housing as a condition for sponsoring visas

Auctioning visas allows prioritisation. There remains, however, the problem of the negative externalities of immigration. The most obvious and immediate given the current housing crisis is the strain this is putting on the housing market, particularly the private rental sector. In London, 67% of all households in this sector are headed by someone born outside the UK[148] which is obviously putting major pressure on rents for UK nationals.

We propose that any sponsor with a record of requesting a minimum number of visas (say 20) every year over a period (so universities, but also some employers) should be required to deliver a number of new housing units proportionate to the number of visas being requested and for the use of visa holders. These must be new build representing a net increase in the housing stock rather than acquisition of existing stock.

There will obviously need to be a lag between when this policy is introduced and when the first units are ready, but there should be a fixed time period within which new units are available or the right to sponsor visas will be restricted. To prevent employers or universities making deals to badge as their own new build developments that are already planned, the new build units scoring towards this requirement should be reserved for the use of overseas students or workers. They should also be additional to those required by the proposed government build targets. This would reduce the strain that net migration imposes on the housing market but should represent a decent investment for the sponsor holders themselves. It would incentivise councils to permit additional housing development to support key local businesses and HE institutions. This might also weed out low value added institutions (for example the London campuses of some universities) which provide little for the local economy and whose survival local political leaders might not feel justifies prioritising scarce land.

If the public had real confidence that overseas students would leave at the end of their studies unless they secured a really high level job, and that their presence in our towns and cities were not exacerbating the existing housing crisis, the concerns about total student numbers would be likely to subside and this would be reflected in the level of the capped number discussed above.

Recommendation: those sponsoring more than 20 visas should be required to provide a sufficient quantity of housing units; for universities these should be new build projects reserved for student accommodation.

148.ONS, 'Country of Birth and Tenure of Household', *Census 2021* (28 March 2023)

Tightening Up the Family Route

We have concluded above that a strict family cap might be challenging. But the higher the level of migration, the more scope there is for 'chain migration', driving numbers even higher. Other countries (e.g., Australia) impose a cap on a first come first served basis[149].

Family settlement is also running at historically high levels. The number of family unification visas issued by the UK remained relatively stable from 2009 to 2022, averaging approximately 38,000 per year. Suddenly however the numbers have increased sharply, with a year on year doubling in 2023.

The previous Government had already announced a significant increase in the minimum salary required. Labour have put this on hold pending a review by MAC. There remains a loophole, moreover, in that families can pool savings as an alternative to meeting the salary threshold. Savings of roughly three times the amount of the salary threshold are accepted as an alternative, but the cash only needs to have been present in an account for six months prior to the application. The point of this qualification is that the money should actually be available to prevent the family member becoming a burden on public funds, and a temporary pooling of resources for just long enough to meet the visa conditions obviously doesn't fulfil this. It is not clear how often this alternative is offered; the Home Office have declined to answer questions on the subject[150]. But there is clearly considerable scope for polling and therefore abuse.

Recommendation: We would recommend requiring proof of funds over a longer period before the application, and for proof the cash will continue to be available to support the couple over the coming five years. One option might be a new escrow facility, along Danish lines, and released in stages over the five year period

Recommendation: There should be a rapid review of the problem of forced marriage and the extent to which increasing the minimum age to be eligible for a visa would reduce the problem, to be followed by legislation to raise the minimum age for a resettlement visa to 24, as in Denmark[151]

Capping Asylum once Illegal Crossing Are Under Control

Policy Exchange has proposed reforms to the current system of asylum, which depends on the chance of who actually arrives in the UK and makes a claim of persecution. As we have seen, the asylum grant and removal system has reached a level of generosity that pretty much anyone physically reaching the UK from most of the countries of the world has a high likelihood of being granted asylum and is anyway highly unlikely to be removed.

Policy Exchange has previously suggested[152] an approach to agreeing a fixed number of refugees through safe and legal routes once the problem

149. Australian Government website: Link
150. Neil O'Brien MP post on X. Link
151. Danish official site. Link
152. Policy Exchange, *Compassionate but Controlled*, Nov 2022:

of illegal routes has been brought under control. This would involve taking genuine refugees perhaps directly from camps near areas of conflict or persecution.

It is important to note that this cannot be implemented in the short term, as it will only increase numbers further if it is not accompanied by an offsetting reduction in the numbers arriving through clandestine routes and claiming asylum or claiming asylum in country having arrived on other routes._Until this problem has been solved, there does not seem to be any value in setting a binding target on asylum numbers over which the Government has no control.

Recommendation: The Government should indicate its readiness to introduce an annual number of asylum seekers who will be entitled to enter the country through safe and legal routes. This policy should only be implemented, however, once successful controls on the borders have reduced illegal migration numbers dramatically.

Incentivising Visa Holders to Leave on Time

There is currently little incentive on visa holders to leave on time. In theory, if they overstay and then leave, this should count against them if they apply again in future, but sanctions are much more limited within the UK, and the prospects of removal even if they were picked up is very low given the large number of countries the courts now deem not to be safe for removal.

According to estimates published by the Migration Observatory in September 2020, there are perhaps somewhere between 800,000 and 1.2 million migrants living here without permission, undetected, mostly because they entered thus or overstayed their visas[153]. The number will be much higher now, given the very high levels of immigration since the estimate was made.

The 'hostile environment' first introduced under Labour and expanded under the Coalition and conservative governments has largely been dismantled after the Windrush affair.

Windrush reflected poor practice, confused record keeping and perhaps a bureaucratic preference for focusing on what were seen as 'soft target' nationalities for removal given the pressure to demonstrate high removal numbers. It represented an approach to immigration control where the main focus was on enforcement and removals. There ought to be scope to move the focus to reducing migrants' incentive to overstay, and the 'pull factors' like landlords and employers who are currently only too willing to profit from illegal immigration.

We recommend introducing a real financial incentive on visa holders to return once the visa expires. This was considered for students during the coalition period with a proposed 'bond' of £2000-3000 to be returned at the end of the studies. Some argued this was either too high or too low – a large amount for a genuine student but relatively low for someone who

153. Walsh, Peter William and Sumption, Madelaine: *Recent Estimates of the UK's Irregular Migrant Population.* Migration Observatory September 2020 Link

was intending instead to work. The plan was also strongly opposed by some Governments like India.

A better proposal would be a 'surety' to guarantee the visa holder complies with the terms of the visa. This would involve a much more significant amount (say £15,000, uprated with inflation) to be paid to the Government at the end of the visa period, unless the visa holder could demonstrate they had left the country- this might be done through kiosks air side or other remote approaches requiring the visa holder to prove they had left.

Such a surety could be provided by the visa holder out of their own resources. It could be provided by the employer – possibly withholding salary to cover the amount of the surety and releasing it once the visa holder has left. Or sureties could be provided by financial institutions, probably in the visa holder's home country. The visa applicant would enter into a contract with a financial institution who would put up the money which would be forfeit in the event of failure to leave on time. The institution providing the surety would have recourse against the individual under both UK law and that of the origin country in the event the amount had to be forfeited. The institution would do its own due diligence on the level of risk the visa applicant poses, potentially themselves requiring collateral, and this in itself should weed out a large number of high risk candidates.

The precise cost of this would vary by candidate, but we would expect the actual cost of the guarantee to be only a small proportion of the amount at stake, particularly if candidates were able to put up collateral in their home countries.

We recommend a similar approach for shorter term visas like temporary agricultural visas (if this route is retained).

A small but material proportion of overstaying happens on visit visas. Here too, we recommend a financial incentive. Given the lower risk and the shorter stay, a simpler option here would be to charge credit cards say £1000 per visit (uprated with inflation), and for this charge to be reversed once departure was confirmed. The cost to the visa holder in this case would just be the interest charge (if any) for the duration of the visit.

This proposal will be controversial with third countries. We can expect it to be opposed by countries like India which prioritise liberal visa policies in their foreign and trade negotiations. As such, a policy like this will make a trade deal more difficult at least in the shorter term. But we believe effective control of the borders is worth the friction.

Recommendation: There should be sureties for those arriving on work, student or visit visas, which ensure significant financial penalties for individuals who fail to leave at the end of their visas.

Tougher sanctions against those profiting from illegal migration

Illegal immigration in the UK depends on financial incentives. The economic migrant believes they will be better off than they would have been at home. Many make considerable sacrifices for their families in the hope of making a better life.

The other main beneficiaries are UK based individuals, often UK citizens, who take advantage of the financial opportunities illegal migration holds out. This might be unfairly undercutting competitors through lower wages or profiteering from renting property to people in no position to complain about the often overcrowded conditions.

Curbing these incentives requires a readiness to be much tougher with those employing and housing illegal immigrants for profit. While measures have been taken in the past, the sanctions have been trivial in comparison to the possible profits. The Home Office's Immigration Enforcement has had limited resources to cope with the high evidence burden to secure convictions. Prison sentences are unheard of.

Given the major problems Immigration Enforcement are facing securing returns of illegal immigrants, we recommend a shift towards suppressing demand by a much tougher line on employment and housing.

The fines for employing illegal labour are low. While data is not particularly up to date, neither the number of the penalties issued nor the value suggest enforcement is going to pose a particular deterrent to employers who are exploiting illegal labour and undercutting honest competitors as a result. Enforcement visits are also heavily concentrated in a couple of sectors, notably takeaways and restaurants.

Figure 16: Illegal Working Civil Penalties issued and fines collected between 1 April 2015 and 31 August 2018

Figure 13: Illegal working Civil Penalties issued and fines collected between 1 April 2015 and 31 August 2018

Year	Number of penalties issued	Value (£ million)	Amount collected (£ million)	% Collected
2015-16	2,594	46.2	12.5	27
2016-17	2,933	46.2	16.5	35.7
2017-18	2,094	36.2	14.1	38.9
2018-19	256	4.4	3.9	88.6
Total	**7,877**	**133**	**47**	**35.3**

Figure 17: Types of premises visited during illegal working deployments between 1 April 2015 and 31 August 2018

Figure 4: Types of premises visited during illegal working deployments between 1 April 2015 and 31 August 2018					
Sector	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**Total**
Restaurants/Takeaways	2,918	2,832	3,070	1,559	10,379
Shops	1,435	1,750	1,614	612	5,411
Residential properties	908	671	582	192	2,353
Commercial properties (inc. farms)	490	805	670	329	2,294
Supermarkets	205	180	186	71	642
Building/construction	59	50	31	17	157
Hospitals/Care Homes	45	25	25	6	101
Council/Government Offices	26	9	23	2	60
Other[38]	672	610	535	199	2,016
Total	**6,758**	**6,932**	**6,736**	**2,987**	**23,413**

The frustration that those charged with compliance feel about the situation is illustrated in a remarkable comment by the Director of Labour Market Enforcement, in her official strategy report for 2023/4.

> *"Since its creation under the 2016 Immigration Act, I feel the government's commitment to the role to the Director of Labour Market Enforcement could have been stronger. Repeated delays in clearing and publishing Strategies that I and my predecessors have delivered on time, have delayed useful progress addressing harm to vulnerable workers and weaken support for compliant employers, raising questions about the value added of my function. I am addressing with Ministers and officials at DBT and Home Office, and with the enforcement bodies how improvements might be delivered"*

> ***Recommendation: There should be much tougher penalties for employing illegal labour, including prison sentences in the worst cases. Repeat offending businesses should expect an automatic ban from any sponsorship and fines of a high proportion of turnover – say 25%. Businesses should face a high likelihood of bankruptcy if caught systematically employing illegal labour.***

The fines imposed for illegal renting are low given the scale of rents in the UK and especially in London. Fines of up to £800 are neither here nor there. Because the criminal offence requires the landlord to "know or have reasonable cause to believe" that the renter did not have the right to enter into a contract, enforcement has preferred to go down the civil route, which applies where the landlord cannot show they have done the checks. Even with higher civil penalties in future, a better route would be to make renting to an illegal migrant an offence with a defence that the

landlord took reasonable steps to ascertain that they were eligible to enter into a rental contract. This would then allow all the proceeds of the rent to be treated as the proceeds of crime.

> ***Recommendation: It should be made clear in the legislation that rental income from illegal immigrations constitutes proceeds of crime for the purposes of the Proceeds of Crime Act and should all be liable for seizure.***

> ***Recommendation: In the event that a landlord claims they do not have the money to return the funds, we recommend creating a power to put a lien on the property. This would guarantee that the funding was repaid, with interest, at the point that the property was next disposed of. The imposition of a charge would also be notified to the mortgage lender who is likely to consider this a breach of the mortgage terms.***

There are many precedents in the criminal law for cooperating offenders to receive reductions in their prison sentences in return for information that secures convictions[154]. There is obvious scope to extend this to decisions on immigration status. Given we are frequently talking about nationalities that cannot easily be returned anyway, the option of regularising their status in return for helping secure the conviction of those facilitating illegal behaviour has a low price in terms of immigration control but promises a big increase in deterrence. The more this power is publicised, the more offers of assistance the authorities might get, and the more cautious rogue employers and landlords will be about breaking the law.

> ***Recommendation: There should be tough measures to incentivise cooperation in securing convictions for those employing and renting illegally. Offering illegal immigrants visas of between 1 year and potentially Indefinite Leave to Remain in return for successfully testifying against illegal employers or renters could have a dramatic impact on employers' and landlords' readiness to break the law.***

Tony Blair has repeatedly argued for a digital ID scheme. In a recent report, he and William Hague argued:

> *"A well-designed, decentralised digital-ID system would allow citizens to prove not only who they are, but also their right to live and work in the UK, their age and ownership of a driving licence. It could also accommodate credentials issued by other authorities, such as educational or vocational qualifications."*[155]

Whatever the merits of this system, it will not make any difference to tackling illegal immigration unless Government is also prepared to require landlords and employers to confirm eligibility to work of all candidates, including British citizens. For British citizens, one obvious existing route

154. See CPS guidance: Link

155. Tony Blair Institute for Global Change: *A New National Purpose; Innovation can Power the Future of Britain (Feb 23)* Link

for this is passport. For EU nationals with settled status, proof of this would achieve the same, while for migrants there are existing routes enabling landlords and employees to confirm entitlement.

According to ONS, only around 13% of people in England and Wales do not have any passport. A requirement to provide identity might be a burden on these people, though many will be elderly in settled accommodation and therefore unlikely to need to prove their eligibility to rent or work. The Government could offer a time limited period for people to apply for first time passports cost free. This is likely to be much simpler and cheaper than setting up a new ID system (though obviously the use case for the latter is much broader).

Recommendation: The Government should legislate to require employers and renters to obtain proof of entitlement to rent and work from everyone, including UK citizens. The Government should consider what incentives might be offered to British citizens to secure the necessary proof, notably a time limited subsidy or free entitlement to first time passports.

Introducing enhanced proof of identity requirements for those working and renting does not in itself require a new digital ID system.

Securing returns to third countries

The main reason for the drop off in returns (see table below) has been the ever more expansive interpretation the courts have taken on safe countries. Two thirds of the world's population outside the EEA and other G7 countries live in countries not deemed safe by the Home Office. This obviously makes returns significantly harder, particularly when migrants destroy their identity papers.

Even if tribunals agree to removals, this is only practically possible if documentation is at hand. In many cases migrants deliberately destroy them, and cooperation with home countries to issue replacement documentation is very patchy

Section 72 of the Immigration and Borders Act 2022 already gives the Home Secretary the power to impose visa penalties on countries that do not cooperate on returns. This power is discretionary and has never been used, with other Whitehall departments constantly blocking any suggestion that a third country be targeted in this way. The exercise of a discretionary power like this will be subject to Whitehall write rounds and likely to be rejected by any number of departments concerned about international relations, but most of all FCDO or BIT.

Recommendation: Government should toughen section 72 of the Immigration and Borders Act 2022 making it a duty on the Home Secretary to act if the conditions of the section are met. The application of this duty could only be postponed for periods of a year at a time subject

to affirmative vote of Parliament.

We would propose any such vote needs to be preceded by a Government paper setting out the reasons for lifting the requirement in respect of any individual country. This would need to identify the departments making the request. The debate should also be structured to force Ministers from the requesting departments to be cross examined by MPs alongside the Home Office Ministers tabling the order.

It is similarly odd that the UK continues to provide international aid to countries that are refusing to assist in returning their nationals.

Recommendation: There should be an absolute prohibition under the International Development Act 2002 for any UK aid to be paid to a country that does not have a returns agreement with the UK. This too should require an affirmative resolution order to suspend, renewed annually if required, forcing FCDO Ministers to justify to Parliament why the continued failure to cooperate on returns should not lead to a suspension of aid.

Future of the Home Office

There has been much criticism of Home Office performance over border and immigration in recent years. Some have suggested there is a case for splitting the Home Office to create a single Cabinet department focused on border security.

We do not support this. The paper outlines the pressure the Home Office is already under as a single department when pretty much every other department in Whitehall has a vested interest in higher immigration for their own sector. A department focusing on the border alone will have even less clout inter-departmentally. Splitting the border from police and security is likely to make securing police cooperation for immigration even harder than it already is. There are some criticisms of the commitment of Home Office staff to maintaining a tight immigration system. As discussed above, these seem largely unjustified given the extremely difficult policy and legal environment within which staff are operating. While there are concerning features, particularly interventions by some unions to influence policy, creating a new department will not in itself change any of the staff working on the issue. With robust policies, clear steers from Minister and a focus on delivery, there is no reason why the Home Office should not be able to implement the changes proposed in this paper.

Recommendation: We recommend the government reject pressure to break up the Home Office.

VI: Restoring Control Over the Borders: Reforming the Human Rights Framework

The levers to influence legal migration are, in the short term, in the Government's hands. The ability to ensure returns once the visas expire is less so, for reasons we have discussed. The sort of measures outlined above can only get us so far. For as long as there are clandestine arrivals to the UK, foreign national criminals we struggle to deport, and a very large population of illegal immigrants in the country, probably well over 1m[156], the country's borders will not be secure until the authorities have the ability to secure them by preventing entry and ensuring removal. Given the state of the caselaw, this will mean significant reforms to the human rights framework to rebalance the rights of migrants and those of citizens in host countries.

In some cases, like Modern Slavery discussed below, this is a domestic debate which can largely be resolved domestically. More difficult is reversing the trends in ECtHR interpretation discussed above which make enforcing immigration control almost impossible in practice.

Reforming Modern Slavery Legislation

There have been concerns for some time about abuse of the Modern Slavery legislation, with claims that it has now become standard advice to illegal immigrants from Albania, in particular, to claim to be victims of trafficking. Unlike asylum claims, which can be made by individuals themselves, modern slavery claims are processed through the National Referral Mechanism (NRM) and can only be initiated by specific authorities such as Border Force and First Responder Organisations.

The number of modern slavery referrals has escalated sharply in recent years, from 552 in 2009 to 16,996 in 2023[157]. Whilst historically British nationals have been the largest group subject to NRM referrals, in 2022 for the first time these were overtaken by referrals for Albanian nationals.

Review of an NRM application is a two-step process, with an initial 'reasonable grounds decision' then triggering a second 'conclusive grounds decision' review after a minimum of 30 days have elapsed. The Nationalities and Borders Act 2022 introduced a higher test for the 'reasonable grounds' decision, leading to a short term reduction in grants but levels are rapidly heading back to their prior level[158].

The rapid increase in NRM referrals and their high rates of success,

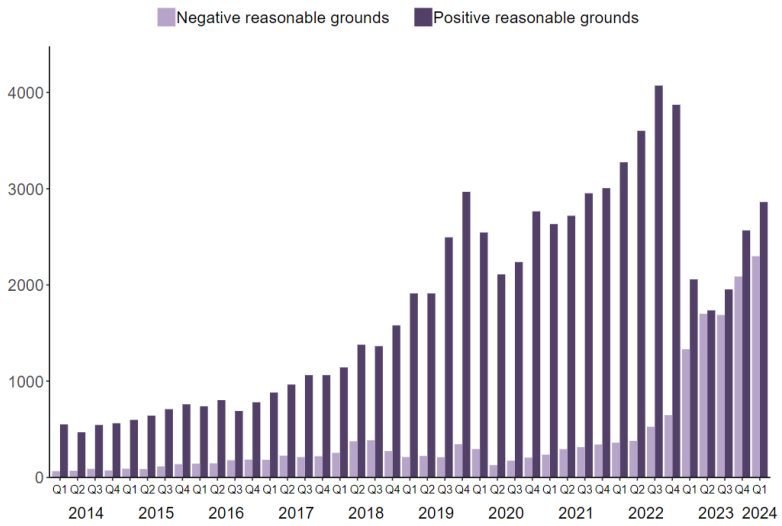
156. Pew estimated 0.8-1.2m back in 2017, for example, and numbers are likely to have risen since. See here
157. Migration Watch UK, The Abuse of Modern Slavery Laws by Asylum Seekers, Link
158. House of Commons Library, Modern slavery cases in the immigration system, Link

has led some to criticise the criteria on which such claims are decided. At the initial review the competent authority must determine that there are 'reasonable grounds' to suspect modern slavery, whilst at the second conclusive review they must find that 'modern slavery is more likely than not to have happened'. Many have argued that these thresholds are too low and require limited evidence to be met. In particular, concern has been raised that illegal migrants can put themselves forward for NRM referrals long after arriving in the UK and even if they have previously denied being victims of modern slavery[159]. The modern slavery regime interacts with the asylum regime, with a recent Court of Appeal ruling finding that confirmed victims with unresolved asylum claims based on re-trafficking risk were entitled to modern slavery leave under the Home Office's published policy[160].

The level of staffing on modern slavery is high. There were 228 members of staff in the Single Competent Authority in 2020[161], with commitments to increase the numbers by between 200-300. This dwarfs the number employed on enforcing the domestic labour market, with around 120 in Gangmasters and Labour Abuse Authority[162] and the 18 in Employment Agency Standards Inspectorate, for example[163]. Numbers on the HMRC National Minimum Wages Team are not published, but it is possible there are more modern slavery caseworkers in the Home Office than staff in all three labour inspectorates combined. This seems unbalanced, given that proper upstream enforcement ought to reduce the scale of the problem to which the competent authority is there to respond.

Figure 18: Number of National Referral Mechanism positive and negative reasonable grounds decisions

Figure 11: Number of NRM positive and negative reasonable grounds decisions



Source: SCA, IECA

159. Chris Philp, (16 August 2022), End the scourge of bogus modern slavery claims, The Telegraph, Link
160. R (KTT) v SSHD (High Court [2022] 1 WLR 1312; Court of Appeal [2023] QB 351)
161. Hansard; House of Lords Questions 27/11/20; Link
162. GLAA Organisation Chart, September 2024. Link
163. Employment Agency Standards Inspectorate Annual Report 2022/23. Link

The Illegal Migration Act 2023 sought to address concerns about the threshold for claims. . As part of the requirement for the Home Secretary to remove any illegal migrant who travels to the UK through a safe third country, the Act excludes claims based on modern slavery except in 'compelling circumstances' where the migrant is required to remain in the UK to assist an investigation or prosecution[164]. However, this provision of the Act is yet to come into force and it must be doubtful if Labour will bring the relevant provisions into force, particularly given statements made in opposition[165]. Modern slavery provisions may as a result remain an additional ground for challenging immigration control.

Recommendation: The Government should bring into force the provisions in the Illegal Migration Act relating to Modern Slavery or should legislate on similar lines.

What to do about the ECHR?

While the Modern Slavery Act is a set of provisions that the UK has produced ourselves, and could reform or repeal, the same obviously does not apply to the ECHR.

The analysis in section I above sets out the formidable challenges which current ECtHR caselaw poses, and the risk that trends in article 3 and 8 jurisprudence, in particular, might make the situation even worse in future.

Public opinion on the Convention is divided, and confused. Given a clearly binary choice, some polling suggests a small majority for remaining and a large proportion of 'don't knows'[166]. Other polling suggests that a majority of the population support Parliament ultimately setting the human rights framework rather than the ECHR, and a plurality for either full withdrawal or only partial compliance with the Convention[167].

The public cannot come to an informed view on the human rights framework without better information. Relevant information includes looking at the caselaw generated by the ECtHR and domestic courts and the restrictions they impose on the Government in various areas, most of all immigration and the borders. Harder to quantify is the 'chill' on policymaking caused by the inherently unstable and unpredictable human rights caselaw. This undoubtedly leads to risk averse and defensive policies and operational decisions, constraining government's ability to respond to voters' expectations in this area.

Departments have been reluctant up to now to countenance going public with case studies setting out the constraints that human rights law imposes. A common argument the author has heard is that going public with case studies would prejudice future court cases, undermining the prospects of removing the individuals in question. Quite apart from the fact that cases could be suitably anonymised if necessary, there are enough striking cases that have already exhausted the litigation process already, or where the prospects of successful removal are remote.

164. UK In A Changing Europe (15 March 2024), Explainer: Illegal Migration Act 2023, Link
165. See for example: Link
166. Link
167. Centre for Policy Studies: *Stopping the Crossings (Dec 2022)*. Link

Describing the sort of cases where removal is blocked by the courts on various human rights grounds will at least give the public the information they need to come to an informed judgement. A paper along these lines needs to set the caselaw in context indicating, where possible, the size of the problem. This does not need to be comprehensive, but a 'rough order of magnitude' sense of how big a problem the different rulings pose is important.

Recommendation: The Government should build on existing work by Policy Exchange to develop a comprehensive analysis of the sort of cases where human rights law is preventing Ministers to take the sort of enforcement actions they would otherwise favour.

The Case for Leaving the ECHR

One of the weightiest arguments for leaving the ECHR is that the Convention as it stands makes securing the borders impossible. In fact, the immigration and borders area is just one manifestation of a wider problem. In particular, the ECtHR's shift in jurisprudence in the 1970s, when it started treating the Convention as a 'living instrument', allowed judges to read ever more expansive interpretations into Convention rights. This creates a radical instability and uncertainty in the law, which in turn fosters defensive policy making and paralysis in the face of challenges[168]. By incorporating the Convention in domestic legislation, the Human Rights Act by gave similar powers to British Judges.

Policy Exchange's Judicial Power Project has focused on this problem for some time. Most recently, the report *The Impact of the Human Rights Act 1998 in Twenty Five Cases*[169] sets out one case for every year in which the Human Rights Act has set law and practice in highly problematic directions. On example is the *Ziegler* judgement. Here, the majority of the Supreme Court held that a protestor cannot lawfully be convicted of the offence of deliberately obstructing the highway unless the prosecution establishes that a conviction would not be a disproportionate interference with the protestor's Convention rights of speech or assembly. This judgment has had very damaging consequences for the rule of law. It overturned the earlier understanding of the law and left the police uncertain about when it would be lawful even to arrest someone for obstructing the highway. It required criminal courts to consider, in every case before them, highly political arguments about the merits of the cause being demonstrated[170].

This conflicts with British constitutional tradition that imposes no legal limits on that Parliament's authority, instead relying on political competition, parliamentary deliberation and a decent political culture to result, over time, in good lawmaking. In particular, it is for Parliament to make the inherently political judgements about the appropriate balance between rights, noting that most of them involve an element of potential conflict.

This shift towards judges second guessing essentially political decisions

168. See Finnis, John *Judicial Law-Making and the 'Living' Instrumentalisation of the ECHR* in Ekins, Barber and Yowell (eds) *Lord Sumption and the Limits of the Law* (Bloomsbury 2018)
169. Policy Exchange: *The Impact of the Human Rights Act 1998 in Twenty Five Cases (Nov 24)*. Link
170. Ekins, Richard: *Human Rights and the Rule of Law (Policy Exchange, April 2024)*. Link

is difficult enough when the power is given to UK judges. It is even more problematic when the powers go to judges in Strasbourg, who are wholly outside any democratic accountability in the UK.

The argument for an international court with an activist bent may rest on a belief that Strasbourg judges are better technically qualified to make the complex trade-offs between rights of parties in every one of the countries of the Council of Europe. It might mean that we do not trust the UK Parliament and implicitly the UK electorate to protect rights and are therefore entrusting human rights to a guardian beyond political control. The third reason often cited is that the UK's compliance with international law sends an important signal to other countries, making it more likely that human rights will be upheld more widely in Europe.

These are weak arguments, which have, moreover, never been put to the British people. The first conflicts starkly with British constitutional tradition. The second undermines democracy altogether, giving an unaccountable group of judges the right and power to block legislation which has clear democratic sanction. The third assumes that the people of the UK are happy to suffer perverse rulings from Strasbourg jurisprudence for the sake of speculative influence over countries with a weaker tradition of the rule of law elsewhere in the world.

Looking back on the various reform efforts, the former Supreme Court judge Lord Sumption has commented:

> *"I once thought that the Strasbourg court could be reformed from within. There were signs of a more cautious and pragmatic approach with greater respect for the democratic processes of state parties. That would have been a less abrasive way of addressing the problems. But I no longer believe that this unwieldy body with its isolated splendour in Strasbourg, its arrogant self-assurance, its 46 judges from as many nations, its powerful registrar and its more than 200 ideologically committed staff lawyers is capable of changing direction*[171]"

This is a powerful critique, which should support serious consideration about withdrawal.

Reform the ECHR?

Notwithstanding Lord Sumption's scepticism, the polling suggests the British public would support a robust but good faith attempt to reform the ECtHR jurisprudence and the workings of the court, rather than moving outright to leave[172]. Moreover, leaving the ECHR is insufficient, as it would still leave the domestic framework and caselaw in place. Any reform option discussed below will involve Parliament setting out clearly what it sees as a reasonable balance of rights in areas like deportation to replace the current caselaw. This will mean a comprehensive change to the Human Rights Act at a minimum, as well as potential reform of the current immigration tribunal system.

Turning back to the Convention, there is little in the original text that anyone in the UK would object to. The problem is the developments in caselaw since the European Court of Human Rights started treating the

171. The Spectator 30/9/23. Link. See also Richard Ekins here and here

172. Polling varies depending on the question asked. One poll here suggests a majority for leaving, but when the question is asked outright, another suggested a majority for remaining in ECHR here

Convention as a 'living instrument in the late 1970s.

It remains to be seen if any attempt to negotiate a return to an approach to interpretation consistent with text and reasoned intentions of the drafters and ratifiers is viable. It would need the unanimous approval of all 46 Council of Europe members.

The Strasbourg court is not, however, immune from politics. . The UK was able to negotiate some concessions in the Brighton Declaration[173], later included as Protocol 15.

Kenneth Clarke and the Coalition government described this as a 'landmark agreement' when it was agreed in 2015. The claim was this agreement had secured

- Amending the Convention to include the principles of subsidiarity and the margin of appreciation [i.e. only intervening in cases where the national authorities had clearly overstepped the line, rather than essentially retaking their decisions]
- Amending the Convention to tighten the admissibility criteria - so that trivial cases can be thrown out and the focus of the Court can be serious abuses
- Reducing the time limit for claims from six months to four
- Improving the selection process for judges
- Setting out a roadmap for further reform.

There is little evidence of the Protocol really having much impact in practice. It is, however, an interesting example of a, limited, renegotiation.. As one academic commentator noted "the ECtHR is receptive to political signals and does not, as is often claimed, operate in a political vacuum"[174].

More significantly, perhaps, the UK was able in effect to maintain its categorical ban on prisoner voting in the UK, with a face saving deal reached with the Council of Ministers. The Court has, temporarily at least, paused the expansion in scope of article 3, almost certainly as a result of the growing salience of immigration in the European political debate. And some (inadequate) concessions have been made on Rule 39 interim measures.

Most interestingly, however, there is now evidence of real appetite for reform in major European partners. In a recent interview, the senior German CDU politician Jens Spahn expressed a strong appetite for radical reform. He commented:

> *"If you come to the conclusion — and this is the debate that is also happening in the UK at the moment — that these things can't be changed because there's no majority for it, then of course you have to think again about your membership [of the ECHR]….*
>
> *"It is not ordained by God that we have to be a member in all these things. We are happy to be a member, we're convinced multilateralists, but it has to deliver some benefit, too*[175]*"*

173. Brighton Declaration on ECHR Reform Link
174. Madsen, Mikael Rask: *Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe? Journal of International Dispute Settlement*, Volume 9, Issue 2, May 2018. Link
175. Interview in the Times Dec 9 2024: Link

This shift reflects the growing frustration among voters across Europe and the resulting growth in support for populist parties and for tougher immigration policy domestically, as discussed above. Given we have argued the ECHR is imposing similar constraints on all countries, a strong coalition for reform is a possibility.

This has only been heightened by the problems activist judges have posed in areas beyond borders and immigration. The Swiss climate case is only the latest example of Convention rights (in this case article 8) being extended into extraordinary new directions (in this case the right to measures to combat climate change)[176].

Fifteen EU countries wrote to the EU Commission calling for significantly more radical measures against illegal immigration than provided for in the recent Pact. This includes more partnerships with third countries, such as the agreements with Tunisia and Turkey, and exploring safe third country and 'place of safety' options to return migrants pending repatriation.[177]. The ECHR is likely to be one of the main obstacles to delivering any of these policies.

The Court will be very reluctant to see even one founding member state leave the Convention, but would be even more anxious about a group demanding major change. Moreover, one of the main arguments deployed in favour of the 'living instrument approach has been the importance of recognising a supposed emerging 'European consensus' for change[178]. It is worth arguing there is now an emerging 'European consensus' to return to a strict interpretation of the Convention, which should be reflected in caselaw.

The main priority in negotiations is to restore *clarity and predictability* to the law, and ensure that British courts interpret human rights issues in a way consistent with British constitutional tradition. In particular courts should focus on the merits of the individual cases before them, rather than ruling on the general compatibility of the legislation. Most importantly, we need to ensure that a clear 'margin of appreciation' is recognised by Strasbourg for domestic court rulings and legislation in member states. This is likely to require changes both to domestic legislation and to the Convention itself.

We have noted a number of ECtHR rulings which are part of the 'living instrument tradition and which have bent Strasbourg caselaw a long way from the intended meaning of the original Convention. Ideally, we would be looking for these to be reversed in a new Protocol to the Convention. An alternative however would be a much stronger reassertion of the 'margin of appreciation' than is provided for in protocol 15, as discussed in an earlier Policy Exchange paper[179]. Giving the Strasbourg court a duty along the lines proposed for British courts under clause 7 of the now withdrawn Bill of Rights Bill would be one way of securing this.

176. KlimaSeniorinnen v Switzerland: Schweiz and Others v. Switzerland - Violations of the Convention for failing to implement sufficient measures to combat climate change. pdf. Link

177. Link

178. Eg *ABC v. Ireland* [GC] no. 25579/05 , 16 December 2010, para 234

179. Policy Exchange: Thoughts on a Modern Bill of Rights (Nov 22): Link

7 Decisions that are properly made by Parliament

(1) This section applies where –

(a) a court is determining an incompatibility question in relation to a provision of an Act, and

(b) in order to determine that question, it is necessary to decide whether the effect of the provision (whether considered alone or with any other relevant provision or matter) on the way in which the Convention rights are secured strikes an appropriate balance –

(i) as between different policy aims,

(ii) as between different Convention rights, or

(iii) as between the Convention rights of different persons;

or as between any combination of matters mentioned in sub-paragraphs (i) to (iii).

(2) The court must –

(a) regard Parliament as having decided, in passing the Act, that the Act strikes an appropriate balance as between the matters mentioned in subsection (1)(b)(i) to (iii), and

(b) give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about how such a balance should be struck are properly made by Parliament.

(3) In this section "an incompatibility question", in relation to a provision of an Act, means a question whether –

(a) the provision is incompatible with a Convention right, or

(b) a public authority which acts (or proposes to act) in accordance with the provision does so in a way which is incompatible with a Convention right.

(4) A reference in subsection (3)(b) to acting "in accordance with" a provision is to acting so as to comply with, or give effect to or enforce, the provision.

While an explicit change to the law on immigration and asylum would be preferable, either approach, properly embedded in both domestic law and the Convention should enable decisions makers and legislators to start undoing the problems caused by caselaw trends since the 1970s with protection against the Court essentially feeling in the position to second guess every decision made.

In the event that Strasbourg still issued rulings which member states believed went beyond their competence, a procedure could be introduced to enable member states to reject new rulings of the Court which they felt were incompatible with the obligations they actually signed up to in the Convention. In March 2020, John Larkin QC, Attorney-General of Northern Ireland proposed something similar in a Policy Exchange paper:

> *"I suggest that a future protocol should re-establish the primacy of sovereign states as the creators of international obligations. This would be done by enabling states to enter interpretive declarations within one month of final judgments addressed to them in which they could reject the interpretations of the ECHR proposed by the Court. The interpretive declarations would be effective as respects the state entering them (and any other state that indicated agreement to them) but would not free the state from any monetary obligations (damages and costs) contained in the judgment. Issues for debate include the extent to which a new judgment relying on an old (but objectionable) interpretation of the Convention could be subjected to the protocol process, and the extent to which other states should have a role in limiting the use of the interpretive*

> *declaration, for example, could unanimous opposition by all other states, or a heavily weighted majority of them, prevent an interpretive declaration taking effect? Put shortly, this proposal would mean that where states A and B have agreed X, no international court can come along and tell them that X means Z. If states want to agree that there should, for example, be an enforceable right to truth in the Convention, fine, but one could not, with such a protocol, be foisted on them in future by the Strasbourg Court."*

This would not mean the Convention could not be developed to recognise new rights. But changes would need to be agreed politically by Member States, not invented by judges.

As for the changes likely to be needed in parallel domestically, Policy Exchange noted in its response to the consultation on the then proposed British Bill of Rights:

> *"It would be entirely consistent with the common law tradition to repeal the HRA and not to replace it with another statutory bill of rights. This would restore the law of the constitution, in relevant part, to its condition in 1998/2000."*[180]

If a specific Bill of Rights were to be introduced, however, the paper argued:

> *"A modern Bill of Rights should be consistent with the UK's history of rights protection, in which the authority to make new law is exercised first and foremost with Parliament and only secondarily by the courts, with courts responsible for fairly adjudicating disputes in accordance with settled law. This may mean that in preparing legislation the government should not simply reproduce the text of the Convention rights, which are routinely glossed and qualified, but should instead reformulate the rights on the terms in which it understands them, inviting Parliament to agree or to amend (specify) them further"*[181].

An alternative to the Bill of Rights would be for primary legislation on, for example, key immigration and asylum issues to make it clear that Parliament had considered and taken into account the various potentially conflicting rights involved in legislating on issues like deportation. The expectation should then be that Strasbourg defers to elected representatives' assessment of the appropriate balance.

It would theoretically be possible to make these changes domestically without any change in Strasbourg. This is broadly what the previous administration looked to do with the Bill of Rights Bill. The problem with this, however, is that it creates a fundamental tension between the direction Government is trying to steer judges domestically and the caselaw likely to be handed down in Strasbourg. Even if there is no legal reason not to, judges are likely to be reluctant to hand down rulings in domestic courts which they expect Strasbourg to declare as incompatible with the UK's international obligations.

It would be much better to reform human rights frameworks domestically and internationally in parallel, rather than seeking to reform

180. Policy Exchange: *Thoughts on a Modern Bill of Rights*. Link

181. Ibid p10

the human rights framework domestically while continuing to be subject to an unreformed Strasbourg jurisprudence, or doing nothing domestically until international negotiations have been completed. Work might need to commence domestically in parallel with international negotiations, if problems are not to be dragged out for years.

Recommendation: The Government should seek to build an international coalition looking to reform the ECHR. The aim of this would be to restore the margin of appreciation for member states, giving them the power to reject the creation of new rights incompatible with what they had signed up to in the Convention. Similar changes to domestic legislation should be prepared in parallel with the international negotiations.

A New Convention?

If it is not possible to secure an agreement with the Council of Europe that really changes the workings of the Court, an alternative option to departing from the ECHR altogether would be to propose a reformed Convention that meets the principles underlying our reform plan.

The UK might propose to Council of Europe members the establishment of a Reformed ECHR. This would replicate the text of the ECHR, though with stronger text on respecting the margin of appreciation for member states along the same lines proposed for the negotiations with Strasbourg above. The Reformed Court would be instructed to construe the convention according to the intention of the founders, while noting that there are existing provisions to amend the Convention to reflect changing understanding of rights, subject to the agreement of the signatory parties.

The UK would indicate its commitment to sign up to such a Reformed ECHR should a reasonable number of Council of Europe states leave the jurisdiction of the Strasbourg Court and enter into the new Convention and accept the jurisdiction of the new court instead.

Some jurists argue that EU member states are required to be party to the ECHR, though EU institutions themselves have not acceded to the Convention despite certainly being required to under the Lisbon Treaty. Ironically, this is because the Court of Justice of the EU considers[182] joining the Convention would pose a threat to the integrity of EU law.

Under this option too, the UK Government would need to reform the domestic human rights regime, with the options including abolishing the HRA altogether, reforming it along the lines outlined above or recasting it through a domestic Bill of Rights.

Risks remain that the Reformed ECtHR judges will still wish to extend the reach of the new court's caselaw, even with the safeguards proposed. We therefore propose replicating the power suggested in the second option for member states to be able to table declarations rejecting the interpretation of the Reformed Convention proposed by the Court.

Recommendation: In the event of negotiations within the Council of

182.Opinion of the European Court of Justice 18/12/14. Link

Europe not securing the desired outcome, the UK should make clear its readiness to set up a Reformed European Court of Human Rights which will fully respect member states' 'margin of appreciation' and which will confine itself to reading the Convention in line with the intention of its founders and any subsequent amendments agreed politically.

VII: Removals Post Rwanda

The proposals in this paper should reduce some of the 'pull factors' of migration, and encourage home countries to be more accommodating with returns. This might lead to an increase in voluntary returns as well as helping the new government in its ambitions to sign new returns agreements.

This is going to take a long time, however, and the reforms of ECHR could take even longer. In the meantime, Europe remains hugely exposed to uncontrolled migration through the Mediterranean and other routes, and the UK remains a highly appealing destination. Even under the most optimistic scenarios of human rights reform, there remains a well motivated and funded movement which will seek to use every opportunity in the law to frustrate the process of immigration control. And there are countries removal to which are always going to be challenging.

The best route to stopping illegal migration to the UK, especially the illegal routes that are most corrosive of public confidence, is ensuring migrants are certain that entering the UK this way will not under any circumstances lead to a right to remain.

The previous government's plan was to embed a clear expectation that nobody arriving illegally in the UK can expect to settle here, irrespective of the merits of their asylum claim. This was to be implemented through the Rwanda plan, which has now been cancelled.

Policy Exchange always had reservations about the Rwanda scheme, proposing instead a Plan A based on a returns agreement with France, or a Plan B based on removals to a British Overseas Territory where asylum claims would be processed by British officials, with genuine refugees transferred to safe third states. Once the previous Government chose the Rwanda plan, Policy Exchange made various proposals to seek to strengthen the legislation and ensure its workability.

In the event, for Rwanda to have worked, asylum seekers entering the country illegally would have needed to believe they stood a near certainty of being removed to Rwanda. The actual scale of the scheme meant this was never likely, even setting aside the loopholes which remained to challenge the scheme's application in the courts. There were anecdotal stories of the prospect of Rwanda had caused some to move from Britain to Ireland, but it is doubtful whether even this deterrent would have lasted once the details of the scheme became clearer, even assuming it survived the continuous legal challenges it was likely to face. In addition, the Rwanda scheme was focused entirely on illegal entry (the 'small boats'), which did not cover the issue of asylum seekers who have reached the UK through

other routes (e.g., on student visas followed by a sudden conversion to Christianity making them claim a return would lead to persecution).

Even at its most ambitious, the numbers likely to be affected by the Rwanda scheme were not huge. The previous government passed legislation removing a right to asylum for those who enter from a country where they are not at risk. But it is one thing blocking any route to permanent settlement, if this is not matched with a near certain prospect of removal from the UK, all this achieves is a large population in limbo, neither allowed to stay nor capable of being removed. Given the weak internal controls in the UK, this is a population bound to disappear into diverse communities across the country.

The new government has cancelled the Rwanda scheme and it is uncertain, even if they or a future government changed their minds, that a third country would be interested in negotiating a deal along similar lines with the UK. The safeguards put in place gradually reduced the likely deterrent effect and brought home the challenge of relying on a third country to judge asylum cases to the same standards as the UK. It was also vulnerable to any future political developments in Rwanda (or any other third country) being cited in fresh challenges against its safety as a destination.

Labour has in the past itself toyed with the idea of offshoring the processing of asylum claims. The legal groundwork for offshoring was first laid by Labour in the Asylum and Immigration Act 2004. At the time, the Government – in which Yvette Cooper was a junior minister – sought an offshoring agreement in talks with Tanzania, though they came to nothing in the end.

The Prime Minister has also implied an openness to offshoring in the past, on the basis that the processing would be carried out under UK law, and those granted asylum would be allowed to return to the UK.

The problem with this, obviously, is that the rate of asylum approvals is so high that offshoring would lose much of its deterrence, while the problem of removing failed asylum seekers would remain too. We would face the very high costs of processing, only for most to be returned to the UK anyway.

An alternative approach builds on the proposals in the earlier Policy Exchange paper[183]. This would see a clear duty on Government not to allow any migrant arriving from a safe country to remain in the UK. All would be removed to a British overseas territory, for example Ascension or Falkland, (probably the former) where their case would be processed.

Irrespective of the outcome, those removed to Ascension would have no prospect of returning to the UK. If asylum claims were granted, the UK would seek agreements with safe third countries to host them.

Refugees not acceptable to any safe third country might be transferred to the care of the UNHCR. This would require careful negotiation, possibly requiring specific funding or a targeted swap arrangement. A swap would of course not reduce the total number of refugees in that year – it might however still be worth considering as it would maintain the deterrent

183. Policy Exchange: *Stopping the Boats, a Plan B* (Feb 22). Link

effect against illegal arrivals confirming that nobody arriving in this way would get to remain in the UK. We would get fewer economic migrants and accept more bona fide refugees from the world's trouble spots.

If they were rejected, the UK would seek third country removals, with the priority obviously being voluntary removal to the home country.

The earlier Policy Exchange report argued that this Plan B should be set out in legislation with a positive duty on officers to remove illegal migrants to Ascension, or another British overseas territory. It argued furthermore that even under the current human rights framework:

> *"the Bill introduced to give effect to Plans A or B can and should be accompanied by a statement of compatibility under s. 19 of the Human Rights Act, to the effect that in the minister's view the provisions of the Bill are compatible with all the "Convention rights" set out in Schedule 1 of the Act. But to prevent Plans A or B being frustrated by litigation, the Bill needs to limit the application of the HRA remedies, so that the Bill constitutes Parliament's authoritative specification of how, consistent with the UK's international obligations, Channel crossings are to be addressed."*

The earlier Policy Exchange paper sets out the arguments why a scheme on these lines is compatible with the ECHR and the Refugee Convention, and does not amount to 'refoulement' as the illegal migrants are not to be removed to an unsafe location.

The challenges will come on the basis of more recent Strasbourg caselaw, pending the proposed reforms of the ECHR discussed above. An additional ground for domestic challenge might be whether requiring people to remain on Ascension/Falkland constituted detention, and, if so, at what point this was no longer considered proportionate. The Policy Exchange paper noted "Indefinite detention of persons, even when coupled with freedom to depart from the territory to any other country willing to receive them, starts to become – after an ill-defined but perhaps relatively short period – unreasonable, not only for the purposes of the ECHR article5 right to liberty and security of person, but also for two other reasons, one constitutional – the historic right to liberty that was mirrored in drafting the ECHR[184] , … and the other moral".

There is some caselaw suggesting that periods of as long as four years could be acceptable in some circumstances, and HMG would obviously be looking to secure returns agreements to enable removal considerably earlier than this. Moreover, there would not need to be detention on the islands themselves, so it could be argued that this issue does not apply anyway, in contrast, say, to locating a detention camp and processing centre on one of the Channel Islands.

The Refugee Convention notes "The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country".

184. Lord Dyson in Lumba [2011] UKSC at para. 22: (i) the Secretary of State must intend to deport the person and can only use the power to detain for that purpose; (ii) the deportee may only be detained for a period that is reasonable in all the circumstances; (iii) if, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention; (iv) the Secretary of State should act with reasonable diligence and expedition to effect removal.

This only applies to refugees who have arrived directly from a country in which their life is in danger and thus does not prohibit the UK from removing the asylum-seekers in question to Ascension Island and denying them entry into the UK.

Recommendation: The Government should plan to establish a reception centre on Ascension Island. This could be done under the current human rights framework, but would clearly operate much more smoothly under reforms discussed above.

Cost of Offshoring Immigration Centres

To be a viable deterrent, the UK government, like that of Australia, needs to demonstrate a commitment to remove 100% of those arriving illegally with no prospect of settlement. This means building facilities which could cope with potentially very large numbers, even in the expectation that crossing numbers will fall dramatically when the migrants realise the government is determined to implement a removals policy (as happened in Australia).

This means a facility which could theoretically hold say 40,000 people though with the expectation that the permanent requirement will actually be a small proportion of that.

Ascension Island currently has a small residential facility for RAF employees, which could probably house around 1000, with significant modernisation. With a density of 400 dwellings per hectare, the site could probably handle the full 40,000 number in, say 30,000 units (recognising the large numbers of unaccompanied migrants). Substantial ground works would obviously be needed, enhanced roads, power (which would require a new power station) an improved port facility to enable oil or gas to be unloaded[185]), and facilities including desalination , education and hospital provision and sewerage.

Bottom up cost estimate

Modular build in western cities is roughly £2000 a square metre. Clearly Ascension involves significant additional costs for transport and labour. On the other hand, the accommodation is likely to be at the more basic end of the specification. There are major economies of scale building this sort of size. If we assumed 20 square metre per room and other living areas, 30000 dwellings (recognising most people are single) and a price of £3000 per square metre, the residential build cost alone would be £1.8b.

A power station sufficient to power a small town might cost £100m, additional roads £60m[186], a desalination plant for 40,000 perhaps £20m[187] and upgrades to the port perhaps £30m[188]. With optimism bias, this might suggest a 'bottom up' cost of around £3b. This assumes however that the decision is made to build permanent accommodation for a year's worth of potential migrants. We would expect crossings to tail off quickly, suggesting that a much smaller quantity of permanent

185. SCMO: *Transportation and the Belt and Road Initiative*, Link
186. Would build/upgrade 6-7km of roads at UK prices Link
187. Assuming UK levels of water consumption, 40000 residents Link
188. Conservative estimate based on figures from Chinese Belt and Road initiative: Link

accommodation combined with surge capacity (eg large dormitories) would be appropriate, and much cheaper.

Comparison with Christmas Island

This is also comparable with the Immigration Detention Facilities built by Australia as part of Operation Sovereign Borders. The Christmas Island site, for example, was estimated to cost around AUS$400 in 2008 money, or just over £300m in current money, to house over 2000 people at its peak.[189] While the residential elements of this cost will scale directly, other parts of the fixed cost will not necessarily scale in the same way for a larger facility. Scaling up this might suggest a £3-4b cost.

Comparison with Camp Bastion

Camp Bastion, the main UK base in Afghanistan, was built for £53m in the early 2000s.[190] (say £80m in today's money) The original camp included power, water, sewerage, accommodation for 2000 and a small hospital. Labour was largely provided by serviceman with some local input. Bastion was arguably an even more difficult location to build, needing shipping to Karachi and then over 6000km transport over land. Allowing for 50% of additional costs for labour on top and scaling up x20 this might amount to around £2.4b

There figures are very much back of an envelope numbers. But they do suggest that £3-4b is a plausible cost for a project of this size. These sums need to be set against the £6.4b figure quoted by the Chancellor as the cost overrun for asylum in this financial year alone with over £3b for hotel accommodation alone, a number which is only likely to increase as claims numbers rise further in the years ahead.

In the author's experience, Ascension has tended to be dismissed as an option within Home Office on grounds both of principle and cost. It is important that Ministers get reliable numbers, setting out transparently their assumptions and securing external professional advice.

> ***Recommendation: the Government should undertake an external study from outside Home Office setting out the costs for various options delivering a facility at Ascension, with full transparency in advance about the specifications being set.***

189. Australian National Audit Office, 2009, Construction of the Christmas Island Immigration Detention Centre, Department of Finance and Deregulation, p.171 Link

190. Robert John Hewson (2008), Camp Bastion, Afghanistan: haven in the desert of death, Proceedings of the Institution of Civil Engineers - Civil Engineering 161:3, Link

Figure 19: Aerial view of RAF Traveller's Hill, Ascension Island

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