LESSONS NOT LEARNED

The failures of asylum decision-making in the UK

Helen Bamber Foundation
working with survivors of human cruelty

THE JOINT COUNCIL *for* THE WELFARE OF IMMIGRANTS

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REFUGEE ACTION

REFUGEE COUNCIL SUPPORTING AND EMPOWERING REFUGEES

SURVIVORS SPEAK OUT

UK Lesbian & Gay Immigration Group

FREEDOM FROM TORTURE
EMPOWERING SURVIVORS, REBUILDING LIVES

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“The aim is to create here in Britain a really hostile environment for illegal migration.”

Theresa May, Home Secretary, May 2012.[1]

“I don’t like the phrase hostile… I think it is a phrase that is unhelpful and it doesn’t represent our values as a country.”

Sajid Javid, Home Secretary, April 2018.[2]

“I am delighted that Wendy [Williams] will be overseeing the lessons learned review, which is vital to ensuring this never happens again to any group of people… The contribution that the Windrush generation have made to this country is invaluable and I am committed to putting things right.”

Sajid Javid, Home Secretary, June 2018.[3]

“[T]he way in which immigration policies and legislation were being enacted… lost sight of the individual in a very practical way… These failings contributed to creating the appalling problems for the Windrush generation, and if they persist, they threaten to continue to do so, and potentially other groups.”

Wendy Williams, *Windrush Lessons Learned Review*
(Draft seen by Freedom from Torture)

INTRODUCTION

The United Kingdom asylum determination system is both inhumane and inefficient. People who have suffered horrific events, often face further suffering once they come to the UK. Poor Home Office decision-making on asylum claims is endemic, with almost two in five asylum refusals corrected on appeal.[4]

A wide range of credible organisations have researched and analysed the problems with Home Office decision-making in the asylum context. They have made practical recommendations that have not been accepted, have been accepted in principle but not implemented, or which in isolation have not solved the problem.

This report examines 50 reports from 17 different organisations, including parliamentary committees, the United Nations, non-governmental organisations, academics, and independent inspectorates.

It charts a 15-year history of longstanding criticisms levelled against the Home Office. The analysis shows a convergence of views on the fundamental causes of poor decision-making, including the unrealistic and unlawful evidential burden placed on applicants and a starting point of disbelief, with a devastating impact on the individuals involved.

Freedom from Torture has seen a draft version of the independent Windrush Lessons Learned Review. In Freedom from Torture’s view, it indicates a connection between the suffering of the Windrush generation and what is happening to others. The systemic Home Office failures urgently need to be addressed. Over many years, lessons have not been learned.

Priti Patel was appointed to succeed Sajid Javid as Home Secretary in July 2019 and an asylum reform programme is under way. She and her successors have a chance to set things right.

This report proposes a new way forward at a moment when Britain stands at a historic crossroads. The system has at its heart the assumption that applicants are telling lies, even when they have suffered so much. The system is inefficient, inhumane and broken. It urgently needs to be repaired.

50 REPORTS
17 ORGANISATIONS
15 YEAR HISTORY

ALMOST 2 IN 5
ASYLUM REFUSALS CORRECTED ON APPEAL

BACKGROUND

The exposure in April 2018 of the Windrush scandal has drawn attention to current immigration policy and practice that has devastating and sometimes tragic consequences.

People who had arrived from the Caribbean between 1948 and 1971 and who had spent most of their life in the UK were told they had no right to be here, denied access to NHS treatment, benefits and pensions, and lost their jobs. Some were detained and even removed or deported.

This injustice, accompanied by a failure to fully apologise and address the escalating crisis, provoked outrage across the political spectrum.

David Lammy, MP for Tottenham, commented to the then Home Secretary Amber Rudd:

> **“This is a day of national shame, and it has come about because of a ‘hostile environment’ and a policy that was begun under her Prime Minister”.[5]**

Amber Rudd said:

> **“I am concerned that the Home Office has become too concerned with policy and strategy and sometimes loses sight of the individual. This is about individuals, and we have heard the individual stories, some of which have been terrible to hear”.[6]**

This recognition of a systemic problem within the Home Office marked a watershed.

Sustained public interest, community campaigning and parliamentary scrutiny of the Windrush scandal forced a moment of reckoning.

One key revelation of the scandal was a refusal to believe people when they told their own life stories, even when backed up by extensive evidence.

The parliamentary Joint Committee on Human Rights concluded:

> **“The Home Office required standards of proof from members of the Windrush generation which went well beyond those required, even by its own guidance; and moreover were impossible for them to meet—and which would have been very difficult for anyone to meet. This led to officials making perverse decisions about their status”.[7]**

There are significant parallels between the Windrush nightmare and the suffering of others who experience the UK asylum and immigration systems.

Amber Rudd’s successor as Home Secretary, Sajid Javid, said it was vital to ensure that the suffering of the Windrush generation “never happens again to any group of people”.[8] The reality, however, was and is that many people continue to suffer some of the injustices and harms that the scandal exposed.

As the Joint Council for the Welfare of Immigrants noted:

> **“The treatment of the Windrush generation is no accident. It is precisely what happens when an anti-immigrant dogma takes over at the Home Office”.[9]**

The Windrush story is one of hostility to immigration by people on the basis of the colour of their skin. It is widely agreed to have stemmed originally from a history of discriminatory law, policy and practice.

The acknowledged Windrush failures put the spotlight on the government policy of creating a “hostile environment” for migrants and reducing net migration.

These fit a historical pattern of constructing immigration policies around politics rather than evidence.[10] This is fuelled by a rise in extremist views and toxic narratives around immigration with British politicians and media using racialised language.[11] Party manifestos, election campaigning and the EU referendum have each contributed to a discourse that further stokes anti-immigrant sentiment.

Many political leaders, even when they know public narratives to be false, lack the courage or integrity to confront the lies that have been peddled. They have sought to placate those whose starting point is not how we can best create a welcoming country, but how to brand migrants and people seeking asylum as deceivers and liars.

Some at the helm of the Home Office now understand the depths of the problems. But, political narratives help perpetuate a damaging culture at the Home Office, with migrants and asylum-seekers still forced to jump through the excessive hoops in this divisive and hostile system.

At the heart of the Windrush story was a refusal to believe people when they told their own life stories, even when backed up by extensive evidence.

ONGOING FAILURES

This report examines 50 reports from 17 different organisations, including parliamentary committees, the United Nations, non-governmental organisations, academics, and independent inspectorates.[12]

All scrutinise the quality of decision-making in the UK asylum system. This predominantly includes Home Office initial decisions but also encompasses fresh claims, where asylum seekers whose appeal rights are exhausted submit new evidence to support their claims.

These reports span the past fifteen years, beginning with the 2004 launch of the flagship Quality Initiative Project (later renamed Quality Integration Project) of the UN High Commissioner for Refugees (UNHCR). Funded by the Home Office, the UNHCR project seeks to improve the UK asylum system, including the quality of Home Office decisions.

The 50 reports interrogated the quality of Home Office refugee decision-making, including through reviews of case files, analysis of country of origin information, reviews of Home Office policies and guidance, interviews and focus groups with people seeking asylum and Home Office staff, attendance at appeal hearings, and stakeholder engagement groups. Almost 1,800 cases were analysed, 140 interviews and focus groups were conducted, and 100 asylum interviews were observed or audited.

The reports identified a striking convergence of views on the fundamental causes of poor decision-making, including:

- flawed credibility assessments;
- the unrealistic and unlawful evidential burden placed on applicants;
- a starting point of disbelief and a broader 'refusal culture' in the ethos of the Home Office;
- an inadequate learning culture and a lack of independent oversight.

The list of failures is compounded by the failure or refusal of the Home Office to act on many of the recommendations made. The problems have therefore been recurrent and persistent.

ALMOST 1,800 CASES ANALYSED
140 INTERVIEWS AND FOCUS GROUPS
100 ASYLUM INTERVIEWS OBSERVED

CREDIBILITY ASSESSMENTS

Credibility is, to quote the UN refugee agency, the "core element of the adjudication of asylum applications" and is used to refer to the process of gathering relevant information from the applicant, examining this in light of all the information available to the decision maker and determining whether the applicant's statements can be accepted.[13]

At least 38 of the reports examined from the past 15 years have identified flawed credibility assessments as a problem in Home Office refugee decision-making in the UK. This has persisted despite a new Asylum Policy Instruction issued in 2015 and associated revised credibility training.[14]

There have been recurrent problems in how the Home Office assesses credibility.

- Two Amnesty International reports nearly a decade apart, in 2004[15] and 2013,[16] indicated that aspects of an "applicant's claim are denied on credibility grounds without adequate reasons being provided".[17] Amnesty International found that of the sample of 50 refused cases, **more than four in five** were overturned on appeal due to a flawed credibility assessment by the Home Office.[18]

- Freedom from Torture's 2016 report *Proving Torture*[19] found that **84% of their case sample[20] had experienced Home Office decision-makers who dismissed medical evidence** because they had already reached a negative credibility finding. This is despite the fact that decisions should be reached by considering information in the round. In 74% of cases, a failure to consider the physical and psychological evidence in relation to the torture account was observed.[21]
- The Independent Chief Inspector of Borders and Immigration (ICIBI) noted that 22 of the 56 cases reviewed in 2016 had either not assessed credibility against the requirements set out in the Asylum Policy Instruction on credibility, or had included no evidence that they had.[22]
- In 2017, the ICIBI again identified **10 of the 30 files examined** as needing improvement in assessing evidence when considering credibility.[23]

- Asylum Aid (now Consonant) found flawed credibility assessments of women applicants to be the reason for every one of the Home Office decisions overturned in their 2017 study, *Through her eyes: enabling women's best evidence in UK asylum appeals.*[24]

CAUSES OF FLAWED CREDIBILITY ASSESSMENTS

The reports we reviewed found that decision-makers focus on inconsistency within a claim to justify a negative assessment, without giving an opportunity to applicants to account for such discrepancies, or they seek to use the lack of evidence to undermine the credibility of the entire claim.[25]

Several organisations point to poor interview technique during the substantive interview, where caseworkers fail to ask pertinent follow-up questions, or fail to seek clarification when required, leaving potentially damaging inconsistencies and information gaps unresolved.[26]

Analysis by the UN refugee agency of reasons given in refusal letters reveals that negative credibility assessments are often not backed up by evidence.[27] Reports also show the use of speculative and unreasonable plausibility findings by decision-makers.[28]

The reports identify a series of different factors as influencing poor decision-making: inadequate training,[29] a poor understanding of the role of credibility,[30] a failure to use the correct methodology to assess claims,[31] and case owners not learning from mistakes[32] as key causes of wrong decisions.

- Amnesty International concluded that avoidable mistakes are central to flawed credibility assessments, and "a significant number of successful appeals could be avoided if the issue of poor quality credibility assessments by some case owners is effectively addressed".[33]
- Flawed credibility assessments were attributed to erroneous preconceptions and/or a lack of understanding of the contexts in which persecution can take place, who is at risk and expectations about how they should narrate their experiences. As the Immigration Law Practitioners' Association (ILPA) highlighted in their evidence to the Home Affairs Committee in 2013, the judgement of whether a claimant is telling the truth "is dressed up in the word 'credibility', perhaps because it is easier to say to someone 'You lack credibility' than to say 'You are telling lies.'"[34] ILPA argued that using such an "amorphous term can also mask no accusation of a specific lie having been made".[35]

Negative credibility assessments are often not backed up by evidence.

- In 2013, Amnesty International analysed a case set of 50, finding "speculation or unreasonable plausibility findings" as the primary reason for a Home Office decision being overturned in 12 cases, and a secondary reason for a further 10 cases.[36] This was compounded by what Amnesty International described as a "domino effect" where "case owners made flawed credibility assessments based on one aspect of the claim, and then used this to undermine other aspects of the claim".[37]
- The Home Affairs Committee found that there was a repeated mishandling of evidence concerning torture and LGBT claims within credibility assessments.[38]
- According to the Independent Chief Inspector of Borders and Immigration, time pressures and performance targets left caseworkers inadequately resourced to make good quality decisions on credibility.[39]

Time pressures and performance targets left caseworkers inadequately resourced to make good quality decisions on credibility.

Targets, coupled with the potentially grave consequences of getting a decision wrong, create a highly pressured working environment.[40] This can lead to burnout, vicarious trauma and compassion fatigue. Without adequately valuing and supporting staff, this will continue to contribute to the high turnover rate amongst decision makers.

FAILURE TO APPLY THE CORRECT STANDARD OF PROOF

Underlying credibility assessments should be the proper application of the standard of proof in asylum decisions. The ultimate question is whether there is a real risk or likelihood that the person seeking asylum will suffer persecution if returned to their country of nationality or origin.[41] This does not require a caseworker to be "certain", "convinced" or even "satisfied" of the truth of the account or any particular aspect of it.[42] It requires the caseworker to assess the relevant aspects of the account, the degree of probity that should be attributed to these, and to make a holistic assessment against all the relevant evidence of whether a real risk of persecution if the person is returned is demonstrated.[43]

This standard of proof partly reflects the reality – as acknowledged by the Home Office itself in its policy guidance – that people fleeing persecution are often not in possession of, or are unable to obtain their documents.[44] It reflects the fact that consequences of a wrong decision are so grave: a person could be sent back to further persecution, torture or even to their death.

> **"My concern for safety was very real. Any more delay and the window of opportunity would close. I couldn't stop to collect evidence to prove my age, to prove that I am fleeing from torture to save my life, to prove that I was coming from this particular country, to prove that I was who I said I was"**
>
> Member of the Survivors Speak OUT network (quoted in Freedom from Torture's *Proving Torture*).[45]

For many years prior to the exposure of the Windrush scandal in 2018, organisations have highlighted the worrying trend towards unlawful and unrealistic evidentiary demands on the part of the Home Office. This can manifest itself in different ways for people seeking asylum. Claimants may be assessed as lacking credibility because they were unable to provide documentary evidence to support their claim.

Home Office decision-makers have repeatedly been found to be failing to apply the correct standard of proof. Applying a much higher standard puts an unrealistic expectation on asylum applicants to "prove" all aspects of their claim. This penalises asylum applicants by forcing them to reach a bar that as a matter of law they are not required and would usually be unable to meet (despite the strength of their application).

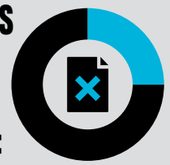
In 2005, a second Quality Initiative report by the UN refugee agency (UNHCR) highlighted that Home Office caseworkers rarely expressed uncertainty in their decisions. The use of phrases such as "failed to demonstrate convincingly" in refusal letters, suggests an expectation of conclusive proof, where there is no such requirement in law.[46] The report noted that caseworkers rarely express uncertainty, indicating a rigid expectation of conclusive proof.[47]

> **"UNHCR is concerned to note that a number of caseworkers do not apply established UNHCR guidelines and UK caselaw when considering evidence and deciding what weight to attach to it. UK caselaw embraces a positive role for uncertainty in asylum decision making and recognises that uncertain aspects of a claim should still be taken into account when considering the ultimate question. Instead, UNHCR has found that caseworkers rarely express uncertainty and instead appear to feel compelled to believe or disbelieve every aspect of a claim. This is of particular concern when an adverse credibility finding is based on apparent discrepancies which the applicant has not been given an opportunity to explain".**
>
> UNHCR, *Quality Initiative Project: Second Report to the Minister*, 2005.[48]

This marks a failure to follow the Home Office's own guidelines;[49] and highlights what the Home Affairs Committee called "a mismatch between the standard of proof used by appeal judges, which reflected official guidance, and the higher standard used by case-owners".[50]

For many years prior to the exposure of the Windrush scandal in 2018, organisations have highlighted the worrying trend towards unlawful and unrealistic evidentiary demands on the part of the Home Office.

A QUARTER OF THE REPORTS REVIEWED CONTINUED TO ARTICULATE PROBLEMS WITH THE APPLICATION OF THE CORRECT STANDARD OF PROOF



Despite the UNHCR's stark findings from 2005, a quarter of the reports reviewed continued to articulate problems with the application of the correct standard of proof in Home Office decisions on asylum claims.

- Freedom from Torture found in its 2016 report, *Proving Torture*, that caseworkers failed to apply the correct standard of proof for asylum claims with medical evidence in every single case of the 50 reviewed. Caseworkers often assumed that lesions assessed as anything less than "diagnostic" of torture by the doctor (in other words, no other possible cause), had little or no significance as evidence of torture.[51]
- In 2018 the UK Lesbian and Gay Immigration Group report, *Still Falling Short*, found that the Home Office was setting the bar too high before granting refugee protection to LGBTQI+ people. They highlighted, for example, a "Catch-22" approach to the consideration of corroborative evidence. Evidence from specialist LGBTQI+ support organisations was often given little weight and labelled as self-serving, but conversely failure to produce evidence such as joint utility bills was considered damaging to the claim.[52]
- The UN has identified a UK breach of its international obligations in this regard. In May 2019, the UN Committee Against Torture criticised the UK for failing to apply the correct standard of proof.[53]

> **"Noting that a large proportion of asylum denials are reportedly overturned on appeal, the Committee expresses serious concern about reports that Home Office caseworkers very frequently do not apply the appropriate standard of proof applicable to asylum claims and arbitrarily reject credible medical evidence of past torture, resulting in the arbitrarily denial of asylum claims made by victims of past torture".**
>
> UN Committee against Torture, May 2019.[54]

IMPACT OF THE IMPOSSIBLE EVIDENTIARY BURDEN

The evidential bar to substantiate a claim for asylum has risen in practice beyond the standard required by the official handbook for the UN Refugee Convention and by UK law. This has had a detrimental impact on many people seeking asylum, including torture survivors,[55] women who have faced sexual and gender-based violence,[56] victims of trafficking,[57] LGBTQI+ people,[58] faith groups,[59] and children.[60]

Reports have also noted that Home Office staff displayed a lack of awareness towards these groups which is amplified by a failure to centrally monitor diversity and protected characteristics (such as torture survivors) in decision-making.

As the all-party Home Affairs Committee noted in 2013: "The assessment of credibility is an area of weakness within the British asylum system. Furthermore, the fact that credibility issues disproportionately affect the most vulnerable applicants – victims of domestic and sexual violence, victims of torture and persecution because of their sexuality – makes improvement all the more necessary."[61]

A number of reports, for example from the Refugee Council and Freedom from Torture, have highlighted the official failure to consider possible reasons for such inconsistencies, such as difficulties in disclosing or recalling information for those who have suffered from or continue to suffer from trauma.[62] This contradicts the Home Office's own Asylum Policy Instruction guidance concerning how "underlying factors" may "explain why a claimant's testimony might be inconsistent with other evidence, lacking detail, or there has been late disclosure of evidence".[63] The lack of understanding is of particular concern in the context of the substantive interview, where silence or failure to directly answer a question is likely to damage a person's credibility.[64]

In 2016, the Freedom from Torture report *Proving Torture* highlighted the barriers torture survivors face in being believed, even when they produce compelling medical evidence of what they have suffered. The report found that the Home Office frequently demands a level of certainty in this evidence that is unattainable, going far beyond the legal standard of proof that applies to asylum claims.[65]

In 2019, it took a judgement by the UK Supreme Court to re-assert the important role of medical expertise. In the landmark case of KV, a Sri Lankan torture survivor seeking asylum in the UK, the Supreme Court unanimously ruled that it was wrong to assert that medical experts should limit themselves to documenting the immediate cause of each individual scar. It crucially affirmed that it is within the medical expert's realm to account for the consistency of the clinical picture and account of torture. The Supreme Court also stated that evidence of "self-infliction by proxy" on the part of asylum seekers is "almost non-existent".

CASE EXAMPLE ARASH FREEDOM FROM TORTURE CLIENT

Arash fled Afghanistan at the age of 19, after being targeted and tortured by the Taliban as a child. In 2017, he attended an asylum interview, which lasted more than four hours.

Arash answered every question, giving as much information as he could about his torture and why he fled his home country. Even though the Home Office's own guidance explains that torture survivors do not need to provide medical evidence of torture for caseworkers to accept that it happened, the interviewing officer repeatedly asked for proof of his torture.

The Home Office refused to grant Arash protection. The reasons included minor inconsistencies and a lack of medical evidence to prove his torture. Conversely, the fact that he had been able to provide some documents only raised suspicion about why he had not provided others.

> **"Your failure to provide documents to substantiate [other parts of your claim] is to be considered an inconsistency in your account, given that you were able to bring photographs on your journey in an attempt to substantiate other aspects of your claim"**
> ***Reasons for Refusal Letter***

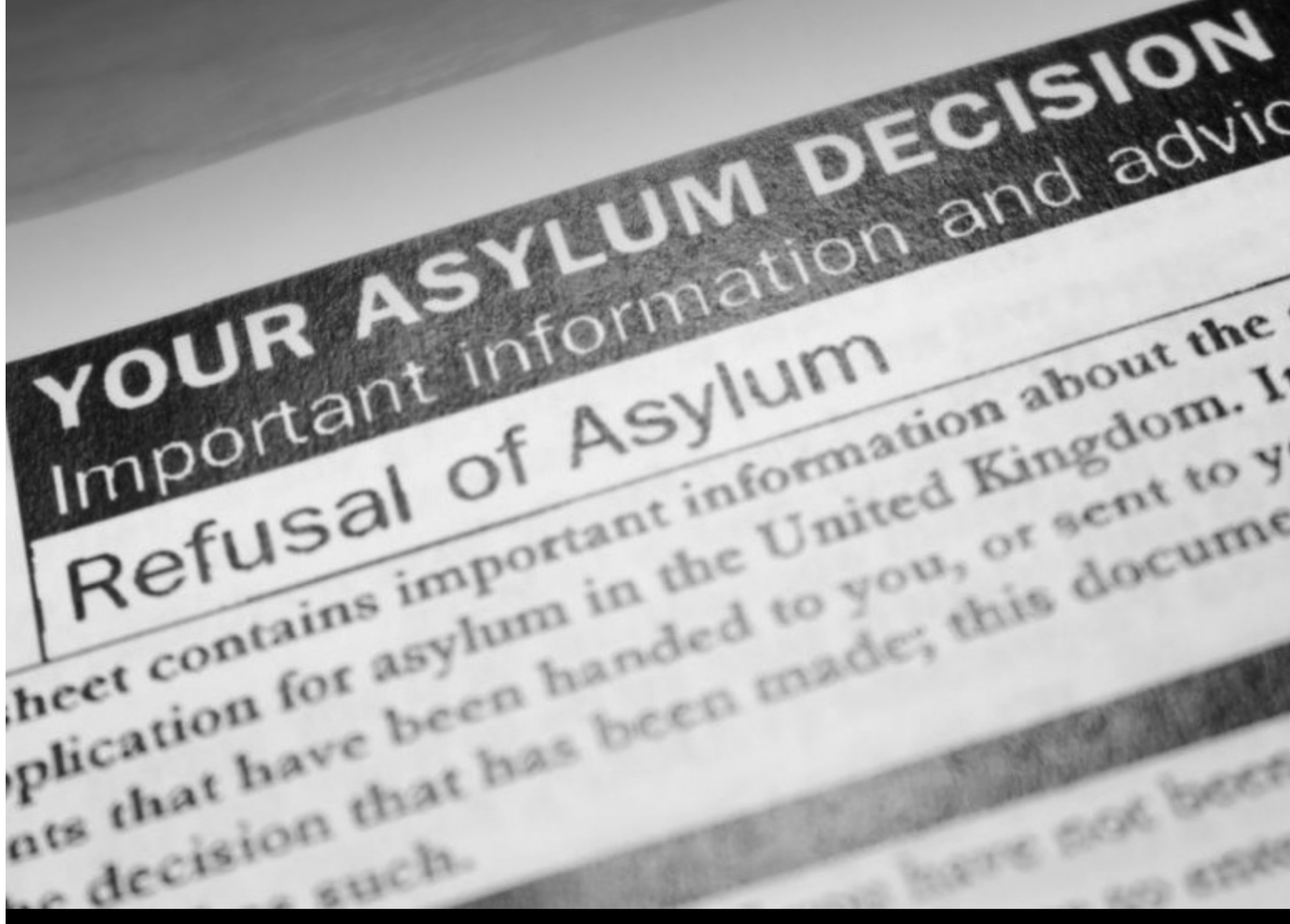
Arash appealed the Home Office decision, and submitted a medico-legal report from Freedom from Torture, which corroborated his torture. Arash was granted protection and is now beginning to rebuild his life in the UK.

"Your failure to provide documents to substantiate [other parts of your claim] is to be considered an inconsistency in your account."

- In 2012, the Refugee Council highlighted that the overturn rate on Home Office decisions on women's claims was consistently higher than on men's claims.[66] This was because doubt was commonly cast on the experiences of women, revealing a lack of understanding of, or sensitivity to, "the nature of violence that women may flee leading case owners to doubt women's credibility".[67]
- Asylum Aid (now Consonant) has further highlighted that women's asylum appeals face evidential issues. Whilst there are specific difficulties in disclosing gender-based violence, there is also a lack of expert assessments and evidence for accounts, which subsequently put "a significant burden on the woman's own testimony, and a focus on her credibility".[68]
- Women for Refugee Women has consistently pointed out (see reports from 2012,[69] 2014[70] and 2017[71]) that women claiming asylum are expected to disclose every aspect of their account on demand, without any mistakes in an often hostile and intimidating environment. They may be subject to aggressive questioning that appears intended to catch them out, or asked to produce evidence that they could not possibly have obtained.
- A Home Affairs Committee report in 2013 noted demands for lesbian and gay claimants to "prove" their sexuality including through being obliged to share highly personal photographic and video evidence of sexual activity.[72] In response to repeated advocacy on the issue, the Home Office no longer asks for sexually explicit evidence from LGBTQI+ people. Decisions are, however, "Still Falling Short", to quote the title of a 2018 report by the UK Lesbian and Gay Immigration Group. There is a failure to appreciate that there is no objective way of proving one's sexual orientation or gender identity, the variety of LGBTQI+ people's lives, experiences and identities, and the challenges that LGBTQI+ people fleeing persecution face in talking about such an intimate or personal aspect of their lives. For example, the Home Office has refused to grant asylum to LGBTQI+ people because they have found their stories do not fit a stereotypical and chronologically linear narrative constructed around emotions.[73]

> **"Interviews often reflected unreasonable expectations of claimants, even in the Western context, vigorously questioning applicants about emotions experienced at a very early age, a considerable period of time having passed since. A man in his mid-thirties was asked in depth about 'feelings' experienced when he was 15. A woman in her early fifties was questioned about what she felt as a teenager. One applicant was repeatedly asked to explain his emotions when first having a sexual experience age 13, while another was questioned in relation to his schoolboy friendship having grown into a sexual encounter age 12-13. The Home Office often made conclusions such as 'it is considered that your inability to provide information about emotional development of your sexuality is inconsistent with your claim'".**
>
> UK Lesbian and Gay Immigration Group, *Still Falling Short*, 2018.[74]

- Those who have fled to the UK because of repression because of their religion have repeatedly been disbelieved about their own faith. The All Party Parliamentary Group on Freedom of Religion or Belief criticized in 2016 the use of "Bible trivia" questions stating that they "are a very poor way of assessing a conversion asylum claim and result in wrong decisions and expensive appeals".[75] The case was reported in 2019 of an Iranian national who was told that passages in the biblical Book of Revelation ("filled with imagery of revenge, destruction, death and violence") were "inconsistent" with his claim to have converted to Christianity after discovering it to be a "peaceful" faith.[76] This was, in the words of the Jesuit Refugee Service UK's Director, a "particularly outrageous example of the reckless and facetious approach of the Home Office to determining life and death asylum cases".[77]
- On children's asylum claims, a report from the Refugee Council on trafficked children (2013) argued that the tendency toward suspicion may have the effect of silencing the child, especially if some aspect of their claim is being challenged.[78] More recently, the Refugee Council has continued to see the Home Office failing their child clients as exemplified in the following case study.



CASE EXAMPLE NAZIR REFUGEE COUNCIL CLIENT

As he was not able to provide details of the job title, the department or the length of service in this job, Nazir's claim was not believed.

Nazir arrived in the country aged 15, having left Afghanistan two months previously.

He relayed his experiences to the Home Office in a written statement and substantive interview. They included being persecuted on the basis of imputed political opinion and being abducted by the Taliban.

His refusal letter received in 2018 includes the following.

Nazir claimed his father worked for the government and named the district in which he worked. As he was not able to provide details of the job title, the department or the length of service in this job, Nazir's claim was not believed.

Nazir claimed to have been abducted by the Taliban; he repeated what the men said to him as they took him, and described that they had their faces covered and that they were wearing black. This was described as "lacking sufficient detail" to identify the men as Taliban, in the refusal letter.

CASE EXAMPLE AALIA JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS

She was held in detention, where she suffered serious abuse and her freedom of movement was severely restricted.

Aalia claimed asylum in the UK after fleeing domestic violence and enduring a long history of trauma and abuse.

Upon seeking protection from the state in her home country, she was held in detention, where she suffered serious abuse and her freedom of movement was severely restricted. After several months she escaped, but was pursued and harassed by her family and state agents for some years afterwards. Eventually, she fled to the UK to seek protection.

Her lawyer from the Joint Council for the Welfare of Immigrants provided extensive evidence to the Home Office caseworker. This included an expert report outlining her real risk on return to her country of origin.

Also submitted was a significant level of documentary evidence, corroborating the client's whereabouts for several years prior to her arrival in the UK, including police records and medical records.

Despite all of this, the Home Office rejected her claim for asylum. When justifying this decision in their reasons for refusal letter, the Home Office caseworker never made any reference to any of the documentary evidence.

Aalia has lodged an appeal.

CASE EXAMPLE ABDUL JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS

His claim was rejected for not knowing details of his father's Taliban membership

Abdul claimed asylum when he was 13 years old and in social services care in the UK.

He explained that his father was involved with the Taliban who had later killed him and this was when he fled the country.

His claim was refused by the Home Office for not knowing details of his father's Taliban membership, such as his rank, when he joined, who he reported to, and for not knowing where his father went with the Taliban.

It was said in his reasons for refusal letter that:

> **"It is considered to be inconsistent that you claim that your father was associated with the Taliban when you did not like them."**

Abdul is receiving legal advice from the Joint Council for the Welfare of Immigrants.

CASE EXAMPLE ESTHER FREEDOM FROM TORTURE

The Home Office decision-maker dismissed the medical evidence on the basis that the doctor had not personally witnessed the events described.

After surviving torture and persecution at the hands of the Sri Lankan authorities, Esther applied for asylum in the UK.

Esther had sustained scars and injuries from deliberate cigarette burns, human biting, and rape. She is now suffering from severe depression and complex post traumatic stress disorder. A Freedom from Torture doctor found that many of her scars could not have been caused in any other way than described, and noted in her medico legal report that her scars are strongly supportive of her account of torture.

The Home Office accepted that she is a "victim of physical and sexual violence" and has serious "mental health issues". Yet, despite extensive medical evidence of her experiences, including the medico-legal report and letters from Freedom from Torture, her asylum application was rejected. The Home Office decision-maker dismissed the medical evidence on the basis that the doctor had not personally witnessed the events described. The Home Office stated:

> **"It is noted that [the doctor] makes reference to your 'history'…However, [the doctor] did not witness any of these events which she has described and is therefore not a reliable source that these events occurred as you claim but rather that she is simply making a judgement based of the version of events that you have informed her of".**

It was concluded that the medical report was not

> **"sufficient evidence that those events have occurred as…claimed".**

The Home Office refused to accept that the medical reports confirmed the appellant's experiences of torture by state authorities and rejected the suggestion that she was at risk of persecution from the Sri Lankan authorities.

When Esther read the asylum decision she was so distraught about being disbelieved again that she attempted to harm herself and was admitted to hospital.

At the appeal hearing the Home Office made a different argument – that it was possible her torturer had since left Sri Lanka.

However, on appeal, the judge bluntly stated "I do not agree" with the Home Office's conclusions. He took the unusual step of providing his decision on the day of the hearing as he said the result was "obvious".

Assessing the evidence holistically and using an expert report, the judge found that "on the lower standard, the appellant was a victim of torture at the hands of the Sri Lankan authorities or their agents". He further concluded:

> **"Given the appellant's credible account of her past persecution she will be perceived by the Sri Lankan authorities as being a threat to the integrity of Sri Lanka".**

After years of a long drawn out asylum claim and the trauma of being disbelieved, Esther was finally granted refugee status.

HIGH EVIDENTIARY BURDEN IN THE ASYLUM SUPPORT PROCESS

The asylum support system is an example of how high evidentiary burdens are applied throughout the asylum process, and not simply as part of asylum decision-making itself.

People seeking asylum in the UK generally do not have the right to work while they are waiting for a decision on their asylum claim, and those who do not have an independent source of income are entirely dependent upon state support in order to survive. People seeking asylum are not eligible for mainstream welfare benefits, and the 1999 Immigration Act sets out the basis for a parallel system for providing people seeking asylum with support. This is enshrined in section 95 of the Act, which enables the provision of support to people seeking asylum or their dependants, and section 4 which allows for the provision of support to people who have been refused asylum as long as they can show that they are making all possible efforts either to return to their home country or to regularise their status in the UK, or they are unable to travel home due to medical reasons.

The legislation states that section 95 support should be given to people "who appear to the Secretary of State to be destitute or to be likely to become destitute" within 14 days. The purpose of this legislation is to avoid destitution. It is important that unnecessary or prohibitive evidentiary demands do not prevent or delay the provision of support.[79]

Research has found time and again that the evidentiary burden put on support applicants is too high, and that this unnecessarily delays support applications. The results can be disastrous for those people applying for support. Applications may be delayed for weeks and even months while people try to find the evidence that the Home Office has asked for, and during that time people may be left in extremely precarious situations, without a safe place to sleep or sometimes forced into street homelessness.

In 2017, Refugee Action looked at over 300 applications from people applying for section 95 support and found there to be a poor – and overly burdensome – application of the Home Office test for destitution in deciding support applications.[80] In 2019, the Destitute Asylum Seeker Service partnered with the British Red Cross, Scottish Refugee Council and Glasgow Night Shelter to gather data on the extent to which people refused asylum exercise their rights to access support. They found "[t]hose applying for support often experience delays in decision making, because of the high and complex destitution evidence thresholds set by the Home Office".[81] Recent research by Refugee Action and the No Accommodation Network shows the Requests for Further Information that the Home Office uses to obtain additional evidence from support applicants are often unnecessary to determine whether the applicant is destitute.[82]

REFUSAL CULTURE

Home Office culture allows poor credibility assessments and the failure to apply the correct standard of proof to persist.

A quarter of the reports described a Home Office "culture of disbelief" or "culture of refusal" – a default position that people are not telling the truth.

> **"Many Refusal letters … are illogical in content. Yet for those to whom they are addressed, the effect of their dismissive tone can be devastating. It is implied, or sometimes explicitly stated in Refusal letters, that the applicant is 'bolstering' or 'fabricating' their asylum claim to obtain refugee status. There is no sign anywhere of the presumption of 'benefit of the doubt', a principle which governs the guidance given in the UNHCR Handbook to which Home Office caseworkers are encouraged to refer by their own Asylum Policy Instructions".**
>
> Amnesty International – *Get it Right*, 2004.[83]

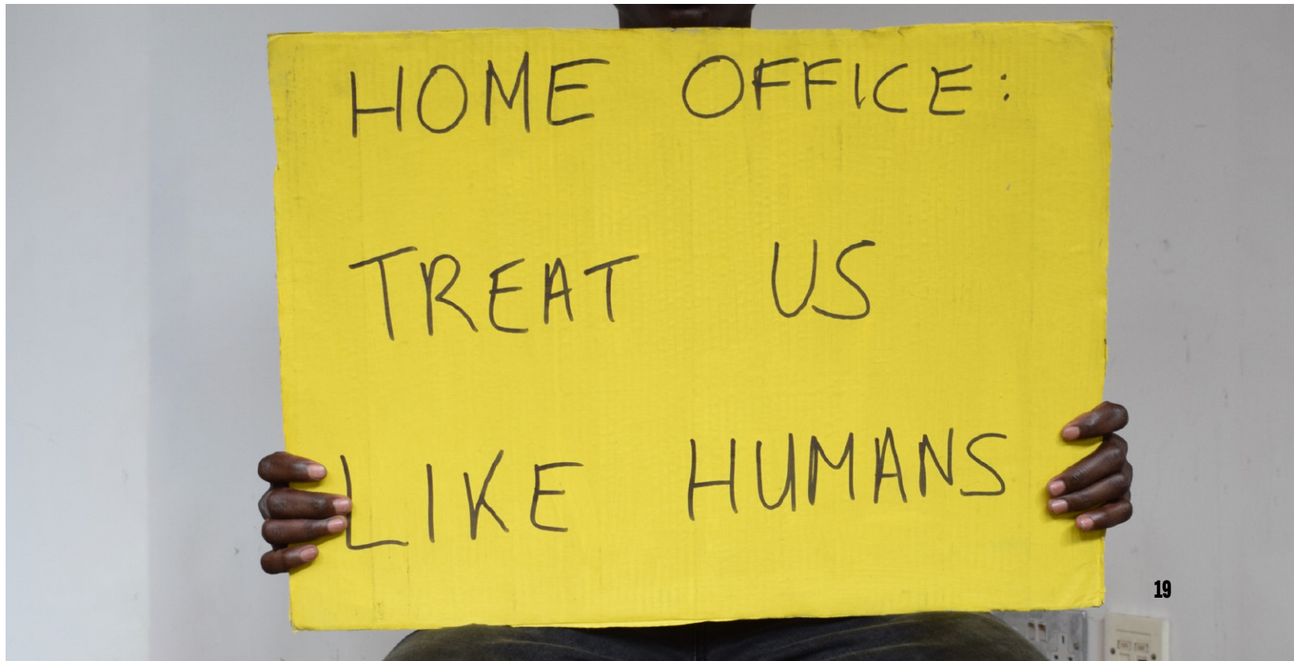
A number of organisations highlighted the introduction of Section 8 of the Asylum and Immigration Act 2004, which was intended to guide the assessment of an applicant's credibility. In fact, several reports highlight that it was taken to encourage an overly prescriptive approach to when, how and why credibility should be questioned, and has effectively sanctioned a culture of disbelief at the Home Office. Other reports described how caseworkers start from the assumption that the asylum applicant is not telling the truth, with some case file reviews revealing that caseworkers often cast unreasoned and unjustified doubt on the credibility of a claim.

The 2008 *Saving Sanctuary* report from the Independent Asylum Commission outlines ways in which caseworkers discredit asylum applications. It reported that focus on internal inconsistencies, the failure to correctly use country of origin information, and the speculation of the plausibility of an account, all indicate a "refusal mindset".[84]

Assessing credibility is generally part of the function of asylum decision-making. But as the Home Affairs Committee pointed out in 2013, the culture of disbelief impedes justice.[85]

> **"The task of staff examining claims for asylum is to judge fairly, not to make it as difficult as possible for asylum claims to be made. While staff should be rigorous in considering the merits of a case, and reject those which are not meritorious, it is not their role to aim to reject cases, and the culture of disbelief that has raised has no place in fair judgements".**
>
> *Home Affairs Committee: Asylum, Seventh Report of Session 2013-14*, 2013.[86]

Below: Member of Young Outspoken Survivors, Freedom from Torture



In 2018, following the exposure of the Windrush scandal, the Home Affairs Committee noted how this culture permeates the Home Office. The Committee described an environment "in which applicants appear to have been automatically treated with suspicion and scepticism and forced to follow processes that appear designed to set them up to fail".[87]

Indeed, in the draft Windrush Lessons Learned Review, as leaked to Channel 4 News in 2019, Wendy Williams blamed a negative culture in the Home Office, which defends, deflects and dismisses criticisms and seeks to shut down critical stories rather than resolve problems.[88]

> **"Whilst everyone I spoke to was rightly appalled by what had happened, this was often juxtaposed with a self-justification…either in the form of 'it was unforeseen, unforeseeable, and therefore unavoidable' or a failure on the part of individuals to prove their status".**
>
> *Windrush Lessons Learned Review leaked draft, as reported by Channel 4 News, June 2019.*[89]

The Home Office has repeatedly denied the existence of a culture of disbelief. Arguably, that defensiveness and unwillingness to reflect is itself part of the problem. This is exacerbated by a lack of centralised record keeping, robust oversight and scrutiny. A refusal to address culture inside the Home Office – its root causes, the nexus between political discourse, policy and operations, and how it plays out at the frontline – means that the system continues to fail.

> **"Home Office decision-making is error-prone and often arbitrary. …The government has repeatedly tried to reduce scrutiny and corrective mechanisms in the Home Office, rather than dealing with problems".**
>
> Joint Council on Welfare of Immigrants/ Liberty, *Dossier of Failure, 2018.*[90]

Wendy Williams blamed a negative culture in the Home Office, which defends, deflects and dismisses criticisms and seeks to shut down critical stories rather than resolve problems.

THE CASE FOR TRANSFORMATION

***Lessons Not Learned* demonstrates that there is a broadly shared analysis of the core and underlying problems in refugee decision-making: flawed credibility assessments, a misapplication of the standard of proof, along with an environment of disbelief, suspicion and scepticism. This, together with a flawed learning culture, has allowed deep-rooted systemic problems to proliferate.**

There has been a failure to sufficiently engage with recommendations made and often a lack of transparency over their implementation.[91] Some recommendations have been taken on board, especially with a focus on short-term and operational reforms. In practice, however, application remains deeply flawed. If the deep-rooted, core cultural problem is not acknowledged, poor decisions will continue to be made.

To be clear, there have been signs of progress within the Home Office. Policy and guidance relating to assessing credibility has improved over the years. An asylum reform programme has been announced and "transformation" efforts are underway including to improve staff wellbeing and engagement. The Home Office has an opportunity to create a protection-focussed asylum operations vision.

The Home Office has invited civil society to run training sessions with decision makers, including on the treatment of medical evidence of torture in asylum claims, and on LGBTQI+ and women's asylum claims. This is crucial to improve the quality of decision-making.

These initiatives require consistent commitment from the highest levels of government, however. They are vulnerable to political whim.

Any attempts to improve quality must be holistic. For example, the quality and adequacy of legal aid provision is connected to the capacity of a person seeking asylum to present their asylum claim; and to challenge effectively any decision to refuse their claim. There is a link between the quality of decision-making throughout the asylum process and the provision of legal aid. The more effective the provision of legal aid, the more likely it is that a safe and reliable decision can be reached on the claim earlier rather than later in that process. Financial investment and a cross-departmental approach are therefore also critical in engineering change.

IN SUMMARY:

1. The Home Office fails to deliver fairly on its responsibilities towards people seeking protection, including those with particular vulnerabilities. This is a legal and a moral failure.
2. This failure has a human and an economic cost. Those who are living in limbo whilst waiting for a correct decision have to go through unnecessary, lengthy and often traumatic appeal processes. There is a significant financial cost to the government in preparing appeals, and the associated support and accommodation costs.
3. These failings cannot be addressed through ad hoc or purely procedural adjustments. They can and must be delivered by a systemic overhaul – or transformation of the current system.

TRANSFORMATION IN PRACTICE

Home Office interventions to address the problems described need to be cost effective and impactful. They therefore need to start in the right place. In transformation terms, this means starting to work at the fundamental level of purpose and beliefs. The starting place for this is the Home Office's asylum operations vision. A culture of protection must be the guiding principle that is embedded into the working practices and discourse of political leaders and frontline decision-makers.

With this in mind, a review of policies and processes (developed with the objective of creating a framework for empowered, professional judgement from skilled and high quality staff) will be required, followed by constant review and vigilance of leaders who are committed to addressing the failings outlined above.

This leadership review and vigilance should focus on ensuring the operations of the Home Office are within the purpose, beliefs and framework above should not be driven by a reduced focus on short term issues, such as responding to inaccurate media stories or misleading metrics.[92]

The aim should be to create a "golden thread" of purpose and beliefs that run through all aspects of Home Office operations. This includes staff recruitment, induction and training, policy formulation and implementation, process development, staff and organisation performance management and development, technology support, audit and governance, and monitoring and evaluation.

This will require engagement with staff at all levels and involving them in problem solving and design of the future. The mindset needs to be one of engagement with professionals – who are capable and motivated to make sound judgements within an ethical framework and a clear articulation of the purpose and beliefs that underpin their work.

It will also require the development of new channels for building better insight into the backgrounds, experiences and needs of people who apply for asylum in this country. This will assist in developing effective system reforms and improving people's experiences at a basic human level required to restore their trust in the system.System-wide organisational change at the Home Office will only be successful and sustainable if political leaders are committed to reform and support Home Office leaders to deliver it.

A culture of protection must be the guiding principle that is embedded into the working practices and discourse of leaders and frontline decision-makers.

CONCLUSION

As the evidence in this report makes clear, the system is currently failing. It continues to have devastating consequences on the lives of people who need protection and those seeking to settle in the UK.

The government must urgently hit the re-set button on how Home Office decisions are made, in order to ensure the mistakes that led to the suffering of the Windrush generation are not repeated.

Improving decision-making can help to restore faith in the Home Office, reduce the number and costs of appeals and associated legal aid and support costs, and empower those recognised as refugees to move on with their lives, and integrate and contribute to society.

At the time of writing, the question of how (or whether) to leave the European Union has divided the country. Whichever way Britain turns on its Brexit choices, one thing is clear: an immigration and asylum system which is both inhumane and inefficient reflects badly on the UK itself, however it chooses to define its future regional and global role.

The number of wrong decisions is inefficient, costly, and inhumane. It is essential to increase the proportion of decisions that are right first time round. Until now, the political will to find appropriate solutions has been lacking. That can and must change.

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That can and must change.

RECOMMENDATIONS FOR CHANGE

Over the past 15 years recommendations have been repeatedly made by parliamentary committees, the United Nations, non-governmental organisations, academics, and independent inspectorates.

The majority of these have focused on operational and quality control measures. These efforts must continue. However, without a systemic overhaul, poor decisions will continue to be made.

As a matter of urgency, the government must recognise that an overhaul of the asylum and immigration system is required. This must include a commitment to an asylum system that has a culture of protection at the core, both internally and externally in political discourse.

Politicians and senior civil servants must promote the operation of a humane immigration system as a national strength. At a minimum this should include:

- Ministerial leadership and hands-on support for initiatives to support Home Office staff to understand and focus more on the individual at the heart of the process, including any vulnerabilities that have arisen from their experiences. This should include active engagement with service users and learning and development opportunities to learn from people who have direct experience of the asylum and immigration system;
- Shifting the culture to take pride in the important work of determining refugee status;
- Promote a genuine learning culture that actively seeks to listen and respond to views and evidence of system failures. This should be supported by improved oversight and scrutiny;
- Ministerial initiatives to reinforce a protection focussed asylum operations vision and to ensure that this is embedded in other Home Office departments;
- Developing immigration policies and narratives that are both humane and evidence-based;
- Replacing arbitrary immigration and removal targets with an evidence-based framework.

The government must ensure that dignity is preserved and that people are safeguarded throughout the immigration and asylum process. This should include a recognition of the potential harm done by policies and a commitment to adequate care and treatment.

Ensure that the Home Office asylum system reform project:

- has a robust strategy that enables it to meet a protection focussed asylum operations vision. This should have clear aims against which performance can be measured, consistently reviewed and improved;
- is informed by insight into the experiences, situations and needs of the people who have been through the system and include opportunities for people with this lived experience to help shape reforms and drive cultural awareness efforts;
- includes concrete steps to improve credibility assessments and the correct application of the standard of proof;
- embeds learning from the UN refugee agency's upcoming audit and training on standard of proof;
- is governed by a holistic framework that incorporates all relevant departments and ensures that they are aligned and resourced in meeting the vision;
- has a clear and public framework of what success looks like and a commitment to publicly reporting on progress in order to ensure transparency and accountability.

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90 Joint Council for the Welfare of Immigrants, *Windrush Dossier of Failure.* [online]. 2018. [accessed 15 July 2019]. Available from: https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=4dcc586b-926b-4142-8628-adc85b92f602.

91 United Nations High Commissioner for Refugees, July 2017, *Evaluation of the UNHCR Quality Integration Project In the United Kingdom.* [online] [accessed 23 July 2019] Available from: https://www.unhcr.org/5bd1be504 The United Nations High Commissioner for Refugees reported in its 2017 review of the Quality Initiative Project reports that "From 2004-2012, 32 recommendations were made to the Home Office. While it appears that the Home Office values the recommendations made by the Quality Initiative Project, it has not accepted all of them nor has it fully implemented all the recommendations that have been accepted. Seventeen recommendations made before 2013 (some dating back to 2007/2008) that were accepted wholly or in part were still being implemented during the 2013 – 2015 grant period … it remained a source of frustration for some UNHCR respondents that not all accepted recommendations were implemented", pages 19-20.

92 Hussein, Z. United Nations Human Rights Office of the High Commissioner. *UN Human Rights Chief urges U.K. to tackle tabloid hate speech, after migrants called "cockroaches".* [online]. 2015. [accessed 15 July 2019]. Available from: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885 Zeid Ra'ad Al Hussein described a "vicious cycle of vilification, intolerance and politicization" in sections of the UK media, with migrants described as "cockroaches" and other similar language. Since then, however, too little has changed.

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"The number of wrong decisions is inefficient costly, and inhumane. It is essential to increase the proportion of decisions that are right first time round. Until now, the political will to find appropriate solutions has been lacking.

That can and must change."

Freedom from Torture
111 Isledon Road
Islington
London N7 7JW
020 7697 7777

www.freedomfromtorture.org

Registered charity number: England 1000340, Scotland SC039632

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