



Families Together

A programme managed by the British Red Cross

Cuts that Cost

The Impact of Legal Aid Cuts
on Refugee Family Reunion

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Contents

Executive Summary and Recommendation		Conclusion	54
Executive Summary	7	Latest Developments: Where Are We Now?	
Recommendation	8	The Ministry's Review of the Cuts to Legal Aid and Refugee Family Reunion Today	58
Methodology	11	The Post-Implementation Review of LASPO and Refugee Family Reunion	58
Legal Aid and Refugee Family Reunion		Since the Post-Implementation Review of LASPO	59
The Background to LASPO	15	Where to Now for Refugee Family Reunion and Legal Aid?	64
The Complexity of Refugee Family Reunion Applications	16	Recommendations	66
The Limited Alternatives to Legal Aid	22	References	69
The Human Cost of Removing Legal Aid for Refugee Family Reunion		Bibliography	78
The Importance of Refugee Family Reunion	28		
The Impact on Sponsors	31		
The Impact on Applicants	36		
The Impact on Women	40		
The Impact on Children	43		
Other Arguments for Reinstating Legal Aid for Refugee Family Reunion			
The Ongoing Challenge of ECF	46		
The Financial Implications of LASPO	48		
The Human Rights Implications of LASPO	49		

Author's note

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The original purpose of this report was to inform the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 by the Ministry of Justice. It is being published more widely only after that review, with the aim of giving voice to refugee families and contributing to the ongoing public discussion on legal aid for refugee family reunion. It now answers the call by the House of Commons Justice Select Committee on the future of legal aid, by assessing the impact of events since the post-implementation review of LASPO. The Latest Developments section at the end of this report examines what that review did to address the considerable challenges faced by refugee families and what, if any, action has been taken by the Ministry of Justice or other government agencies to help refugee families since then. This section also offers a brief overview of the impact of COVID 19 on refugees families.

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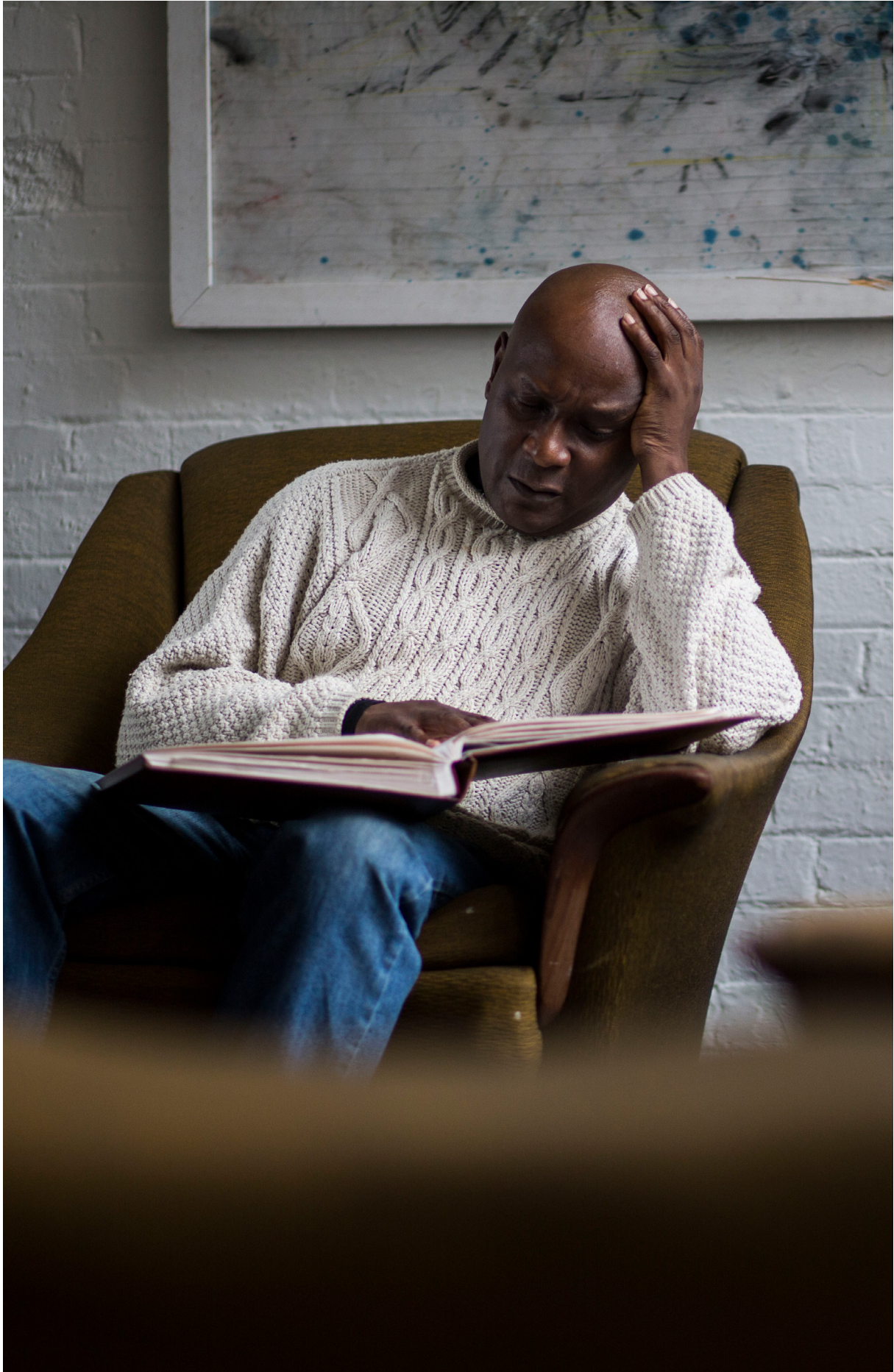
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Final responsibility for this report lies with the author and its content does not necessarily always reflect the position of the British Red Cross, the Families Together Programme or its partners.

Dr Sasha Holden

**Associate Professor and Teaching Fellow, Institute of Law, Jersey
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“I forgot myself. I did whatever I did to help them survive. I am now in this country for about 6 years. In all this time, I have not had my own place to live, I have not settled. I have just been a parasite living with other people so that I could do whatever I could for my family. It is only since my family has joined me [two months ago] that I have felt any happiness, that I have felt hope. I’m very happy now.”

Aamiina, Sudan

“I felt like a ghost... I had no value in life, I felt worthless. I had nothing, all I wanted was to get my family back. Now that my family is here, I feel like things can go on.”

Munir, Sudan

“The process [of applying for family reunion] is ... the most awful experience I have ever had in my life. It is a bad process, there is not enough information, it is not clear, it is so hard to keep going around and around not knowing what to do and finding you have made mistakes which makes it take longer and longer [to be reunited with your family].”

Aamira, Sudan

“Legal aid is crucial to family reunion. I know many people that have not even tried to reunite with their families because they don’t have support. If they don’t have their families, they have no hope and no reason to integrate.”

Solomon, Eritrea



Executive Summary and Recommendation

This report examines the impact of cuts to legal aid on refugees in the context of refugee family reunion following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

It offers an analysis of the impact of the cuts on refugees seeking family reunion, who were interviewed in different locations across England. Participants spoke about the trauma they had experienced as result of their refugee experience and the heavy burden on them and their families of ongoing family separation. They explained their struggle in navigating refugee family reunion applications without early, qualified assistance. Many reported experiencing financial deprivation as well as mental and physical ill-health arising from the family reunion process. While the families interviewed for this report all showed considerable bravery and resilience in the face of extraordinary challenges, as their stories show, barriers to family reunion, including the removal of legal aid, exacerbate their suffering.

The report also offers a brief discussion of policy considerations which bear some relevance to LASPO, including the complexity of applying for family reunion, limits on other sources of funding, the wider financial implications of LASPO, and the human rights implications of removing publicly funded assistance for refugee family reunion applications.

When the Ministry of Justice published its post-implementation review of LASPO in February 2019, it was disappointing to see that it failed to capture the considerable

challenges faced by refugee families, despite significant evidence to this effect provided by a range of organisations, including an earlier draft of this report.² This is a missed opportunity.³

This report has now been updated and is being published more widely to reply to the post-implementation review and to respond to the call for evidence by the House of Commons Justice Select Committee on the future of legal aid. The 'Latest Developments' section at the end of the report summarises what the review said about funding for refugee family reunion and what has been done since to support refugees and their families. It also examines what else has happened in the wider legal and policy landscape since then that might have some relevance to bringing refugee family reunion back into scope for legal aid.

By doing so, it is hoped this report will contribute to the ongoing public discussion about the challenges faced by refugee families.⁴ As it aims to show, applying for refugee family reunion is not simply filling in a form, or just telling a story. It is usually a complicated process, involving traumatised and vulnerable people, and specialist advice is often essential.

Family reunion is a legal right, and to secure and vindicate that right, refugee families must gather and present evidence against a complex background of conflict, fear and flight. This is quintessentially the job of a legal adviser.

Although there have been some positive developments since the post-implementation review, getting specialist help for refugee family reunion is still challenging and it can also still be costly. It is rare for refugees to be able to face this additional challenge or meet additional costs without experiencing ever more hardship. This can have a significant impact on both the physical and mental health of those affected.

Other sources of legal help like pro-bono legal services and qualified legal advice offered by civil society groups are limited and unable to meet refugees' needs. Exceptional Case Funding (ECF), the 'safety net' offered by the Government to ensure funding exists for complex cases involving human rights, is also limited in scope and function. Despite some recent improvements, ECF still fails to provide an adequate funding backstop for some of the poorest members of society, including refugees.

The impact of not having early legal assistance to pursue a family reunion application can be devastating for refugees. Without legal aid, and given the limited support available from a decreasing number of under-funded charities, family reunion sponsors in the UK are often forced to manage applications alone, or go to extreme measures to pay for the advice they need, including going without basic necessities.

By inhibiting access to support for refugee family reunion, the cuts under LASPO also risk prolonging family separation and increasing the harm faced by separated family members outside the UK. Applicants frequently endure precarious living conditions in unsafe and hostile environments. Without an assisted, legal route to reunion with

their families, they are exposed to harm in refugee settings for longer periods. Barriers to reunion, like the withdrawal of legal aid, also increase the risk of harm faced by women and children in refugee settings, who are often those applying to re-join their husbands and fathers in the UK, and who are exposed to gender-based violence and protection issues.

Without legal aid, meaningful access to justice can no longer be guaranteed for refugees because families are hampered in accessing early legal help and securing their entitlement to be reunited. Where legal aid is not provided for families to get specialist help, the human rights of some of the most vulnerable members of society – people who, by definition, have already experienced or fled serious harm – are not assured.

Conversely, the benefits of family reunion are broad and deep, and promoting the reunion of families can have a positive and lasting impact on individuals and the communities they inhabit. Bringing separated refugee families back together helps vulnerable newcomers to feel safe and integrate by ensuring the availability of family networks for emotional, financial and other forms of support, which can reduce the need for families to rely on alternative forms of public sector support, including health and welfare services.

People who are recognised as refugees have the legal right to remain in the UK and rebuild their family lives here. Legal support is vital to the recognition of that right. Given what is at stake, it is both the right thing to do and essential for those concerned to reinstate funded legal help.

Recommendation

This report recommends that refugee family reunion is brought back into scope for legal aid in recognition of the significant human cost of cuts to legal aid for refugee families. Doing so would also acknowledge the true complexity of refugee family reunion, the lack of alternative funding available and the value of early legal advice for an application so firmly rooted in an original claim for asylum.





Methodology

This report draws on a range of publicly available material, including legislation, case law, reports, briefings and other open source materials on family separation, family reunion and publicly funded legal support. It also relies on qualitative research carried out with refugee families and key staff from charities who support them. Primary data was gathered in January 2018 through semi-structured interviews. Criterion-based purposive sampling was used to select relevant research respondents. The purpose of adopting this sampling framework was to identify specific individuals who have experience of the family reunion process. Because this research does not seek primarily to establish trends in relation to legal aid provision and family reunion, but rather to understand the lived experiences of refugees going through the family reunion process, it was considered important to select relevant, willing and resilient participants.

Interviews with refugee participants were carried out with the assistance of five non-statutory organisations across England.⁵ These organisations supported this research by identifying, contacting and connecting us with refugees who are or had been supported by them with their family reunion applications. Sixteen refugee participants were interviewed. Fifteen interviews were conducted in person at six locations across England (the local offices of supporting organisations) and with the participating refugees' assigned caseworkers present.⁶ One person was interviewed over the telephone. An interpreter was required for five of the sixteen interviews and each meeting generally lasted up to one hour. Written or oral consent was obtained from all of those participating in the study and permission to digitally record was also sought and granted for all interviews. Notes were also taken. Participant names have been pseudonymised to protect the

privacy of those involved. Information from all of the sixteen interviews has been used in this report in the form of case studies, quotes, or to inform the main narrative.

Six members of staff from six organisations working with vulnerable refugee families seeking reunion across the UK were also interviewed. They were asked about their roles – offering advice and other support, to gain insight into the wider operational context – based on their daily experiences of providing assistance to refugees. This group included the five support organisations who facilitated contact with refugee participants and a not-for-profit law centre.⁷ All of these interviews took place over the telephone.

The data set is limited and the primary purpose of this report is not to present a quantitative analysis of the refugee family reunion experience. However, a basic analysis of the interview data was carried out, to see if any themes or trends were discernible and this report does discuss commonly occurring complexities experienced by the refugees we interviewed.



CASE STUDY 1: Aamira, Sudan

Aamira left her four young children with their grandmother in Sudan in 2013, because she had been tortured and felt unsafe in the ongoing conflict.

Aamira travelled to the UK, assuming her children would be able to follow. Her own asylum claim was processed quickly. It took more than three months before she found out from friends that she had to make a formal application for family reunion although she had included all the names, ages and other details of her children in her asylum claim.

Aamira initially made a refugee family reunion claim without legal assistance. She did not have the funds to pay for legal advice. She did not understand the complexities of the immigration regulations, and the legal process or the evidence required but she was desperate to be reunited with her children so that she could protect them from danger in her home country. Aamira's first application to be reunited with her children was denied. She was told her link to her children had not been proven sufficiently with the evidence she had provided. Aamira said that her children, as the applicants, had received a rejection letter which indicated uncertainty over whether Aamira was their mother. Aamira and her children were devastated by this and it had a huge, negative impact on the mental wellbeing of the whole family.

Aamira's mother was also undergoing cancer treatment during this time. "I kept thinking all the time that if [their grandmother] died they would have no one in Sudan to look after them.

They already had to look after themselves a lot, but then there would be no one else. There was nothing I could do to protect them." Her children were reliant on the small remittances she was able to send home and the limited support of Aamira's struggling mother. The children went without education and many other necessities during the separation. It then took more than six months for Aamira to save and borrow enough money for DNA testing. During this time, she felt she almost lost her children for good. However, after finding help at the North-East Law Centre, she submitted an appeal with the DNA results and was able to reunite with her children.

More than two years had passed since her initial family reunion application. Looking back, Aamira is frustrated and sad that she didn't have access to more help and better advice at the beginning of this process. Aamira thinks that she would have been able to submit a stronger application and could have been reunited with her children far more quickly if she had had help earlier. She feels her children would have been safer and adjusted better to life in the UK without such a long separation. Even though Aamira's children are now settled in the UK, the trauma they experienced because of their long separation continues to have an effect. If Aamira has to leave her children for any period at all, even for a day-to-day matter, they still find it difficult to trust that she will return when she says she will. They have ongoing mental health problems as a result of their delayed family reunion and their traumatic separation from their mother and it is still very difficult for the entire family.

Legal Aid and Refugee Family Reunion

Key Findings

- 1.** The removal of legal aid for refugee family reunion was done without an in-depth consideration of the impact on refugee family reunion applications.
- 2.** Applying for refugee family reunion can be complex and is rarely straightforward. It can be very difficult for refugees to make family reunion applications without specialist, legal help.
- 3.** It is very difficult for refugees to afford specialist help themselves. Since LASPO was introduced, many refugees have been forced to endure hardship to pay for legal advice, get onerous loans, or navigate the complex system of refugee family reunion on their own.
- 4.** Alternatively, refugees are forced to try to find charities and pro-bono lawyers to give them free support. Neither is able to fill the void left by the removal of legal aid for refugee family reunion.



The Background to LASPO

The first legal aid scheme was set up in England and Wales in 1949 as part of the new welfare state, primarily for the provision of publicly funded legal assistance in criminal and matrimonial cases. In the 1970s, the scope of legal aid was expanded to cover a much wider range of legal proceedings. During the late 1980s and early 1990s, growing concerns about the cost of publicly funded legal support led to the Access to Justice Act in 1999, which was introduced to regulate the way that support was administered. More recently, LASPO introduced deep cuts to legal aid across a wide range of civil legal matters, including refugee family reunion.

Before LASPO, refugees and those with humanitarian protection had been entitled to publicly funded legal support for help with family reunion applications. This funded crucial steps in the reunion process by providing for a legally qualified expert to take instructions, assess the need for evidence and provide necessary advice to refugees seeking to reunite with their families. It also provided financial support for translations, DNA reports and other supporting information.⁸ Additionally, legal aid paid for affidavits and witness statements so often needed to deal with complex issues arising out of family reunion applications.

In coming to a view about which matters ought to be excluded from legal aid following LASPO, the Government confirmed that it took a number of key factors into account, including the importance of the issue, a person's ability to present their own case (including their likely vulnerability and the complexity of the law), the availability of alternative sources of funding, the availability of alternative routes to resolving the issue and the state's legal obligations.⁹

After LASPO, cuts to publicly funded legal advice narrowed both the scope and financial eligibility criteria for legal aid in a range of

areas, including family law, welfare benefits law, employment law and immigration. LASPO removed legal aid for refugee family reunion.

The Ministry of Justice explained the decision was taken to remove refugee family reunion from scope for legal aid because it was viewed as a 'straightforward' immigration matter.¹⁰ Although legal aid continued for asylum cases, the Government considered the grant of asylum had generally been dealt with by the time refugee family reunion was contemplated and, in any event, separated family members could apply for asylum themselves with the benefit of legal aid support should they choose to.¹¹

This conclusion was reached without any in-depth consideration of either the refugee family reunion experience or the impact of removing legal aid for refugee family reunion applications.

As the then Minister of Justice confirmed: "... [we] had to take very urgent action... in an ideal world it would have been perfect to have a two-year research programme talking to all the stakeholders and then come to a decision. Sadly, the economic situation that the Government inherited did not allow that luxury."¹²

Since LASPO's implementation, vulnerable refugees living in England and Wales no longer have access to publicly funded legal support as a matter of course when applying to be reunited with their separated family members.¹³ Because most refugees already struggle to meet their basic day-to-day needs, many endure extreme hardship to pay for legal help. Others try to navigate the complex refugee family reunion application on their own or seek alternative, limited opportunities for help from charities and pro bono lawyers. The trouble with each of these options is that they are neither simple, nor always available.

The Complexity of Refugee Family Reunion Applications

The Government's reform of civil legal aid considered whether different legal issues were routinely so complex that they would prevent anyone from representing themselves effectively.¹⁴ The justification for removing legal aid for refugee family reunion under LASPO centred largely as a result on the suggestion that family reunion is a simple immigration matter; a 'straightforward' extension of the immigration process.¹⁵ The Government took the view that refugee applicants – like ordinary applicants in immigration matters who are seeking to reunite with their families – would be able to process their claims and apply their circumstances to the Immigration Rules without difficulty. The assumption was made that refugees would simply be able to fill in detailed forms online and use the guidance provided to do so without recourse to publicly funded legal support.¹⁶

The idea of refugee family reunion as 'straightforward' does not reflect the reality for many displaced families. While refugees can access online forms and guidance, unlike the ordinary application process for family visas, refugee family reunion is still difficult to navigate.¹⁷

This is largely because sponsors are, by definition, refugees and they and their families will lack the requisite skill to process an application for family reunion on their own. Many new refugees will not be fluent in English and language barriers may make it hard for them to understand what their family reunion entitlements are, let alone complete an application for family reunion or Exceptional Case Funding (ECF), understand the associated guidance and gather evidence on their own. Even where

limited forms are available in an applicant's own language, complicated legal definitions can be difficult for lay applicants to understand. Interpretation services are open to inaccuracies, which can also result in further costs to resolve mistakes.¹⁸

"Just thinking about all the documents that are required to make the application made me feel ill. There was so much, so much evidence required. The whole application process was complicated."

Maria, Sierra Leone

The context that lies behind every application for refugee family reunion informs each one of these practical difficulties and has a direct impact on the ability of refugees to apply for family reunion on their own. Against a backdrop of trauma and flight, refugees and their families often need to rely heavily on assistance.¹⁹ By definition, they have been forced to leave their homes, in fear and often in haste. They may not have the detailed supporting evidence required to make an application because it has been left behind, it is lost or damaged in flight, or it is unavailable (for example, in a conflict zone).²⁰ Where documents are missing or destroyed and where evidence required by the Government to support an application is not available, difficulties naturally arise and overcoming these difficulties can be challenging.²¹ It may not be possible to approach local agencies without fear of persecution, so that even an apparently simple request for information becomes difficult. Other evidence may simply be lost and unrecoverable. Where these things happen, legal documents, such as witness statements and statutory declarations, help to make up for missing evidence.

Some family reunion applications will also be inherently problematic because of the nature of the family relationships concerned and because of the logistical challenges for refugees in communicating with each other and government agencies. These complexities can be more common in war-torn locations. For example, where adoption is informal (which is more common among families who are fleeing conflict), where proof of family relationships is otherwise missing, or where there is a discrepancy during an earlier interview or in supporting documents, families will need to rely on additional forms of evidence prepared by legal advisers to prove the nature of their relationship.²² In such situations, expert legal help makes a significant difference.

The pattern of complexity associated with the refugee family reunion process was evident in the stories of the refugees we spoke to, who experienced common challenges making an application anchored firmly in the refugee context. Every participant spoke of the challenge of the forms and understanding the application process itself. There were other commonly observed complexities too, which included: difficulty producing documentation because of the nature of flight, or documentation in the wrong form; the requirement for extra evidence to prove family relationships; language barriers and a need to source and pay for interpretation and/or translation; difficulty with embassy access and safety concerns for applicants outside the UK because of the refugee context; the need to process an application for extended family members or children close to the age of 18; a need to re-apply for reunion or to make an appeal following an earlier decision. While it is accepted that the sample for this study was self-selecting and small, each family found the process extremely challenging and experienced multiple complexities which arose directly out of the refugee context leading to their family reunion application.

“[Legal assistance] is so important. If I tried to make [an application] by myself, I can’t do it. For instance, I can’t understand anything. I need somebody to help me. I need an interpreter. [For] everything I need to use a dictionary. I don’t have money to pay for this. I don’t have any idea what I need to submit. I need legal advice.”

Dalir, Syria

“Families definitely need legal aid to file an application. It is not possible with the language barrier, with little education, with not knowing the system to file a family reunion [application] on your own. Legal help is crucial for people like me to be reunited with their families”

Roshan, Iran

The need for a working familiarity with Home Office policy and guidelines adds further complexity to the family reunion process. The Home Office places a high premium on the provision of the right evidence to support an application and there has historically been strong likelihood that applications will be refused where errors occur.²³ This is relevant to refugees having to make applications without support because they are more likely to leave their homes in urgency and in highly stressful situations. They are less likely to be able to bring documents with

them and any documents they do have may not be in the right format or from the right authority.²⁴ Refugees will not generally know about the Home Office requirements for original documents to be supplied before they apply. Where applications are refused because inadequate evidence is used, this forces families to start the process again or to lodge an appeal. This adds significantly to the length of time that refugee families spend apart and underlines the need for specialist legal help from the outset.

CASE STUDY 2: Didier, Cameroon

Didier was asked to compile many documents in connection with his application for refugee family reunion.

These included his marriage certificate, telephone records and other documents, which were relatively easy to gather because there had been regular contact with his family during the relevant period of separation. However, things became much more difficult for Didier when the Home Office disputed the documentation he had provided, questioning its validity and also challenging the biological data for his children. Didier eventually used receipts from the money that he sent to his family to support them in his absence, and DNA testing, to prove that the children were his.

Didier felt that not having legal advice was important to the problems he experienced and caused delays to his application, making things much harder for him and his family. He had not been aware that DNA testing was important and it was only when he managed to scrape together funds to pay a solicitor by doing without basic necessities that he was able to get the advice he needed, and get the tests done to produce the information the Home Office required.

The necessity to appeal the Home Office's original decision and the delays which resulted prolonged Didier's separation from his family and made the entire process much more difficult, traumatic and expensive for him. He spent three years separated from his family and endured very difficult day-to-day conditions during that time.

The Public Accounts Committee has addressed the significant challenges faced by refugees in applying for family reunion without legal aid and described the Government's overall approach to implementing legal aid cuts as "deeply disturbing".²⁵ Other bodies have also expressed concern, with one describing it as "perverse" to exclude matters so closely associated with asylum such as refugee family reunion from the provision of legal aid.²⁶

"Many people don't have the documents they need to prove the relationship – whether it's birth certificates or marriage certificates. Unless they know how to document the relationship or obtain documents to prove the relationship and explain any gaps, their applications will be refused – that is what legal advice is for, to explain the complexities. Without support those families will never be reunited. That has a huge impact..."

**Immigration Caseworker,
Greater Manchester
Immigration Aid Unit**

"You have to be so tough, so persistent. I can speak English and could write emails and call and follow up, but if you don't know English there's no way you can do this. I think it is so hard for people to do family reunion applications, it is so important to have legal advice to help with the process. The most important thing, you must have the right advice to make an application."

Solomon, Eritrea

The true complexity of refugee family reunion applications is also reflected in the Government's own regulatory scheme for legal advisers in immigration matters, which requires a high level of accreditation for anyone providing this sort of advice.²⁷ Under the Immigration and Asylum Act 1999, advice for refugee family reunion is regulated by the Office of Immigration Services Commissioner (OISC). According to the OISC framework there are three levels of adviser; Level 1 advisers who are not allowed to provide family reunion advice, and Level 2 and Level 3 advisers who are considered to have the required skill to work on family reunion cases. It is a criminal offence to provide this advice without meeting the rigorous criteria in the regulations.

This insistence on a high level of accreditation not only reflects the true complexity of the family reunion process in practice. It also suggests an irregularity in the approach to family reunion. Where regulating advisers is concerned, the difficulty and seriousness of family reunion applications are reflected in the regulations and required accreditations. Conversely, such difficulty and seriousness are not reflected in the Government's exclusion of refugee family reunion from the provision of funded help under LASPO on the basis it is "straightforward".²⁸

For these reasons, it is difficult to support the suggestion that refugee family reunion is a simple immigration matter. Agencies working with separated families confirm this, and it is also reflected in the experiences of refugee families themselves, for whom the process is often complex and the evidential burden high. The price paid for mistakes or omissions is also severe, meaning the early provision of funded legal support can be vital.

“[The family reunion application] is very difficult. That is acknowledged in a lot of evaluations of the process ... Certainly, it would be very difficult for any lay person to negotiate the Immigration Rules or to know where to access the relevant law. The [Home Office] website has a bit of really quite basic information. It’s fraught with difficulty, some people might be able to negotiate it, but it would be difficult for anyone to make an application without legal advice, let alone somebody with English as a second language. Withdrawing legal aid has made the process much more difficult. There just isn’t the coverage, we know that you have to be Level 2 [OISC registered] to even touch family reunion application, so it’s a bit counterintuitive that this is a simple process. Legal aid needs to be restored. Even people who are legally qualified find [family reunion] difficult. I run into challenges and I’m a legal practitioner – to expect that people who have no legal qualifications would be able to negotiate this process [isn’t reasonable], it would be extremely difficult for somebody that has no legal representative.”

Project Coordinator, Refugee Family Reunion Project at Plymouth University

“I have been involved with family reunion casework and projects for 11 years. My observation in this time is that the casework in this area has become more complex, not less. Successive global crises and a plethora of legal and non-legal routes to the UK mean that there is often confusion and a lack of clarity over family reunion rights and access to them... Where we are unable to provide access to clarity over legal routes in this area people will turn to non-legal routes, where there is risk of exploitation and abuse.”

Specialist human rights and refugee lawyer, JustRight Scotland

“A big part of the legal adviser’s role is to know what information is important to be included. A lot of what they do is explain any discrepancies in the application. If someone has arrived and doesn’t answer that they have children in their screening interview because they are afraid for their safety, they may be turned down if this isn’t explained in the application. A legal adviser is really paramount in being able to unpick this and explain the discrepancies.”

Refugee Assistance Coordinator, British Red Cross



The Limited Alternatives to Legal Aid

The Challenge of Self-Funding

Given the lack of publicly funded advice and the common complexities associated with refugee family reunion applications, refugees may be forced to find ways to cover the costs of skilled support themselves. This can pose a challenge.

Family reunion applications are often expensive for refugees with very limited resources. Application costs quickly add up, from the need for supporting statements and translations of documents, to the costs of travel to the nearest visa centre for all family members applying to be reunited (sometimes requiring multiple visits to an embassy in a different country) and paying for mandatory health checks.²⁹ When evidence is lacking, DNA testing might be the only way to prove a relationship with separated children, but it can also come at a high cost.³⁰ As a result, families may have to spend thousands of pounds on an application.

“I had to sacrifice everything of myself for this to happen. I lived on absolute minimum subsistence. I received second-hand clothes from charity, I took food hand-outs to survive, I walked everywhere. For the most part I would have one very simple meal of just rice and oil each day. I lost a lot of weight, dropping to just 54 kilos. I had very severe mental health consequences.”

Didier, Cameroon

The costs of refugee family reunion applications impose a high burden on refugees because it is common for them to arrive in the UK with very limited resources at their disposal. Those who are awaiting a decision on their claim for asylum are not allowed to work while that claim is being processed and will receive little more than £37.00 per person, per week to live on. This makes it virtually impossible to save anything during this time.³¹ Those who are able to find paid employment after their refugee status is recognised are mostly able only to secure work in roles with limited, low incomes.³² Others will be in receipt of a small benefit payment of around £60–70 per week.³³ Many refugees will also be sending what little money they may be able to spare to their separated family members in the form of remittance payments, as the only means available to support their families abroad.³⁴

As a result, the financial strain on refugees is often overwhelming even before the costs of applying for refugee family reunion are considered, with many sponsors needing to divide already limited incomes to meet basic needs like housing, food and other essentials, while also supporting their families.³⁵ The reality is that refugees who sponsor a family reunion application have almost no chance of funding it from their own income simply because the majority have very few funds to draw on.³⁶

This means that many separated refugees face applying for family reunion without any help, or they may endure greater hardship by going without basic necessities to afford the legal help they need. Some will incur large debts from high interest providers to pay for legal help, leaving already at-risk individuals exposed to further vulnerability and exploitation.³⁷

Alternatively, desperate sponsors may feel compelled to rely on the advice of others in their community. This sort of informal guidance, shared among friends or through online forums to try and fill the gap left by a want of quality professional advice, can sometimes be helpful. But it can also add to the burden that refugees face. It has been noted by caseworkers and legal advisers that where such informal advice is provided, even with good intentions, it is not usually comprehensive or relevant for any other case. When the wrong information is used, this can result in failed family reunion applications.³⁸ Where that happens it can take a lot of professional time and expertise, with additional costs and delays to for refugee families, to make up for the confusion and problems that result.³⁹

“It’s generally very difficult [to find a solicitor to make a family reunion claim]. It’s even more difficult if you’ve not got any money. Most people when they get refugee status, all of their asylum support stops and their accommodation and they then have to find work, apply for benefits and find housing. That’s not a time when people can save the money for the fees that a private solicitor would charge to put in an application. The more children, the more people are involved, the higher the solicitor fees. We’ve known solicitors charge £1,000–2,000 per person, per applicant.”

**Immigration Caseworker,
Greater Manchester
Immigration Aid Unit**

CASE STUDY 3: Munir, Sudan

Munir paid for the assistance of a local community member to get legal advice and help with translations and neither was helpful for his application, which was refused.

The informal advice he had received led to mistakes in his original application and, as a result, also to complications in subsequent applications. The mistakes were eventually explained and corrected by the team at the Greater Manchester Immigration Aid Unit, but by that time he had been separated from his family for much longer than he would have been had the initial application been processed correctly.

“I was so desperate I needed my family back, I paid to get advice that made my situation worse and it took so much longer”.

“95% of refugees (or more) can’t afford to pay for a solicitor. The free services, like British Red Cross, are too much in demand – it causes such long delays and damages the integration and [family reunion] prospects of refugees. Everyone should have free legal advice for the whole process.”

Tamim, Syria

The stated aim of LASPO was to ensure that public funding for legal support would be offered to those who really need it and, the fact is, this aim is not being met where refugee family reunion is concerned.⁴⁰ People who are often among the poorest in society are unable to get the help they need because it is prohibitively expensive.⁴¹ The reinstatement of publicly funded legal help would make a significant and positive difference to that outcome.

“From my experience, when you get the refugee status, that is when your problems start. There is no clear guidance. At every point, you have to fight for everything. Most of us come with a language barrier, a cultural barrier, a poverty barrier.”

Aamira, Sudan

“There are so many issues at so many different levels of the process that it’s really important that refugees have support throughout it. To have legal aid for the whole [family reunion] process – so that they don’t have to pay private fees or have to use our service where they would have to wait much longer to be seen. We have a waiting list – as a result of the cuts to legal aid – that is very long, so people must wait and extend the separation to access our free legal advice. Families have been quoted £1,500–3,000 per application. It’s not feasible for families to be able to afford this when they are in transition immediately after receiving refugee status and still trying to get benefits... We are the only not-for-profit law centre in the North East, there isn’t really any other free provision [in our area].”

**Specialist legal adviser,
North East Law Centre**



The Limits to Pro Bono Legal Advice and Other Sources of Support

The charity sector is proactive in offering valuable assistance to refugees. Those who operate in this sector have been placed under enormous strain, however, as cuts to publicly funded legal support have resulted in more pressure being placed on them as a vital resource.

Some of the charities who support refugees have closed down, mainly due to funding cuts.⁴² The closure of Refugee and Migrant Justice in 2010 and the Immigration Advisory Service just over one year later – which, together, had previously supported approximately one third of all cases taken on by the charity sector each year – left a large gap in the provision of quality legal advice for refugees seeking support with family reunion. This placed even greater pressure on other agencies in the sector that were left after the introduction of LASPO and charitable agencies have been unable to meet that demand.

“It is very, very clear the demand [for refugee family reunion advice] far exceeds what we can cope with as an organisation... so I do a lot of applications in my own time: weekends, evenings ... but it's still not enough. Currently we're funded to do two family reunion applications a month. It's more likely that we do two per week... I suppose I make a conscious choice to do that because I know the demand is high and the refugees, the majority, aren't able to fund private fees.”

**Specialist Legal Adviser,
North East Law Centre**

The net result is that family reunion applications cannot be well supported by charitable alternatives to legal aid, at a time when demand for help is high.

Pro bono work by volunteer lawyers is also unable to fill the advice gap left by LASPO. While it is undoubtedly a helpful back-up for some refugees, and volunteer lawyers work well to top up a funded system to ensure that manageable gaps are plugged and adequate support is provided, pro bono advice cannot take full responsibility for more systemic failures. This is particularly so because demand for pro bono legal advice has risen sharply since the introduction of LASPO.⁴³

“The instability is worrying. We're funded by the Big Lottery and our grant is just coming to an end, so the instability as workers is quite worrying at the moment. We're not sure if we will still exist ... we don't know if the project will continue... I think they should bring back legal aid.”

**Immigration Caseworker,
Nottingham Refugee Forum**



When LASPO removed refugee family reunion from the scope of legal aid the Government established a funding safety net of sorts for complex cases where human rights might otherwise be breached, in the form of Exceptional Case Funding (ECF).

The management of ECF has been fraught with complaint and complexity. Although improvements have been made, it continues to be criticised for failing to offer a meaningful back-up to the removal of legal aid, a fact discussed in detail later in this report.⁴⁴

The reality is that the funding and advice gaps which are left post-LASPO act as a barrier to family reunion for refugees. The limited number of providers still able to offer quality legal support are now under severe pressure to do more, with less. While they are a vital source of support for refugee families in need, NGOs and pro bono lawyers ought never to become the cornerstone of legal support for the most vulnerable members of society.

“The changes [to legal aid] affected our work in that we didn’t have funding to do the work we were doing ... so we had to set up our own service and have had to spend more time doing administration, looking for funding, rather than doing the applications we were doing. LASPO has meant that more time has had to be devoted to administration and fundraising rather than processing the applications, so less applicants have been helped.”

**Immigration Caseworker,
Greater Manchester
Immigration Aid Unit**

The Human Cost of Removing Legal Aid for Refugee Family Reunion

Key Findings

- 1.** The impact of ongoing family separation can be punishing and include physical and emotional ill-health and difficulty integrating.
- 2.** In the absence of funded help, refugees in the UK who sponsor family reunion applications feel immense strain and may be forced to endure extreme hardship by going without basic necessities to pay for legal help. These things can have a severe impact on their physical and mental wellbeing.
- 3.** Family members outside the UK are more likely to remain separated for longer where barriers to family reunion exist, such as a lack of free legal advice. This poses an ongoing risk of extreme harm in unsafe settings.
- 4.** Where a lack of legal aid delays refugee family reunion, this can have severe consequences for women and children, who are particularly exposed to harm in the refugee setting, including gender-based violence and protection issues.

The Importance of Refugee Family Reunion

The Protection of Refugees

The recent spike in mixed migratory movement of very large numbers of people has had consequences around the globe. At the time of writing, approximately 68 million people remain forcibly displaced as a result of ongoing crises, persecution, violence, and human rights violations in the most extensive global displacement of people fleeing danger since the Second World War.⁴⁵

A lot of those who are displaced have embarked on long and dangerous journeys to reach safety. The United Kingdom offers resettlement for around 750 people seeking refuge each year under its Gateway Protection Programme (GPP) in connection with UNHCR.⁴⁶ An additional, very small, number of refugees with close family ties

in the UK is also welcomed as part of the Mandate Refugee Scheme (MRS).⁴⁷ Up to 20,000 people affected by the Syrian conflict were also able to enter the United Kingdom before 2020 through the Syrian Vulnerable Persons Resettlement Scheme (VPRS), along with a further 3,000 Syrian children and their families under the Vulnerable Children's Resettlement Scheme (VCRS).⁴⁸

In addition to those refugees who come to the UK as part of formal resettlement programmes, many others in need of protection will arrive at the border seeking asylum.⁴⁹ In the UK, this process is governed by the Immigration Rules, which establish who can enter and stay.⁵⁰ Despite high numbers of refugees globally, comparative statistics across Europe illustrate that the total number of asylum applications received and positive decisions made on asylum applications in the UK has been low compared to many other European

countries. For example, in one year, Germany received a total of 722,265 applications for asylum, of which 433,910 were granted. By comparison, in the same year, the UK received 39,357 applications and granted a total of 9,944 applications.⁵¹

The Protection of Refugee Families

When people are forced to flee their home, it is common for family members to become separated because of the necessity to leave quickly and without preparation. Separation may be intended, for example, so that one person in a family is able to escape persecution. Alternatively, it can be unintended, as a result of a rapidly escalating conflict or insecurity and the need to flee urgently. Families are often torn apart and some family members may be left without protection in conflict zones or refugee settings.⁵² UNHCR, along with other agencies supporting vulnerable refugees, has advocated strongly in favour of measures to protect the integrity of the family unit where families are displaced.⁵³ One of the measures UNHCR advocates to best protect separated families is refugee family reunion. Refugees whose status is recognised in the UK are able to apply for refugee family reunion to have their close relatives, such as a partner or dependent child, join them.⁵⁴

“In a war situation... sometimes family reunion is to get the families reunited, but sometimes it is to get families out of a very dangerous situation quickly. So, if it doesn't happen quickly, then those families are left behind in greater danger.”

**Immigration Caseworker,
Greater Manchester
Immigration Aid Unit**

CASE STUDY 4: Senait, Eritrea

Senait is from Eritrea. She fled her country with her brother because she was persecuted for her religious beliefs.

She spent seven years living in Egypt, where she met and married her husband, before seeking asylum in the UK. Her husband had returned from Egypt to Angola for work when Senait was resettled in the UK under the Gateway Protection Programme. Senait assumed that her husband would be able to join her in the UK and immediately made an application for family reunion when she was resettled.

“When I came to the UK, I came with a lot of hope. Unfortunately, it was not what I was expecting. I was told before I came that it would be no problem for us to be reunited as soon as I was resettled here. It took a long time for my husband to join me. This was the biggest challenge of my life... To be a refugee is hard, but then not to be with your husband, the one you love. What is the point of living? If I wasn't accepted, I would be dead. To be a refugee is a hard life. Resettlement means hope. I came with a lot of hope that I would be protected ... that I would be with my husband. This [process] made me feel dead.”⁵⁵

Family reunion can be vital to a sense of individual wellbeing and to allow family members to give support to each other, whether it is practical care, emotional support or financial assistance.⁵⁶ In times of crisis, it is very often families who provide a vital safety net for each other; one that benefits both family members themselves and their wider communities.⁵⁷ Studies show that families who get a positive decision on their refugee family reunion applications are naturally more likely to feel established because family reunion acts as an accelerator of integration for all.⁵⁸ By ending the suffering associated with separation, refugees' ability to settle is improved and families who want to rebuild their lives together are more able to take the necessary steps to do so successfully.⁵⁹

“Being with your family – your husband or wife or children – this is a basic need. If the Government knows I’m married and I have been granted asylum here it should be automatic that my husband is able to join me. Coming to the UK... I feel like I have delayed integrating. I needed to integrate and I needed my husband, I couldn’t do both. I’m now repeating my studies since my husband has joined me. My life has been on hold for all this time.”

Senait, Eritrea

“I think for the family it is about being reunited and being together again. I think that the way we live as a society is often in family networks and we do that because we get support from them, we work better when we are part of a group rather than on our own and that those family relationships matter to us... it’s exactly the same for people who are refugees who’ve been separated... to be separated [from your family network] is massive. I think the consequences of that, of not having [family], are that people don’t settle, that they don’t integrate, that they don’t feel part of society because they’ve not got their own family unit.”

**Immigration Caseworker,
Greater Manchester
Immigration Aid Unit**

Conversely, the UNHCR suggests that where families remain separated, this will very often have a devastating effect on personal wellbeing, as well as a direct and detrimental impact on refugees' ability to rebuild their lives and engage with society.⁶⁰ Where families are separated, they often experience long term psychological trauma.⁶¹

The Impact on Sponsors

Separation from family members can involve great suffering and distress for refugees who have reached the UK, or ‘sponsors’, for whom the safety of their loved ones is at the forefront of their minds.

While their families are still at risk, sponsors will often experience worry and guilt, alongside an overwhelming sense of their own lives being on hold. They report being unable to function because of the psychological impact of separation and the strain of the reunion process. Many report depression from their concern over the welfare of their missing family and despair over living their day-to-day lives alone.⁶²

It is common for sponsors to feel great pressure associated with their family reunion applications, particularly because this may be their only chance to be reunited with their families and bring them to safety.

It is also notable that, unlike other matters removed from the scope of legal aid provision, refugee families cannot turn to alternative forms of resolution, such as mediation or settlement. Sponsors talk of feeling “left in the dark”, isolated and under significant stress without legal support to be reunited.⁶³

The mental stress of navigating the process and the strain of not having funded, early legal help exacerbate the worry about their families being left in danger while an application is ongoing. To this end, sponsors have been described as experiencing life as an “underclass, trapped in limbo”, whose fear and anxiety are made worse by a lack of qualified legal advice to support their applications.⁶⁴

As one lawyer working with displaced families put it: *“These are people who have been torn from their families and through no fault of their own, through war conflict and violence. People who have been through so much already and whose families can be left in horribly dangerous and difficult positions.”*⁶⁵

The strain of separation without legal support can also have a detrimental impact on the physical wellbeing of sponsors. Physical ill-health may arise out of the desperate need to get support and frustration from being unable to do so in a timely and affordable way, making it hard for sponsors to eat or sleep properly and leading to health problems. The trauma of being separated can make the lives of vulnerable people worse by aggravating underlying medical conditions.⁶⁶ The challenges associated with navigating refugee family reunion without funded support also risk becoming part of a cycle of problems, which continues to build.⁶⁷

The experiences of the families who participated in our study reinforced this view of the impact on refugee sponsors of not having adequate, early support. Each person we spoke to confirmed their experience of multiple challenges associated with their background as refugees, which were exacerbated by a lack of funded legal help for their family reunion application.

It was common for refugees who participated in this study to have experienced severe physical, mental and financial hardship as a direct result of the impact of their family reunion claim. Even for those who were eventually able to get support with their application, the hardships they faced were amplified during periods when legal advice was not available to them.

Without publicly funded legal support, many sponsors suffered while trying to reunite with their families, trying to save as much as they possibly could from very small incomes. Many interviewees had resorted to extreme measures to save money. This included going without food, not having their own place to live, managing with insufficient clothing and walking everywhere instead of taking public transport (sometimes taking several hours to reach a destination). These cost-cutting measures had profound, negative health effects. Participants reported weight loss, illness, anxiety and depression. As a result of having to fund refugee family reunion applications, they reported feeling vulnerable, and being forced to be dependent on charities or community members to meet even their most basic needs.

Participants also expressed their concern about being unable to integrate in their new communities because they felt a part of themselves had been left behind. They experienced crippling anxiety about their separated family members, making it very difficult to concentrate and learn English or take vocational classes, work or engage in other activities to assimilate and to succeed in their new home in the UK.

Discovering the complexities of applying for refugee family reunion and finding out that legal aid assistance was not readily available added additional weight to the heavy burden already being carried by all of the participants in our study. Because a lack of legal help with a complex application might lead to an initial application being refused, or force an appeal or re-application to the Home Office, additional delays added further to the burden carried by refugees and their families.⁶⁸

“You should be hopeful for your future. If you have hope, you have a reason to get up, to get dressed, to try and make things better. At the moment, I don’t feel any happiness. I don’t want to socialise, I don’t want to meet or talk to anyone. I have no hope. This is the effect the process [of family reunion] has had on my life...”

Roshan, Iran

“Not being able to have all my children in one place is a form of torture – it is like part of my body has been cut off and left behind. Worrying day and night about the ones that have been left behind... I had no idea that keeping my family together would be impossible, I assumed they would all join me.”

Tabish, Afghanistan

“Without support some of those families will never be reunited. And that has a huge impact on the person who is here, on their mental health and their ability to settle in the UK and obviously it has a huge impact on the families they have left behind, on their future, on their safety, and so it is absolutely imperative that those families are reunited.”

**Immigration Caseworker,
Greater Manchester
Immigration Aid Unit**

“For the individual that arrived in the UK with no one else it is easy, for just having a safe place to live is the goal. For someone that has a family that has had to leave them behind in a place that is not safe and who has had a difficult journey to get here ... The separation from family is the hardest thing. Half of me felt it was in the UK, and half felt like it was home in Cameroon. To have your family so far away, unable to protect them, it is impossible to focus on the new life here. I was demoralised to the point that I was referred to mental health services. The separation from my family was so difficult because we were very, very close ... To have been separated for such a long time and to have all these additional steps that kept appearing made it so hard. So, so hard.”

Didier, Cameroon

CASE STUDY 5: Faven, Eritrea

Faven was persecuted in Eritrea and escaped without her son, firstly to Egypt and then on to the UK through the Gateway Protection Programme, arriving with refugee status in 2015.

Faven was desperate to be reunited with her child. His father had died, and during the time Faven was away from him, her son had no parent to care for or protect him. “When my son was away [from me], we would not be able to talk when we were on the phone. We would both just cry and cry. All we wanted was to be together again. It was very painful to be separated, there was no-one to protect my son. His father had been killed and I was here [in the UK]. I worried about him

all the time. I found it extremely difficult to be away from my son. My concentration was completely gone, I found I couldn't focus at all, I just worried all the time for him. My first priority is to make my son safe, to give to my son. If I can't do this, there is no point. My son is everything.”

Faven found it very difficult to navigate the family reunion process and to be reunited with her son with limited help and limited English language skills. She was told by an immigration caseworker about the Red Cross and asked them for help. “The Red Cross did everything for me in my application. There is no way I would have known what to do, where to apply, what sort of information to include. [Specialist] advice was so important to being able to complete the family reunion application.”

CASE STUDY 6: Aamiina, Somalia

Aamiina left her husband and young son in Somalia when she became separated from them while fleeing torture in 2012.

She was quickly granted asylum and leave to remain in the UK and assumed that she would be able to bring her husband and child over automatically with her new refugee status. It took her some time to discover that she had to apply for this herself. Aamiina tried several times to reunite with her husband and child – paying private solicitors for three separate family reunion claims.

In order to pay the enormous legal costs connected with her applications and to support her separated family members, Aamiina saved the very small amount she received in benefits using every means possible. She stayed with friends in the local community, went without food and didn't buy any clothes for herself. Instead she went to charities or borrowed from friends. She was regularly forced to ask her new friends from her local community for money to pay for her transportation or to walk everywhere. An additional application for family reunion was finally successful. Aamiina feels that she can now finally be hopeful and feel happiness, since being reunited.

CASE STUDY 7: Munir, Sudan

Munir's priority was to look after his family, so he focused on them and was homeless for some time to try and save enough money to bring them over to the UK to be with him.

When he did have a home, he went without turning on the gas or electricity, without eating, without having warm or new clothes for himself. Munir lost weight and suffered from anxiety and insomnia, and found it impossible to concentrate. "I had no value in life, I felt worthless. I had nothing. All I wanted was to get my family back. Now that my family is here, I feel like things can go on."



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924 EPSOM
925 HOUNSLOW
925 CHESSINGTON STN
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The Impact on Applicants

Family reunion may only account for a relatively small number of newcomers to the UK, but it offers a crucial, safe and legal path to protection, which can be a lifeline for separated refugee family members.⁶⁹

Applicants for family reunion face numerous challenges. Whether they are in war zones or refugee camps or other unsafe environments, applicants are at high risk of harm while they wait to be reunited, and protecting their personal security can be intensely challenging.

“The period when we were separated was the most difficult time in my life. I was worrying all the time about my family. They were not safe. There were bombs going off. Anything could happen and I wasn’t there to protect them... Having legal assistance was so, so important. I do not think [my family] would be reunited if not for the excellent advice we had [at the North East Law Centre]”

Maher, Syria

Risks to the personal safety of applicants include physical violence, sexual violence, unlawful detention and abduction, and retaliation because of the sponsor’s flight.⁷⁰ Less direct threats to personal security may also include restricted access to resources

such as food, water and shelter, as well as a lack of access to information and constrained social networks, so that very little support and protection is available. Women, children and the elderly are more likely to be exposed to these sorts of risks, as most often, they are the ones left behind while adult males make the journey to safety first, with the intention of bringing their family as soon as possible thereafter.⁷¹

Although it offers the safest route to reunion, even the procedure for family reunion can pose security risks for members of refugee families outside the UK. To gain a family reunion visa, applicants must usually travel to the nearest UK embassy, which may be a great distance away. Travel can pose a direct risk to their safety, particularly where applicants have to cross borders or conflict zones or enter unfamiliar and sometimes unwelcoming regions. Travel of this nature is likely to add to the financial strain on refugee families because of inevitable, associated travel costs.

These risks and costs undoubtedly have some relevance to funding for the family reunion process and should be considered in the context of reinstating publicly funded legal support. Where funded legal help is provided at the beginning of an application, families are able to make informed decisions about how to act. It is also more likely they will be better prepared to make already challenging journeys with the right documents and evidence for the family reunion application process. Having legal aid and access to early specialist advice may even prevent unnecessary journeys from being taken altogether and reduce the risks of harm to applicants as a result, as well as reduce the length and strain of family separation on all family members concerned.⁷²

Finding supporting documentation for family reunion applications can also be difficult for applicants. As explained earlier, evidence may get lost during hazardous journeys or be left behind intentionally, as being found with it might pose a danger. Even where documents are available, as also noted, they may not be in the right form to meet the standard required for a successful family reunion application.

In this situation, legal guidance can make the difference to ensure the best possible documentation is submitted with an application, particularly in the refugee

context where surrounding circumstances are not usually straightforward. Where families are able to access specialist advice, producing evidence is likely to be less complex and result in fewer delays to the process of family reunion, with fewer negative consequences for applicants.

“Night time I study in college, daytime I do leaflets. I worked for 8 months and saved the money to give to a solicitor for the family reunion application... My children had to go to Ankara, Turkey to have an appointment with the UK embassy. It cost £2,000 to travel this far... They stayed three days giving evidence. Somebody there [in Ankara] was working like a human trafficker and took another £400 for translating... we had to pay to fill in the form in Turkish. In two weeks, we were refused. I had spent so much money, so much time... We all felt anxious... I was depressed, what can I do now?”

Reza, Iran

“Most of the families that the Red Cross supports live in extremely vulnerable conditions. [Applicants] are usually in countries that are conflict or post conflict zones, having crossed an international border or otherwise displaced. This vulnerability is compounded by the fact that many are required to cross into another state to visit an embassy or visa centre for three months while the application is decided. If the case is refused and goes to appeal, then it will be another 18 months that (in most cases) the women and/or children are to be living in a foreign country with little rights or protection.”

**Operations Manager,
British Red Cross**

CASE STUDY 8: Solomon, Eritrea

Solomon fled Eritrea and made his way to the UK via the Gateway Protection Programme in 2015 after spending several years in Egypt.

He and his wife were separated along the journey, prior to his selection for resettlement in the UK. But he had thought that once he arrived in the UK he could reunite with his wife quickly. Solomon was given no information about how to have his family join him once he had arrived in the UK and it took weeks of research and hiring his own solicitor before he was able to file his application for family reunion.

Even with access to specialist advice, Solomon's initial application was refused. He was given 28 days to file an appeal and provide more documentation to prove his wife's identity and that their relationship was genuine and ongoing. Unable to afford costly legal fees, Solomon was lucky in getting help from a charity that gave him free specialist assistance to help him lodge an appeal. Solomon gathered and translated the many documents that needed to be filed as part of the appeal against the Home Office decision and he agitated for his

case to be heard quickly: he knew his wife was vulnerable and in grave danger of being abducted by human traffickers. While he waited for an appeal court date, his wife was kidnapped, detained and tortured.

After more than a year from the time his appeal was filed, his case was finally heard and his wife obtained a family reunion visa. Solomon and his wife are now reunited, but they are still suffering from the mental, physical and financial hardships they experienced during this lengthy process.

Despite getting some assistance with his wife's application for reunion – initially by self-funding and subsequently with the help of the British Red Cross – having different sources of support at different times was disruptive and delayed the process. Solomon feels that if he had had access to funded, quality legal advice earlier and his initial application had been approved, or his appeal had been heard more quickly, his case would not have been delayed in the same way. He feels it is more likely that his wife would have been able to join him in the UK before being abducted and tortured had he benefitted from having specialist legal advice and been able to reunite with her sooner.



The Impact on Women

For women, the challenges associated with refugee family reunion can be especially onerous.

Female sponsors in the UK are more likely to be responsible for children and if any of their children are already in the UK, women will need to rely on childcare if they are to work, become educated, learn the local language and integrate more easily.⁷³

For women outside the UK, they will often follow a male head of family whose refugee status is recognised first. Where women are trapped in refugee settings or left without the protection of family in their countries of origin, they face a particularly heightened risk of harm, including risks of physical, sexual and other forms of violence, simply because they are women.⁷⁴ In addition, they will often have nowhere to turn for relief or support, for fear of reprisal or being stigmatised for doing so. While people hope that once they flee conflict they will be safe, the truth for many is they will simply face a different type of harm when they begin life as a refugee. For women on their own in the refugee setting, the risk of being subjected

to this new harm is great. Hardship in the refugee setting is compounded for women, and as one NGO representative describes: *“After living through the horrors of the war... women have risked everything to find safety for themselves and their children. But from the moment they begin this journey they are again exposed to violence and exploitation, with little support or protection.”*⁷⁵

The harm women experience in the refugee setting was painfully apparent during interviews with women for this report. Women we spoke to shared shocking personal stories of physical and sexual violence they had suffered, on top of their distress at being separated from loved ones, including children. Such harm can be compounded by a lack of legal advice. This fact was noted by the Government prior to the introduction of LASPO in its assessment of the likely impact of LASPO on women as “disproportionate”.⁷⁶

The reality is that a lack of legal aid acts as a barrier to family reunion, which heaps additional pressure on female sponsors in the UK and delays family reunion for women who are stuck elsewhere, increasing their exposure to serious harm. This makes it all the more likely that women will be among those who feel the loss of legal aid most keenly.

CASE STUDY 9: Maria, Sierra Leone

Maria was kidnapped and held captive by rebels in Sierra Leone during the conflict. After she was released and returned home, her family did not accept her as a result of the sexual violence she had experienced.

Very young and without family support, she was forced into a life of prostitution and she had a son. Maria fled Sierra Leone, but left her son with extended family while she undertook a perilous journey to safety. In hindsight, she feels this was not a safe place for him but at the time felt she had little choice.

She eventually arrived in the UK and was granted asylum, though she was not advised of her right to family reunion. Maria suffers ongoing mental health challenges which made reliving prior experiences during her asylum claim very difficult. She maintained contact with her son and eventually discovered through local community members she had a right to have her son join her in the UK. Without legal assistance, however, she was unable to make a claim herself. Maria was referred to the British Red Cross support project and was supported in her application by their family reunion team.

The many evidentiary requirements, including DNA testing, obtaining and translating documents, among others – and the associated costs – were particularly difficult for Maria who felt that she was always begging friends and community members for financial help. This put a strain on the relationships she had managed to build in the UK. Maria's mental health deteriorated through the long, traumatic process that she went through to be reunited with her son. She was not expecting to have to go through so much detail about her experiences or that it was going to take so long to be reunited. For Maria, reliving these painful experiences over and over again made her life much more difficult.

Eventually, after many years apart, Maria was able to reunite with her son. The long separation meant that Maria has missed his childhood and was unable to protect him while he was growing up. When Maria fled he was just three. Now he is grown up.

The delays to Maria's family reunion application were exacerbated because she was unable to make her claim without specialist help. In addition, the strain of the costs associated with meeting the evidentiary burden associated with her application had a severe detrimental impact on Maria's wellbeing.

CASE STUDY 10: Semira, Eritrea

Semira left Eritrea due to human rights abuses. She first sought refuge in Sudan, where she was subjected to severe emotional and physical abuse from a man who raped her repeatedly.

Semira's son was conceived as a result of the sexual abuse she was subjected to while seeking refuge. Semira's child lived with her until he was about four years old, until the father of the child abducted him and left him in Ethiopia with a friend (not related to either parent).

Semira came to the UK in 2015 and claimed asylum immediately. Her first application was refused but her refugee status was recognised on appeal.

She was later advised by the Red Cross that she had the right to reunion with her son. She was referred to the Nottingham Refugee Forum to get assistance with her application. Semira's son had no ID card or birth certificate due to the complex circumstances of his birth. With the benefit of specialist help, Semira's first application for family reunion was

successful despite having a very complex case with little evidence (documentation or communication) of her relationship to her son.

While seeking refuge, Semira suffered severe sexual violence and emotional harm. Semira has also suffered as a result of years when she was unable to have any contact with her child. Now they are reunited, Semira and her son are happy and relieved to be together again, but after such a long time apart and so much hardship, it is naturally taking some time for them to adjust.

Semira is very grateful that she was able to get specialist help with her family reunion application. She is fortunate in being able to get the help of charitable organisations to pursue her case for family reunion, particularly as she knows the support provided by charities is dwindling as a result of funding cuts. The help she received, both in terms of the advice and its availability free of charge, allowed Semira to provide enough evidence to support her successful family reunion application so that she could be reunited again with her son after experiencing great hardship, and begin to rebuild their relationship.

The Impact on Children

Following a Freedom of Information request, Ministry of Justice data revealed an estimated 75,000 children and young people, including 6,000 children under 18, were prevented from obtaining publicly funded legal help each year as a result of LASPO.

This led to the Joint Committee on Human Rights' condemnation of the reforms to legal aid and a call for the Government to, "...undo some of the harm they have done to children."⁷⁷ In July 2018, following an application for judicial review by the Children's Society, the Government agreed to amend LASPO to reinstate legal aid for immigration matters for children.⁷⁸ At the time of writing, this decision was yet to be implemented.

In any event, it is clear the challenges for displaced and unaccompanied children remain immense.⁷⁹ The UK has opted out of a European Directive which would have required it to allow unaccompanied minors to seek family reunification with their parents, rejecting calls during the passage of the Immigration Act in 2016 to expand family reunion in this way.⁸⁰

For children trapped abroad, family separation can have particularly far reaching implications for their personal security, wellbeing and human rights. Where children are on their own, they are especially vulnerable and the harm they are exposed to can be severe. In this setting, separation can be terrifying and dangerous for children.

It can also be distressing for children who are removed from the financial and emotional support of parents, and who may be missing out on basic needs regarding their education and wider wellbeing.

Further, where parents are not able to access funding for family reunion, the delays that may result exacerbate the trauma of separation for children who are left in refugee settings for longer, without the protection and support of their family. Delays can also have a negative impact on family stability after families have been reunited, where children have little memory of a separated parent and have difficulty settling back into family life.

More generally, the approach to young people in the context of refugee family reunion is at odds with the ordinary approach to children in a formal setting. That is, to prioritise the interests of children and their protection, and to keep them safe.⁸¹ While the benefits of the decision to reinstate legal aid for children in immigration are appreciated, allowing children to sponsor family reunion applications by their parents and caregivers would also be a significant, positive step towards acting in children's best interests. Providing legal aid more broadly for refugee family reunion applications would also assist children by decreasing the length of time during which many families remain separated, and reducing children's exposure to harm in refugee settings.

"We like the safety [in the UK]. We like that our children are in school. We like that there is no fighting here...the children are happy, they are safe."

Dalir, Syria

“My children were young; 6–14 years old, without any parents. My children kept asking me why things were taking so long. Months and years separated and never knowing how long it would last. This had such a bad impact on myself and my children... When the time passed on and on, the children didn’t want to talk to me anymore. They didn’t believe what I said, that we would be together again. I was so worried I would lose them even if they are alive. Still now my third child he needs to be with me all the time. He worries that if I am out of sight I will disappear forever. They are all worried that I can go at any time and we will not be reunited again.”

Aamira, Sudan

“I’ve had two cases where you’ve had young children separated for a long time from a single parent who’s in the UK and the child is being looked after by a friend or an extended family member – for years. That’s going to have a huge impact on the child. I had one case where the father was very upset because he felt that the friend wasn’t treating them right. He was sending money and it wasn’t going to the child, it was being spent on other things. He felt [his child] was being neglected by the people that should have been looking after him.”

**Immigration Caseworker,
Nottingham Refugee Forum**

“I have lots of problems with my son, I don’t understand him. He’s very quiet and I don’t know how to make him happy. I don’t know what happened to him [when we were apart], I don’t think he was looked after well. He’s a different person. His childhood is gone.”

Semira, Eritrea

It is undoubtedly the case that the human cost of removing legal aid for refugee family reunion has taken a very high toll on sponsors, applicants, and refugee women and children alike. This is despite the fact that, at the time LASPO was being considered the Government claimed that it would target legal aid to be provided to those who need it most.

The choice to continue to provide publicly funded legal assistance for asylum cases under LASPO was linked to the context of the individuals involved, including the particular vulnerability of people seeking refuge, the likelihood they may be traumatised and the difficulty they are likely to face navigating their way through the legal process of applying for asylum.⁸²

But these factors were discounted for refugee family reunion, despite such applications being so firmly embedded in a prior claim for asylum. As a result, refugee families remain disadvantaged and continue to suffer because of the lack of legal aid.



The removal of legal aid for family reunion is perhaps all the more significant when one considers the cuts to publicly funded legal support more generally have resulted in twice the amount of expected savings to the overall legal aid budget.⁸³ When these (much greater than anticipated) savings are considered alongside the vulnerability of

refugees, the challenges they face in seeking family reunion and the impact of not having support, the decision to take refugee family reunion out of scope for legal aid seems questionable. Publicly funded legal advice ought therefore to be reinstated, not just for children, but also for refugee families.

Other Arguments for Reinstating Legal Aid for Refugee Family Reunion

Key Findings

- 1.** The significant gap in support caused by cuts to legal aid for refugee family reunion is not being bridged by ECF, despite recent changes to the scheme.
- 2.** One of the key reasons for the decision to implement legal aid cuts was to reduce the burden on the public purse, yet no in-depth assessment of the ‘downstream’ implications of LASPO was carried out prior to cuts being introduced.
- 3.** Although savings have been made to the legal aid budget, LASPO has resulted in public sector expenditure elsewhere, including on health and welfare.
- 4.** In being forced to find alternative routes for support, justice is often delayed or denied for refugees and their families, often at a high personal cost. The reinstatement of legal aid in refugee family reunion would support basic human rights

The primary aim of this report has been to highlight the impact on refugee families of cuts to publicly funded legal support.

In addition to the human cost of LASPO, there are policy factors that add further support for bringing refugee family reunion back within the scope of legal aid.

The Ongoing Challenge of ECF

In exceptional circumstances, LASPO provides publicly funded legal support for those whose human rights would otherwise be breached by the absence of financial support for legal assistance, through the ECF scheme. ECF was set up to offer funding for legal advice where

a family reunion application is complex and requires professional legal help, provided an exceptional case determination is made by the Legal Aid Agency. LASPO allows for the provision of ECF where a person’s human rights would be breached by a failure to provide funding, or where a risk of such a breach is possible, in the opinion of the Director of Legal Aid Casework.⁸⁴

However, ECF has been widely criticised for failing to offer a meaningful safety net to vulnerable refugees in the family reunion context. This is in part because the complexity of applying for ECF – like the complexity of the reunion process itself – is a significant challenge. Caseworkers interviewed for this research confirmed that refugees frequently experience problems identifying the correct forms, understanding the procedure and navigating the legal and evidential requirements to claim exceptional funding.

Getting help with the process of applying for ECF is made more difficult because legal advisers do not get paid for time spent on an application where it is unsuccessful.⁸⁵ Advisers themselves find the process of applying for ECF time-consuming (it can take around 6–10 hours) and if unsuccessful, they are not paid for this time. Many advisers and charities already operating on very small margins face difficulty offering support for ECF applications as a result.

The limitations of the system of ECF have been clear for some time. During its first year of operation, around 1,300 applications for ECF were made, and just over 1% of those submitted were approved for funding.⁸⁶ As a result, the administration of ECF was challenged in the courts, with one judge confirming a higher than expected level of suffering imposed because of LASPO and the administration of ECF.⁸⁷

As a result of legal challenges, legal aid was initially reinstated for refugee family reunion.⁸⁸ However, a later judgment overturned that decision, saying only that refugee family reunion ought to benefit from ECF and requiring changes to ECF guidance.⁸⁹ This led to some improvements in the administration of ECF, including a shortening of the form and the introduction of a procedure for urgent applications. In a quarterly legal aid statistics report that followed, the Ministry of Justice said that the number of ECF applications had increased following the changes.⁹⁰

Despite improvements, however, at the time of writing, the number of applications for ECF and the number of successful ECF grants still remain well below those projected at the time LASPO was introduced.⁹¹ At the time LASPO was first contemplated, it was estimated there would be 5,000–7,000 applications a year and that around 55–75% would be granted.⁹² However, while more applications are being made, the number being granted is still well below predictions, with only 981 successful applications for ECF in the period 2016–17.⁹³

“The forms are complex to complete and I think impossible in many circumstances if you are not a practitioner. There are generally 3 forms to complete. The forms use phrases like ‘controlled work’ and ‘why do you consider that there is a risk that failure to provide legal aid for this work will breach a convention or enforceable EU right?’ which are difficult to understand. I think they require a practitioner to complete them and... this is unrealistic for many legal aid practitioners with the time/funding constraints under which they are working. It would take me (as a practitioner) several hours to complete an ECF application on top of the time obtaining proof of means etc... I recently (successfully) applied for ECF for a client with mental health difficulties and no formal education. Because I know the Legal Aid Agency require detailed evidence I had to analyse his case in some detail and provide medical evidence. We always provide additional sheets to the forms containing evidence. The impact of this is that because we are a resource-limited project we simply cannot make ECF applications as often or as quickly as they are needed.”

Project Coordinator, Refugee Family Reunion Project, Plymouth University

Legal advisers are still faced with the risk they will not be paid for their work on an ECF application where it is not granted and no right of appeal against a refusal of ECF exists. ECF applications are also still time-consuming and difficult for refugees

who are forced to apply on their own and who lack the requisite knowledge to be able to say whether their human rights are likely to be breached without exceptional funding.

While the administration of the ECF scheme has improved, the system continues to have serious shortcomings for those who seek to rely on it. Those who work with refugees, affected families themselves, representatives of the legal profession and domestic and international monitoring organisations have all expressed the same conclusion: ECF is still problematic.⁹⁴ In the family reunion context, whatever minor improvements might have been made, they have still not made up for the impact of the lack of publicly funded legal support.⁹⁵ The fact that ECF is unable adequately to support vulnerable refugee families who need to advocate for their rights adds further strength to the argument for bringing family reunion back within the ordinary scope of legal aid.⁹⁶

The Financial Implications of LASPO

The prompt for introducing LASPO was to reduce the cost to the public of providing legal support in the face of decreasing fiscal resources. At this time, however, the downstream consequences were not adequately considered.⁹⁷

No clear understanding existed of how LASPO would impact on those people directly affected by it, or what the wider economic implications might be. In part, this was because no review was carried out into these matters prior to the Act coming into force, a fact confirmed in evidence given to the Parliamentary Public Affairs Committee by the Permanent Secretary of State at the Ministry of Justice, who said: “...it was quite explicit from the start that we would not be able to do research in advance if we were to make the savings to which the

Government committed... the most critical piece of evidence that was relevant to the decision that was made was the size of the spend.”⁹⁸

Various parliamentary committees and NGOs have raised serious concerns about the lack of research carried out before such deep cuts to legal aid were introduced.⁹⁹ With the passage of time, the downstream effects of LASPO are slowly becoming clearer and the ‘knock on’ effects of LASPO are being more widely reported.¹⁰⁰ The Law Society has described the effect of the cuts following LASPO as having a wide, detrimental impact, which has undermined the Government’s overall aim to reduce expenditure, saying: “... LASPO has undoubtedly resulted in increased public expense elsewhere as a result of increasing numbers of people unable to access free, reliable and timely legal advice ... without a holistic approach to justice, this will result in further costs to taxpayers and increased pressure on already hard-pressed public services.”¹⁰¹

In the refugee context, claims involving asylum are managed more efficiently with the skill and care of a qualified adviser.¹⁰² Refugee family reunion applications, just like the asylum claims they stem from, are managed better with early advice. As explained before now, applying for refugee family reunion is usually complex, necessitating expertise and care, and refugee family reunion, like asylum, often involves clients who are traumatised.¹⁰³ The early provision of publicly funded legal support for these cases allows for commonly occurring complexities to be addressed at the beginning of the application process.¹⁰⁴ Where that happens, this is not only likely to have a positive impact on refugee families themselves, but applications for family reunion are also less likely to encumber the public purse in other ways by being wrongly rejected.¹⁰⁵ Ultimately, with early legal advice, savings can be made, both on additional support for refugees who are suffering because of delayed family reunion

and on unnecessary appeals for well-founded applications that fail because they were not supported from the outset.

Instead, the removal of legal aid for refugee family reunion means public expenditure is spent in other ways. Typically, in the refugee context this will manifest as support for those who are suffering with mental and/or physical ill health or who are struggling to settle in the UK without their families, and who need to rely more heavily on health and welfare resources.¹⁰⁶ While the removal of legal aid may not be the only reason for ill health, anxiety or difficulty integrating, legal help can prevent problems from escalating, with a significant impact on the individuals concerned, as well as the public purse.¹⁰⁷ Without support, the problems refugees face are more likely to multiply and themselves become more complex, placing greater financial burden on public sector bodies.¹⁰⁸

While it is accepted that the economic pressure to reconsider the provision of publicly funded legal support must be understood within the constraints of the current economic climate, the economic objectives of LASPO are undermined when the savings made by LASPO in the context of refugee family reunion are balanced against related, less direct costs to the state.¹⁰⁹

The Human Rights Implications of LASPO

In evidence given to various parliamentary committees, the Minister of Justice has referred to the fiscal concern driving LASPO.¹¹⁰

Although the consequences of denying legal aid for refugees seeking family reunion engages human rights, the decision to remove legal aid appears to have been made without any detailed assessment in advance of the human rights implications.¹¹¹

Access to Justice

Access to justice is a key element of a free and functioning society and a fundamental internationally recognised right protected by the Human Rights Act.¹¹² States can determine how they wish to implement this right in the administration of legal aid and they have the freedom to restrict the right to publicly funded legal support, subject to legitimate and proportionate limitations.¹¹³ The importance of what is at stake for applicants, the complexity of the relevant law and procedure, and the applicant's capacity to cope alone are relevant to the exercise of that power.¹¹⁴

Concerns have been widely expressed over the disturbing impact of the cuts to legal aid on access to justice generally following LASPO. Such concerns have been discussed in some detail elsewhere, and do not need to be repeated here.¹¹⁵ They are worth considering, however, in the specific context of refugee family reunion.

While the idea of access to justice is most likely to be associated with representation to ensure a fair trial, it is also relevant to the provision of early funded legal advice, including for refugee families. Participants in this research reported the practical effects of a lack of access to legal aid, including long delays in realising their entitlement, unwarranted refusals and unnecessary appeals, making it difficult for them to secure their full legal entitlement to family reunion.

Without publicly funded legal support, refugees are unquestionably hampered in accessing legal help for family reunion and achieving justice for themselves and their families.

As already noted, without publicly funded legal support, it is very difficult for refugees to obtain advice elsewhere, or navigate the complexities of the family reunion process (including applications for ECF) to realise their entitlements and enforce their rights on their own. This raises the concern that

LASPO has had the effect of delaying or denying a fundamental entitlement to family reunion for those who cannot afford to pay.¹¹⁶ Refugees are often already marginalised and living in poverty with many surviving on subsistence rations, with little money to pay for basic amenities or the disbursements associated with their family reunion application, let alone any money left over to pay for early legal advice to access their legal entitlements.¹¹⁷

That the provision of early legal advice would make a significant difference in family reunion cases is a sentiment recognised by the Bach Commission in its recommendation for legal aid to be reinstated as part of a wider call for a broader, enforceable right of access to justice so that people who cannot afford legal help are not left to deal with their problems on their own.¹¹⁸ This is particularly relevant for refugees, who are often isolated and vulnerable.

Given the complexity of the refugee context and of the family reunion process itself, the lack of alternative sources of support and the hardship for refugees and their families where there are barriers to getting legal help, publicly funded early legal help can be vital to apply successfully for family reunion and achieve justice.¹¹⁹

As one legal professional described it: *“Legal aid gives a voice to the unheard and light to those overlooked. Without legal aid the marginalised are kept in the shadows. They cannot be seen and cannot be heard.”*¹²⁰

It is also interesting to note in this context that legal aid is still available for refugee family reunion in Scotland. This means that where refugees are accommodated (or detained) after they have arrived in the UK may alone determine whether they have access to legal aid for family reunion, or not.

“In Scotland, legal aid remains available for family reunion cases. This includes the cost for advice, interpretation, translation, key reports or evidence as well as representation in tribunal. In deciding whether the free legal assistance is indispensable for effective access to the courts or fair hearing in a particular case, the European Court will consider the particular facts and circumstances of each case, taking into account several factors: (1) the importance of what is at stake for the applicant; (2) the complexity of the case or the procedure; (3) the capacity of the applicant to effectively exercise his or her right of access to court. [For refugee family reunion] ... given the importance of the right, the capacity of the applicant (from a financial and psychological perspective), the complexities referred to and the high level of exploitation and abuse, it is clear that continued access to legal aid is required for the UK to be compliant with human rights law. [In Scotland] the provision of legal aid and a specialist enhanced refugee family reunion service allows full access to justice for refugees.”

**Specialist human rights and
refugee lawyer, Scotland**

Other Human Rights Considerations

The 1951 Refugee Convention provides the basis for a refugee's right to settle in the UK.¹²¹ The Convention is premised on the basic understanding that all human beings should enjoy fundamental rights and freedoms, and that being forced to flee ought not to limit an individual's human rights. States are also encouraged to make "every effort" to reunite families.¹²²

Although the Convention does not expressly mention a right to refugee family reunion, the importance of family unity for refugees flows directly from it, and is supported in the Final Act of United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, which recommended that states: "...take the necessary measures for the protection of the refugee's family, especially with a view to ... ensuring that the unity of the refugee's family is maintained, particularly in cases where the head of the family has fulfilled the necessary conditions for admission to another country."¹²³

Family unity is also privileged by the UNHCR, which has regularly underlined the need for refugee family unity to be protected and the importance of facilitating family reunion. The importance of refugee family reunion has also been recognised by the European Court of Human Rights, which noted the essential right of family unity for refugees fleeing persecution so they may settle and resume a normal life.¹²⁴

The importance of the family is also reflected in many regional and international human rights guarantees. The Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social, and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989) are only some of the international human rights instruments which recognise

the value of family integrity.¹²⁵ Although Article 8 of the European Convention on Human Rights does not guarantee refugees an unlimited right to be joined by family members or to be protected against separation from family members, family reunion is inherent in the right to family life, and there are some limits on how governments exercise their discretion in family reunion matters.¹²⁶ The right to family unity is also considered by a number of academic commentators to be customary international law.¹²⁷

By their very nature, refugees who seek family reunion are also different from ordinary migrants and their families. Refugee families are unable to return to their country of origin and the only place they may exercise their right to family unity is in the state that has recognised the refugee status of the sponsor. The importance of states giving special attention to the family reunion needs of refugees, given the reasons they are forced to flee, is referred to in European Union law.¹²⁸ The Directive on the Right to Family Reunification notes that any measures taken by states in relation to family reunion ought to conform to the obligation to protect the family and respect family life, as enshrined in international law. Although the UK has chosen not to implement the Directive, it is nonetheless arguable that it remains generally applicable to refugee families here because of their status under the Refugee Convention.¹²⁹ Of note is the emphasis in the Directive on the need for special attention to be paid to refugees because of the reasons that oblige them to flee their country and force them to become separated, recommending that more favourable conditions be laid down by states for the exercise of refugees' right to family reunion. The special circumstances faced by refugees are also recognised domestically, so that refugees applying for family reunion do not have to satisfy the same income and accommodation requirements as ordinary migrants applying for family visas.¹³⁰

The significant risks faced by children in the refugee context are also relevant in consideration of human rights. Children are recognised as having special rights that ought to be guaranteed in the context of family reunion.¹³¹ For example, alongside more general obligations to children in the Convention on the Rights of the Child, Articles 9 and 10 recognise the special circumstances of refugee children.¹³² The EU also recommends elevating the best interests of children wherever they are separated from their families, suggesting that positive, humane and expeditious family reunion is promoted to provide a durable solution, particularly for unaccompanied children.¹³³

Women, too, are recognised as having rights that are relevant to their gendered experience of seeking refuge, which are relevant in the family reunion context.¹³⁴ It is now commonly recognised that displaced women are more likely to experience gender-based violence, including sexual violence, and where they are fleeing conflict, they are more likely to be targeted by combatants and armed groups because they are women, particularly where they are without a male relative.¹³⁵ While 51% of applicants for family reunion are exposed to security risks, 96% of those are women and children and the gendered experience of women in insecure environments is now widely accepted.¹³⁶ The disproportionate harm suffered by women is evident in women's experience of the global refugee crisis, and is supported by long-term evidence of systematic sexual

assault of women and girls in conflict zones and refugee settings.¹³⁷ While the specific challenges faced by women in refugee settings may still not be privileged or adequately addressed in human rights guarantees, the UK is also bound to protect women's rights according to a variety of obligations, including the International Convention on the Elimination of all forms of Discrimination against Women (CEDAW).¹³⁸ The UK has also instituted a National Plan on Women, Peace and Security, calling on UK officials to see gender as central to their work on conflict, stability and security and routinely integrate, assess and evaluate the gender implications of policies, legislation and programming.¹³⁹

The Equality Impact Assessment process associated with the cuts to legal aid did not consider the potential impact of cuts on broad human rights obligations to refugees in international human rights treaties.¹⁴⁰ Because no formal assessment was carried out on the likely impact of legal aid cuts on the core content of rights, the disproportionate effect of the cuts on refugee women and children or the rights implications of removing publicly funded legal support more generally, the rights of refugees and the needs of displaced women and children have effectively been ignored.¹⁴¹ The outcome of that is legislation which imposes severe human costs on some of the most vulnerable members of society without ensuring the full protection of their human rights.



These additional arguments in support of bringing refugee family reunion back into scope for legal aid are compelling. The range of complex circumstances which ordinarily surround refugee families' applications for reunion make them different from ordinary family visa applications and the particular challenges refugees face are compounded by the current scope of legal aid provision, which is insufficient because legal aid can only be obtained where ECF is successfully applied for.¹⁴² Given the deficiencies in the scheme of ECF and the challenge for advisers in spending time making complex ECF applications, ECF does not ensure refugees are able to recognise their rights with respect to refugee family reunion, nor does it ensure their needs are recognised by the immigration authorities responsible for

doing so. The possibility of change following the post-implementation review of LASPO, and with the passage of the Refugee (Family Reunion) Bill, offer opportunities to recognise the rightful place of refugee family reunion as deriving from refugee status, rather than as a simple immigration matter. They also provide an opportunity for decisions about publicly funded legal support to be anchored in domestic and international human rights obligations. In light of the UK's commitments to the protection of refugees, women, children and family unity, given the risks to women and children, along with the importance of family reunion to the successful settlement of refugee families more widely in the UK, taking up that opportunity is crucially important.

Conclusion

This report has considered how the state engages with the responsibility of ensuring that those who are least able to protect themselves are offered the financial and legal assistance they need in the context of refugee family reunion.

It is clear that applying for refugee family reunion is usually complex, lengthy and difficult. Family reunion is not a simple extension of the immigration process, but a legal right which stems from the recognition of refugee status. For that right to be recognised, refugees must gather and present evidence against a complex background of conflict, fear and flight. As the experiences of refugees show, this is difficult to achieve without legal advice and legal aid to get that support.

Where legal advice is not paid for by legal aid and refugees are unable to afford it, other sources of legal help like pro-bono legal services and specialist advice offered by civil society groups are not able to fill that gap. Exceptional Case Funding is not a reliable safety net and, although there have been some recent improvements, it remains inadequate and not a viable alternative to legal aid provision.

As this report has sought to show, there is a nexus between the removal of legal aid for refugee family reunion and a severe human cost to refugees. The importance of being reunited and the strain of coping with complex family reunion applications adds weight to the considerable hardship that refugees have already endured. Even where refugees are safe, where their families are not, they will work tirelessly to be reunited. In doing so, they will demonstrate considerable

stamina in trying to achieve that aim, but often at the cost of suffering severe mental, physical and financial hardship. For those family members outside the UK (who are often women and children) they face an increased risk to their personal security as a result of barriers to family reunion like a lack of legal aid provision. Family reunion is critically important as an essential route to protection for people who are fleeing harm, offering support to them and their refugee sponsors in the exercise of their fundamental right to family unity, and allowing families to come together to rebuild their lives in a safe and supported environment.

The removal of publicly funded legal support for refugee family reunion applications in England and Wales has also restricted meaningful access to justice for refugees and undermined the human rights of vulnerable groups. It sits in stark contrast to the provision of legal aid in Scotland.

Reviewing LASPO offers an opportunity to take stock of the human cost of legal aid cuts and make a positive contribution to the biggest global displacement of people since the Second World War; sentiments which have been echoed by NGOs, the UNHCR and various parliamentary bodies. Conversely, sticking with the status quo and hampering family separation for refugees risks exacerbating the severe personal impact of the human tragedy unfolding today.

Cuts to public spending have become routine around the time of writing and the challenge in balancing resources is great, which makes allocating legal aid provision

difficult. This makes it more important, however, that resources for publicly funded legal support are allocated to those who need them. In the context of family reunion, LASPO neither targets those who need legal aid most, nor delivers value for money. Legal aid is not always reaching those who need it, including vulnerable refugee families, and the costs associated with denying legal aid are often simply passed on to other agencies in the public sector. By reuniting interdependent family members, the state can support people who have already endured a great deal and help them to integrate by promoting the availability of networks for emotional and financial support.

In considering the scope of future legal aid provision, it is possible to learn from the post-implementation impact of LASPO

and prevent further suffering by responding to the legitimate concerns of refugees and those who work with them to reinstate publicly funded legal support.

It is strongly recommended that this opportunity for change is embraced, to recognise the quintessential role of legal help in making an effective application for refugee family reunion, and bring it back within the scope of legal aid provision. This is both the right thing to do and essential for those concerned.



Latest Developments: Where Are We Now?

Key Findings

- 1.** Although the Government had committed to the post-implementation review of LASPO to consider evidence from organisations supporting groups affected by the cuts to legal aid, the review did not respond in detail to the considerable, ongoing challenges faced by refugees who are seeking family reunion, despite clear evidence to that effect.
- 2.** The Government has engaged with the sector since the post-implementation review of LASPO and there have been some positive developments, specifically regarding better decision making and the administration of ECF.
- 3.** The Government's decision to recognise the risks and vulnerabilities faced by unaccompanied asylum seeking children and provide legal aid for them in all immigration matters was welcome. Because refugee families' claims for reunion are anchored in an asylum claim, they too continue to face significant risks and vulnerabilities. However, these were not addressed in the LASPO review on the provision of legal aid, and they have not been addressed since then.
- 4.** Applying for refugee family reunion is still challenging and the need for legal representation and funding remains, because barriers to refugee family reunion are ongoing. These include challenges with ECF (despite some improvements) and growing advice 'deserts' and capacity gaps leaving many without access to legal help at all.
- 5.** There is no agreed replacement following the removal of Dublin III as a legal pathway to refugee family reunification at the end of the Brexit Transition period in December 2020. This closes an alternative safe route to the UK and imposes an additional, heavy toll on refugee families.
- 6.** The full effect of COVID-19 on refugees who have already experienced so much hardship is still unknown. While this update cannot examine the pandemic or its effects on refugee families in depth, the impact of COVID-19 is to exacerbate the anxiety and strain of separation on vulnerable refugee sponsors in the UK and refugee families abroad, who are more likely to remain stuck in precarious and unsafe environments.

The Ministry's Review of the Cuts to Legal Aid and Refugee Family Reunion Today

At the time of the post-implementation review, the Minister for Justice said its scale provided the Government with the opportunity to engage with all interested parties. It is essential for that engagement to continue.¹⁴³

This update forms part of that ongoing engagement. In particular, it is prepared in response to the House of Commons Justice Committee's call for written evidence on the future of legal aid and to support the Government's aim to collect more evidence and explore additional ways to ensure access to justice for vulnerable people like refugees and their families.

Research for this update began in early 2020, a year after the Ministry of Justice post-implementation review of LASPO, with the purpose of examining what the review said about bringing refugee family reunion back into scope for legal aid and assessing what has happened since then for refugee families and in the wider legal and policy landscape.

In March, 2020 the COVID-19 pandemic led to lockdown restrictions being imposed in the UK. The imposition of lockdown posed logistical difficulties which, in turn, delayed the production of this update and the publication of this report.

The updated report will now cover the period up to October 2020. While the full impact of COVID-19 is yet to be known, this report does not cover the pandemic or its effects on refugee families in detail, and this is left to be evaluated at a later date.

The Post-Implementation Review of LASPO and Refugee Family Reunion

Purpose of the review

The stated aim of LASPO was to target legal aid to those who need it most, changing the areas of law for which legal aid funding was available. The post-implementation review of LASPO was intended to carry out an evidence based and objective assessment of the impact of those changes. The Ministry of Justice also used this opportunity to look at how the full range of legal support should be delivered in the future.¹⁴⁴

Refugee Family Reunion in the PIR

The review of LASPO followed engagement with over 130 organisations, either through submission of written evidence or in individual or group events. This process solicited a broad range of views and was undoubtedly comprehensive. The continued strain on refugee families following the removal of family reunion from the scope of legal aid was highlighted by an earlier draft of this report, along with other submissions to the Ministry of Justice. However, refugees are mentioned expressly only a handful of times throughout the post-implementation review and there is very little discussion of the ongoing challenges they face in seeking family reunion without funding for legal assistance.¹⁴⁵

While the difficulty associated with both a limited budget and many different groups' needs to weigh and balance is understood, it is nonetheless a missed opportunity for the review not to examine in more detail the considerable, ongoing challenges faced by refugee families. Asylum claims and family reunion applications are inextricably linked and therefore also inherently complex. They are also of fundamental importance to all of the individuals involved, and often relevant to the realisation of basic human rights. As this

report has argued, legal advisers play an essential role in helping refugees to navigate the difficult process of making an application so that they can be joined by their loved ones, by making sure the right evidence is included to support an application which is already often complicated because it is firmly rooted in a prior claim for refugee status.

Since the Post-Implementation Review of LASPO

The Government has confirmed that it sees the process of administering legal aid as one of ongoing engagement and the Justice Committee has issued a call for views on the administration of legal aid.¹⁴⁶ To further that engagement and answer that call, this update offers a review of key events in refugee family reunion since the post-implementation review.

The Process of Applying for Family Reunion

Better Decision Making

The Government referred in the review of LASPO to the sustainability of decisions and the quality of engagement with applicants, recognising that improvements were needed.¹⁴⁷

In June 2018, a new central UK Visas and Immigration (UKVI) Chief Caseworker Unit was established in Sheffield, the post of Chief Caseworker was created and senior caseworkers were appointed from across the Home Office. New processes and training schemes were put in place to improve decision-making and promote a more customer-focused approach. Crucially, procedures were introduced with the aim of reducing the number of refusal decisions that are later overturned at appeal.¹⁴⁸

As a result of these changes, the Independent Chief Inspector of Borders and Immigration and practitioners have spoken of a more

positive experience for those who are making applications for refugee family reunion.¹⁴⁹ Practitioners supporting refugees and interviewed for this update told us that it is often now easier to communicate effectively with the Home Office about an application because they more likely to get responses to their questions. It is also easier to rectify errors and discuss problems that arise during the application process, reducing the time, cost and strain of applications being refused where minor errors are made. These improvements in communication with the Home Office mark an important and welcome change in the decision-making process and the quality of decisions on family reunion applications.

Improvements to ECF

Significant problems with the ECF scheme and its administration were highlighted in some detail earlier in this report. Following legal challenges and since the post-implementation review of LASPO, however, the Government has committed to working with legal professionals and the wider advice and charity sector to make changes to the ECF scheme and to ensure it works more effectively.¹⁵⁰

The good news about ECF is that the number of successful applications has increased and ECF is now more likely to be available as an alternative to legal aid for refugees where a breach of human rights is otherwise threatened.¹⁵¹ Practitioners confirmed their view that ECF is now more likely to be granted, and that some of the initial problems with accessibility have been resolved.¹⁵²

However, if ECF is now almost universally granted in refugee family reunion cases, this begs the question: given it is now arguably exceptional that denying legal aid won't breach an applicant's rights, why is refugee family reunion not simply brought back into scope for legal aid? To do so would reduce the additional stress to refugees of having to apply for ECF, and remove the additional cost to the public purse of managing this

scheme in the context of administering legal aid. Doing so is also more likely to have a positive impact on the gaps in legal advice capacity (discussed below) by making it more financially secure for practitioners to take on refugee family reunion work.

Practitioners also said that the process of applying for ECF remains difficult and time-consuming. The reality is that, while there has been some progress, legal advice is needed and where it is not granted, the time spent making an application is still not funded. While the improvements to ECF are welcome, practitioners questioned whether they met the Government's aim of targeting legal aid to those who need it most, because ECF continued to pose an unnecessary barrier and add a layer of complexity to the process of reuniting vulnerable refugee families.

Capacity Gaps

The post-implementation review of LASPO acknowledged the growing problem of gaps in advice provision, where solicitors have been unable to continue work which is funded by legal aid.¹⁵³ The review noted research suggesting that 56% of immigration and asylum providers have left the market, leaving very large gaps in advice provision, particularly in rural locations.¹⁵⁴ In turn, this has placed even more pressure on the not-for-profit providers who, as this report has already noted, are not able to fill advice gaps, and who are also dropping out of the legal aid market because of associated strains.¹⁵⁵

A report by Jo Wilding, 'Droughts and Deserts: A report on the immigration legal aid market' describes the twin barriers of advice deserts (where there are no legal aid providers in the area) and advice droughts (where there are suppliers but clients are not able to access that support).¹⁵⁶ The outcome is limited capacity, in part caused by inadequate funding which makes this type of work unattractive to practitioners. According to Dr Wilding, this means the claim in the post-implementation review

that the legal aid market is sustainable is wrong and its importance for applications like refugee family reunion ought not to be underestimated, where complexities and challenges to making a successful application are increasing and where an understanding of the law is often vital. Dr Wilding makes the point that legal aid is the cornerstone of public interest and the availability of good quality legal advice and support for applications like family reunion ensures that taxpayers' money is well spent, adding: "*Neither the clients nor the lawyers involved in publicly funded asylum and immigration legal services receive unmitigated public sympathy, but it is firmly in the public interest to ensure that the systems in which they operate are effective.*"¹⁵⁷

The Wider Legal and Policy Landscape

Brexit, Dublin III and the Immigration Bill

The Dublin III Regulation is an inter-state system for the transfer of asylum claims. It aims, with some limitations, to make family reunification more collaborative and simple within the EU by allowing for the transfer of asylum applications to a Member State where a family member is present. Where an applicant for asylum has family members in a different Member State to the one in which they've made a claim, their claim may be transferred. This means that states themselves have an obligation to facilitate family reunification applications. Under Dublin III, Member States must ensure that refugees are able to join their family members as easily and swiftly as possible, even if the process of reunification can still take some time.¹⁵⁸

Dublin III has become increasingly important to families who are separated by war and persecution. In 2019, the UK authorities received 825 transfer requests for family reunification under Dublin III.¹⁵⁹ With Brexit, Dublin III will come to an end in the UK and so will the family reunification rights it

provides.¹⁶⁰ At present, there is no agreed replacement for Dublin III.

The Government has indicated its commitment to negotiating an agreement for unaccompanied asylum-seeking children by publishing a draft agreement to replace Dublin III earlier this year. This draft agreement forms part of the negotiation process of withdrawing from the EU and establishing the terms of a future relationship. However, at the time of writing, nothing has been agreed with the EU and as things currently stand, at the end of the transition period on 31 December 2020, refugee families who were previously able to be reunited in the UK under the Dublin regulations will have to apply according to the relevant provisions of domestic immigration law.¹⁶¹

Throughout the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill attempts have been made to protect the rights offered by Dublin III. First, in the form of a cross party amendment tabled in the committee stage, requiring the Government to amend the Immigration Rules to preserve the effect of Dublin III so that unaccompanied asylum-seeking children, spouses and vulnerable adults would continue to have the same opportunities to reunite in the UK.¹⁶² The clause was withdrawn. Lord Dubs, a highly regarded and well-known advocate for child refugees, has also introduced Lords Amendment 4 during the passage of the Bill, requiring the insertion of a new clause that would establish a legal route for people who would have been eligible for transfer to the UK under Dublin III. This amendment requires the Government to ensure that unaccompanied children in an EU Member State are relocated to the UK, where that is in a child's best interests. Lord Dubs and the many NGOs supporting his amendment have expressed deep concern that, without these changes to the Immigration Bill, separated families in Europe will be left without a safe passage to the UK. The

result of which is to subject refugees to ever more vulnerability and harm, and to leave the UK open to the accusation it is behaving inhumanely in the face of grave suffering. In reply, the Government has repeatedly objected to the amendment largely on the basis that refugee family reunion under the Immigration Rules offers adequate routes for families to reunite and that it would not be appropriate to replicate Dublin III after leaving the EU, apparently unconvinced that it is a good idea for children to be able to sponsor family reunion applications or that people seeking asylum elsewhere should be able to pursue their claim in the UK where they have family here. At the time of writing in late October 2020, Lords Amendment 4B had successfully been passed in the House of Lords (with an amendment regarding charging application fees) and again returned to the House of Commons for consideration.¹⁶³ The final text of the Bill, and whether or not it protects the rights offered by Dublin III, is awaited.

As this report has already outlined, separated family members who are still in Europe or further afield are likely to have undertaken a dangerous journey from their home country, usually with the help of smugglers or traffickers, and find themselves in a foreign country where they do not speak the language, have no support system and are worried about seeking help from the authorities for fear of being sent back to their home country. While the Dublin process is not flawless, the burden of navigating an alternative safe route to join loved ones via the complexities of the UK immigration system in the absence of Dublin is high.

Even when a person is eligible to make an application for family reunion under the current UK Immigration Rules, the process is practically and legally more difficult than a request for Family Reunification under Dublin III. This can have terrible consequences for the most vulnerable categories of refugees.

At present, requests under Dublin III are made to the UK Home Office directly by the EU member state where the person is based. It is the authorities that submit a request for family reunification when the basic conditions are met and the applicant is only required to provide basic details and documents – if they have them – to demonstrate the link with the person in the UK. The onus to investigate that the conditions for the request are met is on the UK Home Office, who is required to make checks and involve the local authorities to help with the case.

By contrast, in a family reunion application under the UK Immigration Rules, the responsibility to demonstrate the family link, and anything else relevant to the case, is on the applicant. The person who wishes to join their family in the UK must submit an application online, requiring internet access and an understanding of how to navigate a complicated website with many fields to fill in. The applicant is expected to collect and submit original documents that prove that they are related to the person in the UK, providing official translations of non-English documents which often cost a lot of money. For the application to be valid, there is also a requirement to attend a visa centre to provide biometric information, which is incredibly difficult for people who find themselves in places they may not even be allowed to leave, for example on a Greek island subject to the so called “island restriction”.¹⁶⁴

Moreover, not everyone who is currently eligible to apply for family reunification under Dublin III will be able to apply for family reunion under domestic immigration provisions. For example, parents of refugee children who find themselves in the EU will no longer be able to join their children in the UK, irrespective of whether those children are minors.

Not having access to legal aid to get support for a family reunion application means the loss of Dublin III as a safe route to the UK and family reunification will impose an

additional heavy toll for some of the most disadvantaged, and may increase the risk that separated families will feel forced to try more dangerous alternatives to reunion.¹⁶⁵

Legal Aid and Child Refugees

Following a judicial review brought by the Children Society in 2018, later the same year, the Government committed to expanding the scope of legal aid to cover unaccompanied asylum-seeking children in immigration matters. In October 2019, the Legal Aid for Separated Children Order 2019 came into force, “... to bring their cases into the scope of legal aid and ensure access to justice.”¹⁶⁶

Before the order, refugee and migrant children were unable to access legal aid to receive legal support for a wide range of applications and had to find alternative ways to advocate for their rights, such as accessing – very limited – pro bono legal support services or preparing their case themselves.¹⁶⁷ This led to a high number of vulnerable children being left unable to access justice and join family members, or resolve their immigration matters, with disastrous consequences for their future as well as their wellbeing and mental health.¹⁶⁸

After the order, non-asylum immigration and citizenship matters were brought back into scope for legal aid for under 18s not in the care of a parent, guardian or legal authority.¹⁶⁹ This change to LASPO includes all aspects of immigration advice, and means that children are eligible to receive legal aid to make applications to remain in the UK.

The change also means that a child sponsor can get legal aid as of right for refugee family reunion, even though children are not currently entitled to sponsor refugee family reunion applications under the Immigration Rules. It is important to note that, the UK Government’s policy on preventing child refugees who have sought safety in the UK from sponsoring family reunion applications leaves some of the most vulnerable children separated from their families at a time when

they are most in need, a concern explored in detail in a research report looking at the issue of child refugees and their eligibility for refugee family reunion, prepared by the Refugee Council in collaboration with others.¹⁷⁰ As that report highlights, the justification for this policy – that to change the rules would encourage parents to send their children on unsafe journeys to secure refugee status, so that other family members could join them – is unsupported by any body of evidence, inconsistent with the approach of every other European state and difficult to take at face value. This is not least because it seems to suggest that refugee parents are different from other parents because they would willingly expose their child to severe harm, or even death, by sending them alone on a dangerous journey to the UK for the sole purpose that other family members may reach safety in the future.

The suggestion that refugee parents are different from any other parent because they would willingly expose their child to the risk of extreme harm, and even death, to offer the possibility that the rest of the family may have a safe passage, is baffling. It is time that the Government accepted that any refugee parent who sends their child on an isolated and dangerous journey, does so in a desperate last attempt to best ensure that child's safety. To suggest otherwise reveals a disturbing insensitivity leading to a serious injustice.

Despite the Government's disappointing approach to the issue of child refugees as family reunion sponsors, the move to reinstate legal aid for unaccompanied children is welcome.

The arguments made by the Children's Society during their five year campaign for

this, which centred around vulnerability and the fact that the money saved by the Government in denying children legal aid was effectively spent elsewhere (particularly by local authorities with responsibility for supporting vulnerable children) might also be made regarding adult refugees who are seeking family reunion.

This is because refugees have by their very nature fled their country of origin to escape persecution, often having experienced complex trauma that is exacerbated by separation from family members. Sponsors commonly experience intense distress while their families are still elsewhere and at risk. Their own lives are regularly stuck on hold while they endure the emotional and mental health effects of prolonged separation. Family members outside the UK are also very often exposed to serious risks to their personal safety in unsafe environments, including physical and sexual violence and other harm directly as a result of their family connection to the sponsor in the UK. For these reasons and more, refugee families who are trying to navigate the complex immigration system in the UK and reunite with loved ones are extremely vulnerable to a range of risks.

As also outlined earlier in this report, although savings have been made to the legal aid budget as a result of LASPO, it has also resulted in public sector spending elsewhere, including on health and welfare for refugees who are often traumatised as a result of their experiences and struggling to settle into life in the UK without their families. Without legal aid and the reliable source of support it offers, where family reunion is delayed or denied, other problems are likely to escalate. This has an impact on the lives of refugees as well as government expenditure.

As with vulnerable children, it also undermines apparent savings of LASPO. While the cost of providing legal aid for refugee families is very small in the scheme of the overall budget

for legal aid, the impact of providing this funding is broad and deep.

It would be a positive step for the distinct vulnerabilities, complexities and importance of refugee family reunion to be recognised by the Government – as they were for vulnerable children – so that any future amendments to LASPO bring refugee family reunion applications back into scope for legal aid.

The COVID-19 Pandemic

Since we began this update, the COVID-19 pandemic has had far-reaching implications around the globe.

It is important at this time to note that for refugees, the impact of COVID-19 and its lockdowns are likely to exacerbate the anxiety and strain of being separated from their family members trapped in unsafe environments.

While the full effect of COVID-19 is unknown, those working with refugee families have confirmed that access to asylum and family reunion has been made even more difficult during this global crisis.¹⁷¹

People who have been recognised as refugees have been waiting much longer for resettlement, while others have been unable to apply for asylum at all. While refugee family reunion has not been stopped altogether, families have also had to wait longer to be reunited with loved ones because of delays associated with COVID-19.

Inevitably, this has meant they have been more likely to spend even longer in dangerous and unsafe environments. As Naomi Phillips, Director of Policy and Advocacy at the British Red Cross has confirmed, this is particularly

worrying for women and children because: *“...nine in every ten family reunion visas issued in the UK go to women and children [and] if they’re unable to be reunited safely they will often be left in incredibly precarious situations.”*

While this update cannot examine the pandemic or its effects on refugee families in detail, particularly because the uncertainty over the virus and its impact is ongoing, it is clear that COVID-19 has increased the suffering experienced by refugees. Refugee families have been made even more vulnerable because of COVID-19 and, as a result, they are more in need of support, advice and guidance.

Where to Now for Refugee Family Reunion and Legal Aid?

The Government has confirmed the importance of making sure that those who need legal aid can get it, expressing its commitment to supporting access to legal aid and access to justice.¹⁷²

This commitment is evident in the family reunion context in the small but meaningful improvements the Government has made, to ensure better decision making and make ECF more accessible and efficient. These changes are welcomed by practitioners and refugee families alike. The Government’s decision to bring legal aid back into scope for unaccompanied children is also positive and far reaching. Bold policy decisions such as this are not always easy to make, especially as budgets continue to be stretched. But this decision was both right and fiscally sensible.

If the Government were to do the same thing for refugees and their families, and fund legal assistance for family reunion applications, this would also be the right thing to do and make fiscal good sense. Like unaccompanied children, separated refugee families are distinctly vulnerable.

Their application for reunion is not ordinarily simple, either, because the nexus between refugees and their loved ones, both in terms of family ties as well as the nature of the experiences causing them to seek refuge, is direct and strong. As a result, the challenges they face are great.

Denying legal aid for refugee family reunion has a deep human cost. It also shifts other costs around so that other government agencies pay to pick up the pieces when refugees are struggling with the severe mental and sometimes physical effects of separation that is prolonged without legal help.

Resources like the NHS funded Asylum Seeker and Refugee Mental Health team as well as local authority funded resources supporting refugees day to day are in greater demand where legal advice is absent and integration is made much harder. While it is understandable at a time of fiscal uncertainty that the Government will want to spend less and spend well, where refugees are not reunited with their loved ones, they are likely to suffer more trauma and require more indirect support from the public purse.

The reality is that refugee family reunion appears to have become lost in the amorphous mass of the many matters that are considered in or out of scope for legal aid since LASPO. Family law, crime and

now the needs of unaccompanied children have, to date, had more attention.

Despite that, it is possible for the Government to continue to build on the small but meaningful administrative changes it has made in this sector, and show that refugees have not been forgotten.

Although it may politically be easier to prioritise other groups in considering how to spend public money, it is in the public interest to fund legal aid for refugee family reunion.

It is also an opportunity for the UK government to show leadership in international conversations on refugees, such as those happening in connection with the UN Global Compact, where the UK can show its credentials when it comes to compassion and the refugee crisis.¹⁷³

Funding refugee family reunion doesn't have to be a choice between legal aid and no legal aid, or resorting to the unsatisfactory assistance provided by ECF, either. It is possible for the Government to reframe this debate on its own terms, acknowledge the unique vulnerabilities of refugees and the views of the advice sector about family reunion being a matter of protection and asylum, while still holding the view family reunion is also closely associated with immigration and family visa applications. The Government could take a proactive step and consider reinstating funding without the hurdle of ECF, by creating a special category of publicly aided legal help which is granted as a matter of right to all refugees seeking to reunite with their loved ones. If bringing family reunion back into scope for legal aid is viewed as a difficult leap backwards for the Government, this could be one way of moving forward, for the benefit of everyone involved, including refugees, their families and public sector agencies and budgets.

If the aim of LASPO and its post-implementation review was to ensure that the highest priority cases receive legal aid, by not recognising the importance of refugee family reunion and the need to bring it back into scope for legal aid, this aim cannot truly be met. It is right that refugees are viewed as a sufficiently vulnerable group to have

access to legal aid. It is difficult to reconcile that, however, with the failure to recognise the same vulnerabilities at play when refugees try to reunite with their separated family members; often women and children, trapped in dangerous locations and at risk of severe harm for reasons associated with the original claim for refugee status.

Recommendations

1. The Government is urged to build on the small but positive steps it has recently taken by amending LASPO to bring refugee family reunion back into scope for legal aid, or offer an alternative that does not pose the same barrier to assistance as ECF. This would recognise the direct link between asylum and refugee family reunion, the distinct vulnerabilities of refugees and the indirect costs to the public purse of denying legal aid and operating the ECF scheme.
2. In line with the Government's decision to provide legal aid to vulnerable children, it is only right that unaccompanied asylum-seeking children and those with humanitarian protection are able to sponsor refugee family reunion applications so that they may be reunited with their caregivers and loved ones.



References

1. This report was commissioned by the Families Together Programme under the direction of its steering committee. For more on the Families Together Programme, please visit <https://www.redcross.org.uk/about-us/what-we-do/how-we-support-refugees/families-together>
2. Ministry of Justice, Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (February 2019) and Ministry of Justice 'Legal Support: The Way Ahead' (February 2019).
3. Ministry of Justice, n 2, p 60, para 305 refers to the feedback from interested parties that the lack of legal aid makes it difficult to navigate refugee family reunion applications. The report noted this feedback but did not go on to discuss it in detail.
4. This discussion has included the passage of the Family Reunion Bill, a Private Members' Bill introduced by Scottish MP Angus MacNeil, which sought to expand the criteria for who qualified as a family member for family reunion, allow unaccompanied children the right to sponsor their family members to join them and reintroduce legal aid for refugee family reunion cases. MPs voted in favour of the Bill at its second reading on 18 March 2018. Although the Bill did not proceed further than the Committee stage after that, the issues raised by its introduction gained widespread support and the campaign to bring refugee families together continues. For further information see Families Together Coalition <www.refugeesttogether.co.uk>.
5. Assistance was provided by the British Red Cross in London and Leeds, The Greater Manchester Immigration Aid Unit, the North-East Law Centre in Newcastle, the Nottingham Refugee Forum, and the Refugee Family Reunion Project at Plymouth University.
6. Interviews took place in London, Leeds, Newcastle, Nottingham, Manchester and Plymouth.
7. Interviews with caseworkers and legal advisers were carried out with the British Red Cross in London, The Greater Manchester Immigration Aid Unit, the North-East Law Centre, the Nottingham Refugee Forum, the Refugee Family Reunion Project at Plymouth University and JustRight Scotland.
8. Home Office 'Family reunion: for refugees and those with humanitarian protection' (29 July 2016) p 24. Despite the provision of DNA being optional at the election of sponsors and applicants, an independent review of the Government's policy on DNA testing in visa and asylum cases found DNA tests have been demanded and not simply requested by the Home Office; Richard Alcock, 'Internal Review of the Government's Policy on Requirements to Provide DNA in Visa and Asylum Cases' (September 2018).
9. Ministry of Justice 'Proposals for the Reform of Legal Aid in England and Wales' (November 2010) p 33, para 4.12.
10. Ministry of Justice, 'Reform of Legal Aid in England and Wales: The Government Response' (June 2011) p 28, paras 89, 90. LASPO halted the provision of legal aid for immigration matters, and while there are exceptions for asylum and detention cases, refugee family reunion was not considered an asylum issue.
11. The suggestion that family members can apply for refugee status themselves, either as a dependent or in their own right, is likely to be limited as a solution to family separation. To claim asylum as a dependent of a primary asylum claimant, or to claim in their own right, separated family members would have to make it to safety in the UK. This doesn't take account of the fact of their forced separation, and risks encouraging them to make a dangerous journey without the benefit of family reunion and a safe passage. Claims for family reunification may also be made under the Dublin III Regulations where a family member is already in the UK. Relying on this as a route to family reunion has many challenges so that it is extremely limited as a practical alternative to refugee family reunion, and will likely be removed altogether following Brexit.
12. House of Commons Justice Committee, 'Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012' (12 March 2015) p 8.
13. Legal aid is currently available for refugee family reunion in Scotland and Northern Ireland.
14. Ministry of Justice, n 9, p 34, para 4.24
15. Ministry of Justice, n 10, p 28, para 90 "Applications to join family members are treated as immigration cases and are generally straightforward because they follow a grant of asylum."; Jonathan Djanogly Hansard HC, Vol 357 Cols 626-664 (31 October 2011) Col 651 "Amendment 145 seeks to bring family reunion cases back into the scope of legal aid, at a cost of about £5 million a year ...They are immigration applications, rather than asylum ones, and they are generally straightforward."
16. Ministry of Justice 'Reform of Legal Aid in England and Wales: Equality Impact Assessment (EIA) (21 June, 2011) p 46, para 2.109. Refugee family reunion cases are referred to specifically once, as 'straightforward', at p 47, para 2.114. The forms and guidance for refugee family reunion applications can be found at: < <https://www.gov.uk/settlement-refugee-or-humanitarian-protection/family-reunion>>.
17. For a detailed and comprehensive review of the multiple, common complexities associated with refugee family reunion, see Beswick and The British Red Cross 'Not So Straightforward: The Need for Qualified Legal Support in Refugee Family Reunion' (Report, 2015).
18. Beswick, n 17, p 31; Greater Manchester Immigration Aid Unit 'Briefing paper on family reunion for refugees in the North West of England' (June, 2017). While some forms and information may be offered in languages other than English, not all are.
19. Beswick, n 17; British Red Cross 'The Complexity of Family Reunion' (Research Report, August 2013) p 10; White and Hendry and The British Red Cross 'Family Reunion for Refugees in the UK: Understanding Support Needs' (Report, 2011) p 24, 28; British Red Cross 'Torn Apart: How reuniting families can provide solutions to the refugee crisis' (Report, 2016); UNHCR, 'Family Reunion in the United Kingdom' (Briefing Paper, March 2016) p 3.
20. Beswick, n 17; All Party Parliamentary Group on Refugees (APPGR), 'Refugees Welcome? The Experience of New Refugees in the UK' (Report, April 2017) p 40. Julie Gibbs & Deri Hughes-Roberts for Asylum Aid, 'Justice at Risk: Quality and value for money in asylum legal aid' (Report, November 2012) p 42 also illustrates the benefit

of investing in early good-quality legal advice rather than having to send applications several times, or having appeals, particularly because they are intricately legal and because fundamental human rights are at stake. Although not speaking directly about family reunion, the report concludes that claims involving asylum (which refugee family reunion applications do) are better managed by a qualified representative. This sentiment was shared universally among the caseworkers and legal advisers interviewed for this report.

21. For example, photographs evidencing a close relationship. This can be very difficult where the relationship itself is complex, such as a same sex relationship in jurisdictions where those relationships are banned.
22. Beswick, n 17, p 35, 39; APPGR, n 20, p 40, para 180.
23. No disaggregated data is available on the proportion of refugee family reunion applications that fail on the first application and how many of those are re-submitted or appealed, but the Home Office has been described as “too ready” to refuse applications where it considers sufficient evidence has not been supplied. It would be both more fair and efficient to defer a decision and allow an applicant to produce any missing documentation; see Independent Chief Inspector of Borders and Immigration ‘An inspection of family reunion applications – January to May 2016’ (September 2016) p 2. See also, Home Office, n 8 p 21, for the basis for these refusals: “...the onus is on the applicant and their sponsor to provide sufficient evidence to prove their relationship and satisfy the caseworker...” where the right information is not provided from the outset, applications may be refused and started from the beginning or appealed.
24. Beswick, n 17, p 35, 39.
25. See <<https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/report-implementing-reforms-to-civil-legal-aid/>> (accessed 9 February 2019), for the comments of the Public Accounts Select Committee Chair on the reforms being based on a simple objective to cut costs as quickly as possible, an especially problematic approach given the purpose of legal aid is to ensure that the poorest and most vulnerable people are able to get access to justice. For the full report, see: House of Commons Committee of Public Accounts ‘Implementing reforms to civil legal aid: Thirty-sixth Report of Session 2014–15’ (4 February 2015).
26. The Low Commission ‘Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales’ (January 2014).
27. Office of the Immigration Services Commissioner, ‘Guidance on Competence’ (January 2012), p 12, 14.
28. Beswick, n 17; APPGR, n 20.
29. Practitioners we spoke to confirmed the requirement for TB tests was common among clients (for information on those countries from which a TB test is required visit: <https://www.gov.uk/tb-test-visa>). The costs of translations vary and may depend on the number of words in a document, the format of the original document and the format of the translation needed, the languages that need translating, the complexity involved and the deadline for the translation to be completed.
30. Interviews with practitioners also revealed the cost of DNA testing for family members to prove their connection was around £400–600, sometimes more, depending on the number of tests needed. The costs also vary according to the location of family members (for example, clinics collecting samples may charge fees in addition to those published by UK companies carrying out the DNA testing and where samples need to be collected in countries that are considered high risk, couriers may charge a premium).
31. Asylum support payments are outlined at: <www.gov.uk/asylum-support/what-youll-get> (accessed 9 February 2019).
32. Refugee Council and Oxfam ‘Safe but Not Settled’ (January, 2018) p. 11
33. Refugees will stop receiving asylum support within 28 days of their refugee status being recognised. They are eligible to apply for income support. Payments are outlined at: <www.gov.uk/income-support/what-youll-get> (accessed 9 February 2019).
34. Beswick, n 17, p 63. Successful family reunion requires sponsors to show they continue to have a ‘subsisting relationship’ with their family members, including children who must be dependent on the sponsor to be eligible for reunion, and remittance is also one way that a sponsor can show this.
35. Scottish Refugee Council ‘One Day We Will Be Reunited; Experiences of Refugee Family Reunion in the UK (Report, April 2010) p 39; Beswick, n 17, p 63.
36. APPGR, n 20, p 40 cites the ordinary cost of getting legal advice on a family reunion application at around £600–800, although where complications arise, as they often do, the practitioners we spoke to confirmed those costs can rise to £2,000–3,000.
37. Beswick, n 17, p 11, 64; British Red Cross, 19, p 4, 10.
38. Eduardo Reyes, ‘Pro bono: Never Enough’ Law Society Gazette (November, 2017). Caterina Franchi, Wilsons’ Solicitors, highlights the dangers inherent in trying to ‘multiply’ the benefit of pro bono advice and the problems that can cause: “Refugee communities do that quite a lot. One person gets legal advice and then spreads the word – the wrong word. Then it takes 10 times as much ... advice... to try to patch up what has been done.”
39. Eduardo Reyes, n 34; British Red Cross, n 33, p 3.
40. Ministry of Justice, n 9, p 5, para 1.2.
41. It is difficult to outline any standard cost structure for refugee family reunion applications, precisely because they are rarely straightforward or predictable and each application will often have its own pattern of complexities. Private solicitors working in this area are known to quote from £800 for a simple application, but anecdotally, family reunion applications will generally incur costs between £1,000 and £3,000, depending on the numbers of applicants involved.
42. Amnesty International ‘Cuts that Hurt: The impact of legal aid cuts in England on access to justice’ (October 2016) p 21 contains a detailed discussion on the closures.
43. Bar Council ‘LASPO Five Years On’ (September 2018) p 31, paras 123, 124. The Bar Pro Bono Unit has told the Bar Council that demand for its services has increased by 65% since LASPO. In particular, requests for help in immigration cases increased from an average of 20 cases per year pre LASPO to just under 150 cases a year on average after legal aid cuts.
44. Discussed in more detail later in this report at Other Arguments for Reinstating Legal Aid for Refugee Family Reunion.
45. ‘Mixed migratory movements’ are irregular flows of people with different needs, being driven by multiple factors. They can be made up of refugees, those seeking asylum and migrants (who may also have different profiles and needs). UNHCR Global Trends: Forced Displacement in 2017’ (25

- June 2018) provides updated statistics on displacement, with approximately 25.4 million refugees, 3.1 million people seeking asylum and 40 million people who are internally displaced.
46. Refugees are those who have formally been recognised as refugees in the UK, according to the Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 23 March 1976) 189 UNTS 137 ('Refugee Convention').
 47. In the year ending September 2018, 27 people were resettled under the MRS, suggesting it is not being used to its full potential in the UK, despite the fact it could play a vital role in making sure that refugees who have relatives in the UK are able to access a safe and legal route to protection. Up-to-date asylum statistics can be found at: <www.gov.uk/government/publications/immigration-statistics-year-ending-june-2018/how-many-people-do-we-grant-asylum-or-protection-to> (accessed 9 February 2019). For more discussion see: British Red Cross and other agencies, 'Together Again; Reuniting refugee families in safety – what the UK can do' (February 2017) p 8.
 48. A total of 12,851 people have been resettled under the VPRS since the scheme began in 2014. In the year ending June 2018, 5,702 people were resettled in the UK under various schemes, a decrease of 17% compared with the previous year. This consisted of: 4,316 under the VPRS, 603 under the VCRS, 766 under the GPP and 17 under the MRS. (<<https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2018/how-many-people-do-we-grant-asylum-or-protection-to>> (accessed 9 February 2019).
 49. Additional information on asylum numbers in the UK can be found at: <www.refugeecouncil.org.uk/assets/0004/4614/Asylum_Statistics_Nov_2018.pdf>. For European asylum statistics see: <ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report> (accessed 9 February 2019).
 50. Immigration Rules, Part 11, Asylum, paras 352A to 352FJ.
 51. See <www.gov.uk/government/publications/immigration-statistics-april-to-june-2017/how-many-people-do-we-grant-asylum-or-protection-to>, Section 7 International Comparisons.
 52. European Council on Refugees and Exiles (ECRE) and Red Cross EU 'Disrupted Flight: The realities of Separated Refugee Families in the EU' (November 2014) p 21.
 53. Family reunion is recommended as a 'safe and legal' pathway by UNHCR, 'The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied' (December 2017). For additional information see <<http://www.unhcr.org/excom/exconc/3ae68c4324/family-reunion.html>> (accessed 14 February 2018) and for a summary on the importance of family reunion, see <<http://www.unhcr.org/family-reunification-4e142b0c6.html>> (accessed 14 February 2018).
 54. See Family Reunion <<http://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2018/how-many-people-do-we-grant-asylum-or-protection-to>> (accessed 9 February 2019). In the UK in 2017, 5,218 family reunion visas were issued. In the five years leading up to March 2017 approximately 22,000 families were reunited under refugee family reunion policy; Home Office 'Family reunification for Third Country Nationals in the European Union: National Contribution from the United Kingdom' (March, 2017) p 6. The Immigration Act 1971 provides for the Immigration Rules to be laid down and amended to regulate the entry and stay of people coming to the UK. Under Part 11 of the Immigration Rules regarding asylum, family reunion is available to a spouse or partner, a dependent, biological or formally adopted child under the age of 18, provided the relevant relationship existed before the sponsor left their home country (paras 352A-F). Successful applicants for humanitarian protection may also apply for family reunion (paras 339C-GD). See Part 8, para 319X for additional entitlements for children to join relatives who have limited leave to enter or remain as a refugee or beneficiary of humanitarian protection. In addition to refugee family reunion under Part 11, which is the simpler and less costly way for refugees to bring close family members to the UK, dependents may also be included in an application for asylum or claim asylum in their own right (Part 11, para 349), although this route to reunion has many limitations, as noted earlier in this report. Claims for family reunification may also be made under the Dublin III Regulations where a family member is already in the UK. However, relying on this as a route to family reunion has many challenges so that it is extremely limited as a practical alternative to refugee family reunion, and it will likely be removed altogether following Brexit in any event.
 55. When someone is referred for resettlement under a UNHCR programme like the GPP, every attempt is made to ensure a family unit is settled together (although, as in Senait's case, this is not always possible), see UNHCR, Resettlement Handbook (July 2011) p 330 "Preserving family unity is essential to the successful integration of resettled refugees, and UNHCR is committed to ensuring that resettlement should not separate dependent family members."
 56. Brooke Wilmsen, Family Separation: The Policies, Procedures and Consequences for Refugee Background Families, 30 (1) Refugee Survey Quarterly (2011) highlights the various support roles families play, and the basic and important building block families offer to fundamental social structures.
 57. Brooke Wilmsen, n 56.
 58. Refugee Council and Oxfam, n 32, p 4, 16.
 59. Beswick, n 17, p 70; Refugee Council and Oxfam, n 32, p 3, 16.
 60. UNHCR 'A New Beginning: Refugee Integration in Europe' (September, 2013) p 70.
 61. UNHCR, n 57; Refugee Council and Oxfam, n 28, p 17; APPGR, n 20, p 39.
 62. UNHCR, n 57; Refugee Council and Oxfam, n 28, p 17; APPGR, n 20, p 39.
 63. Amnesty International, n 42, p 28.
 64. Amnesty International, n 42, p 28.
 65. Amnesty International, n 42, p 32.
 66. White and Hendry and British Red Cross, n 19, p 24, considers extensive interviews with refugees and humanitarian and legal agencies, describing the process of separation as traumatic, with both physical and psychological effects. The vulnerability of refugees is detailed in the report by the APPGR, n 20, p 20, para 68 referring specifically to evidence of many newly recognised refugees having to face periods of homelessness and having to rely on charitable and emergency support as a result.
 67. White and Hendry, British Red Cross, n 19, p 24; Beswick n 14; European Council on Refugees and Exiles, Red Cross EU, n 52; Equality and Human Rights Commission, James Organ and Jennifer Sigafos 'The Impact of LASPO on Routes to Justice' (September, 2018) p 46 also discusses this effect in the more general context of cuts to legal aid.

68. Data is not available to illustrate the average duration and cost of appeals proceedings in this context, but the significant burden of making an appeal was confirmed in interviews with practitioners and refugee families for this report.
69. UNHCR, n 53 refers to the importance of family reunion as a fundamental way to ensure families are reunited. This is reiterated in many NGO reports, among them are: Refugee Council and Oxfam 'Safe But Not Settled: The impact of Family Separation on refugees in the UK' (Report, January 2018) and Marsden and The British Red Cross 'Voices of Strength and Pain: Impacts of separation, loss and trauma on health and wellbeing of reuniting refugee families' (Research Report, 2018). Recent UNHCR documents also illustrate this, see: UNHCR 'The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification' (December 2017) and UNHCR 'The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied' (December 2017). Support for family reunion as a safe route for refugees is also formally expressed by the UK Government, see Home Office 'Family reunification for Third Country Nationals in the European Union: National Contribution from the United Kingdom' (March, 2017) p 6; Home Affairs Select Committee report 'Migration Crisis' (Seventh Report of Session 2016-17, July 2016) and the House of Lords European Union Committee 'EU Action Plan against migrant smuggling' (4th Report of Session 2015-16, November 2015).
70. Beswick, n 17, p 31
71. ECRE 'Position on Asylum Seeking and Refugee Women' (December 1997) para 38; Beswick, n 17, p 15: "... the majority of sponsors [for family reunion] are men and the majority of applicants are women and children..."
72. ECRE and Red Cross EU, n 48, p 21; "While beneficiaries of international protection reach safety in the EU, the situation of family members left behind either in war zones, camps or other unsafe environments is often characterised by great insecurity." The Refugee Council 'Safe but Not Settled' (Report, January 2018), p 3, highlights the stories of families who are pushed into poverty, resorting to smugglers or irregular means, making substantial financial sacrifices, and sometimes also irregular and dangerous journeys in an attempt to be reunited; Beswick, British Red Cross, n 14.
73. APPGR, n 20, p 7; ECRE, n 69 considers the financial hardship faced by refugees and the fact that women are usually responsible for the care of children, which can add to the hardship they face and make them vulnerable to exploitation and abuse.
74. ECRE, n 69 para 8 illustrates such gender-based forms of abuse have long been acknowledged; Amnesty International 'I want a safe place: Refugee women from Syria uprooted and unprotected in Lebanon' (February 2016) illustrates that such abuse continues.
75. Tirana Hassan, Director of International Crisis Response at Amnesty International <www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/> (accessed February 2018) commenting on the Amnesty International report at n 74, above. Hassan confirms that such conditions included sexual activity and 'temporary' offers of marriage in return for assistance. For additional NGO commentary on women's refugee experiences see: International Rescue Committee 'Are We Listening: Acting on our Commitment to Women and Girls Affected by the Syrian Conflict' (September, 2014) and Human Rights Watch 'Welcome to Kenya: Police Abuse of Somali Refugees' (June 2010) p 55, which highlights the plight of refugees at the Dadaab Refugee Camp; Office of the High Commissioner for Human Rights, 'Women's Rights are Human Rights', (Report, 2014), which discusses the human rights framework in practice, and the impact of migration and displacement on women's rights at Part V, 86.
76. Ministry of Justice p 20 para 98; Equality and Human Rights Commission Legal aid reforms and women's access to justice. Shadow report to the UN Committee on the Elimination of Discrimination against Women: Follow-up procedure (March, 2016).
77. Joint Committee on Human Rights 'The UK's Compliance with the UN Convention on the Rights of the Child: Eighth Report of Session 2014-15' (24 March 2015) p 35, para 118 confirmed the reforms to legal aid have been a "significant black mark" on the Government's human rights record.
78. In July 2018, and following an application for judicial review by the Children's Society, the Ministry of Justice confirmed LASPO would be amended to allow immigration matters for unaccompanied children into the scope of legal aid: <www.gov.uk/government/publications/legal-aid-for-unaccompanied-and-separated-children> (accessed 9 February 2019). The amendment has not yet been laid, however.
79. UNHCR, n 41: More than half of the 22 million refugees around the world are children. On the child refugees see: Unicef 'For Every Child in Danger' (2017)
80. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Charities supporting refugee children have consistently argued that, the fact that the UK is not a signatory (along with Ireland and Denmark) should not be barrier to implementing this basic right for children to reunite with parents where they enter a country as an unaccompanied minor, as most other European states do (Children's Society 'Cut Off From Justice: The impact of excluding separated and migrant children from legal aid' (August, 2017); Scottish Refugee Council 'Refugee Family Reunion and Unaccompanied Minors' (June 2011); and British Red Cross and other agencies, n 43, p 5. The recommendations regarding unaccompanied minors have been reiterated by the APPGR, n 20, p 9). For recent parliamentary debate on the situation faced by unaccompanied minors and the challenges they face in the UK see Hansard, HC, Vol 608 Cols 264WH-288WH (19 April 2016) 'Unaccompanied Children' where the Minister for Immigration, James Brokenshire stated "The UK has been working with the United Nations High Commissioner for Refugees on this issue, and we will do more." Since the debate, no changes have been made to the rules preventing unaccompanied minors from being reunited with their families, although the Family Reunion Bill MP (n 4, above) seeks to changes this, by allowing unaccompanied children the right to sponsor their family members to join them.
81. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) Article 3(1) elevates the best interests of the child to a primary consideration in all actions concerning children. The CRC came into force in the UK in 1992. The UK Borders, Citizenship and Immigration Act 2009 s 55 doesn't apply to children outside the UK but according to this Act, entry clearance officers abroad and anyone in the UK must prioritise protection and safeguarding for children. See also Beswick, n 17, p 16; British Red Cross et al, n 43.

82. Ministry of Justice, n 9, p 37, para 4.38.
83. During the passage of LASPO, in response to amendments to bring family reunion into the scope of civil legal aid, the Government said that the cost of doing so would be approximately £5 million per year (Hansard HC, Vol 357 Cols 626-664 (31 October 2011) Col 651). On its face, this is a not insignificant sum. But LASPO has actually saved more than twice the amount expected, with spending on legal aid approximately £950 million less in 2016 than 2010, prior to the legal aid cuts: Bach Commission 'The Right to Justice' (September, 2017) p 6. The proportion of the legal aid budget that is spent on refugee and immigration cases is also low compared with other European Countries, the highest being Belgium at 17%, compared with England & Wales' much lower 2% (Hiil 'Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice (2014) p 73.
84. Amnesty International, n 42, p 25. See also Children's Society 'Cut Off From Justice: The impact of excluding separated and migrant children from legal aid' (August 2017) which highlights the poor decision making in the administration of legal aid and ECF, discouraging practitioners from making ECF applications on behalf of children. Low Commission, n 22, p 19 discusses the manifest unfairness of the limits to ECF, including the fact that applications for ECF are not themselves funded.
85. Amnesty International, n 42, p 24.
86. IS (by his litigation friend the Official Solicitor) v Director of Legal Aid Casework and the Lord Chancellor [2015] EWHC 1965 (Admin) §80. "...[T]hose who are unable to pay for legal assistance are suffering in a way that Parliament cannot have intended."
87. Gudaviciene and Ors v Director of Legal Aid Casework [2014] EWHC 1840 (Admin) following arguments that the right of a family member of a refugee to enter or remain in the United Kingdom under the Immigration Rules is a right arising from the Refugee Convention, and legal services in relation to an application for family reunion ought to be within the scope of legal aid under LASPO.
88. Gudaviciene and Ors v The Director of Legal Aid Casework and the Lord Chancellor [2014] EWCA Civ 1622, 15 December 2014.
89. Ministry of Justice and the Legal Aid Agency 'Legal Aid Statistics in England and Wales' September 2013–December 2015, from the Ministry of Justice and the Legal Aid Agency. More up-to-date statistics for legal aid, including ECF, can be found at <www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2018> (accessed 9 February 2019). See also: National Audit Office 'Implementing Reforms to Civil Legal Aid' (20 November 2014) p 7.
90. Changes to ECF guidance have improved the take up figures for ECF but the number of applications remains at around 1,200 per year. Grant rates are also low, at below 50%. In an open letter to the Ministry of Justice, Alison Pickup, Legal Director at the Public Law Project, 21 December 2016 says this means ECF is still effectively inaccessible as a result. See also Law Society 'Access Denied: LASPO Four Years On' (June, 2017) p 22.
91. Law Society, n 89 p 22.
92. Law Society, n 89 p 22.
93. Law Society, n 89, Bar Council, n 43; Equality and Human Rights Commission, James Organ and Jennifer Sigafoos, n 67. The UN Human Rights Committee has also previously highlighted the shortcomings of the ECF scheme, recommending the UK address its weaknesses (Human Rights Committee (2015), Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland (17 August 2015), UN Doc CCPR/C/GBR/CO/7).
94. Amnesty International, n 42, p 23; "Evidence suggests that significant numbers have slipped or are slipping through [the safety net]."
95. See the Bach Commission, n 83, p 9 which describes ECF as having manifestly failed, and urgently in need of review and reform. Amnesty International, n 42, p 23 quoting Michael Tarnoky, Director Lambeth Law Centre, 29 February 2016 "The whole system just creates an additional barrier which vulnerable people with difficult complex cases have to get through. It's simply inadequate."
96. The Bach Commission, n 83, p 12; National Audit Office, 'Implementing Reforms to Legal Aid' (17 November 2014), which is critical of the Ministry of Justice for not considering the "downstream implications" of LASPO.
97. House of Commons; Committee of Public Accounts, n 25.
98. Hansard HC, Vol. 530, Col 984-1017 (29 June 2011).
99. Bar Council, n 43, p 6, Law Society, n 89, p 24.
100. Law Society, n 89, p 24.
101. Gibbs & Hughes-Roberts, n 16, p 42; Equality and Human Rights Commission, James Organ & Jennifer Sigafoos, n 67, p 43; Bach Commission, n 83, p 29; Law Society, n 89, p 3; Bar Council, n 43, p 6.
102. Gibbs & Hughes-Roberts, n 16.
103. Gibbs & Hughes-Roberts, n 16.
104. Gibbs & Hughes-Roberts, n 16, p 42; Equality and Human Rights Commission, James Organ & Jennifer Sigafoos, n 67, p 43; Bach Commission, n 83, p 29; Law Society, n 89, p 3; Bar Council, n 43, p 6.
105. Equality and Human Rights Commission, James Organ & Jennifer Sigafoos, n 67, p 51 discuss the potential increase in reliance on health services and welfare with regard to legal aid provision generally.
106. Written evidence submitted by the Law Society of England and Wales to the Joint Committee on Human Rights: Attitudes to enforcement (February 2018) p 4; Law Society, n 89, p 28 quotes a report commissioned by the Secretary of State for Health in 2010 'Fair Society, Healthy Lives' (The Marmot Review), confirming a significant body of evidence exists to state that advice provision is one of the social determinants of health and that its provision can reduce health inequalities with beneficial impacts for individuals and the state.
107. Kimberley Rennick 'Filling the gaps left by the loss of legal aid for family reunion cases' (June 2013) p 10 cites the damage to individuals and the damage to the public interest because costs go up and time is wasted; Beswick, n 17, p 33 "[U]ltimately, LASPO's aim to increase the legal independence of sponsors is demonstrably ineffective and the theoretical costs saved are displaced on to already financially vulnerable refugees."
108. Bar Council, n 43, p 36 "The Government is still unable to show that those savings have not been diminished or extinguished, or even outweighed, by consequential costs to other Government Departments and local authorities. ... or that they have targeted legal aid at those who need it."
109. The LASPO reforms were based on a simple objective to cut costs as quickly as possible, which is particularly problematic given the purpose of legal aid is to help the most vulnerable. Many bodies including the UNCESCR have expressed concern about the lack of any assessment of that impact (The Committee on Economic Social and Cultural Rights observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland,

UN Doc: E/C.12/GBR/CO/6, (14 July 2016)).

110. For an in-depth discussion see Amnesty International, n 42, see p 14 suggesting the cuts were made without due diligence or any full and proper analysis, because it was driven by an urgent desire to institute a programme of savings which left no space for a research-based and well-structured programme of change to the system of legal aid. No detailed assessment of the human rights impact of LASPO was made, and the Government preferred to see what happened, after the fact.
111. The Human Rights Act 1998, Schedule 1, Article 6, sets out the minimum scope and refers to those who do not have sufficient means to pay for legal assistance and their right to be given it free when the interests of justice so require. Gudanaviciene elaborates on that in the civil legal aid realm. For further discussion on access to justice and the right to an effective remedy set out more generally in Article 13 of ECHR, see European Agency for Fundamental Rights and Council of Europe 'Handbook on European law relating to access to justice' (January 2016), although it is to be noted that the UK did not incorporate Article 13 into Schedule 1 of the Human Rights Act.
112. *Airey v Ireland* (Case no. 6289/73) ECHR, 9 October 1979.
113. *Steel and Morris v the United Kingdom* (Case no. 68416/01) ECHR, 15 February 2005; *P, C and S v the United Kingdom*, (Case no. 56547/00) ECHR, 16 July 2002; *McVicar v the United Kingdom* (Case no. 46311/99) ECHR, 7 May 2002.
114. Law Society, n 89; Bar Council, n 43; Bach Commission, n 83; Equality and Human Rights Commission, James Organ & Jennifer Sigafoos, n 67; and The Law Commission, n 26 are among them.
115. Amnesty International, n 42, p 9. See also Human Rights Committee, General Comment 32 on the right to equality before the law, and the Council of Europe Commissioner for Human Rights, 'Safeguarding human rights in times of crisis' (November 2013) which alludes to the impact of governments driven by cost savings, so that policies are developed at the expense of vulnerable and marginalised groups of people who are hit disproportionately hard by cuts, compounding pre-existing patterns of discrimination.
116. The Bach Commission, n 83, offers a comprehensive analysis of the right to access to justice throughout the report, and recommends at p 9 a review of legal aid for immigration, with specific reference to the vulnerability of those involved in family reunion cases.
117. Bach Commission 83, on access to justice and the removal of legal aid and calls for the reinstatement of legal aid for refugee family reunion, p 11, Recommendation 14. The Law Society has also called for legal aid to be provided for early legal help as part of their access to justice campaign, to improve access for all, regardless of social background or wealth. While their campaign focuses on family and housing law, similar arguments regarding unnecessary delays, escalation and 'knock on effects' can also be made in respect of family reunion for refugees.
118. APPGR, n 20; House of Commons, Committee of Public Accounts, n 25.
119. Amnesty International, n 42, p 8, quoting Sarah Sadek, Immigration and Asylum Solicitor-Advocate, Avon and Bristol Law Centre, Interview 8 December 2015. The Amnesty report also suggests that legal aid cuts have a discriminatory effect on those who are poor because they face the most barriers in accessing justice, including a lack of direct financial resource, as well as institutional and structural barriers which are discriminatory in nature, p 13.
120. The right of persons to seek asylum from persecution is also contained in UDHR, Article 14 and EU Charter of Fundamental Rights, Article 18.
121. UNHCR Executive Committee Conclusion No 24 on Family reunification. The New York Declaration for Refugees and Migrants, unanimously adopted by 193 countries including the UK confirms the commitment to refugees at an intergovernmental level (United Nations General Assembly, Resolution 71/1 UN Doc A/Res/71/1, (adopted September 2016)). Family reunion is also endorsed in the Global Compact on Refugees, itself endorsed in UN General Assembly resolution 73/151, adopted on 17 December 2018.
122. United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act and Convention Relating to the Status of Refugees (July 1951). See also UNHCR Executive Committee (ExCom), 'Protection of the Refugee's Family' (Conclusion No. 88 (L) (1999) (8 October 1999)) on the protection of the family.
123. *Affaire Mugenzi c. France*, (Requête no 52701/09), Arrêt, 10 Juillet 2014, paras 32, 54. The judgment is only available in French; for further discussion see 'Submissions of the Intervener The Queen (on the Application of B) v The Director of Legal Aid Casework', *International Journal of Refugee Law*, 2015, Vol. 26, No. 4, 700–715, which refers to the recognition by the European Court of Human Rights of 'the right to refugee family reunion by reference to the Refugee Convention', describing family unity as an essential right of the refugee and reunion as fundamental to those who have fled persecution to be able to resume a normal life.
124. Children's rights in relation to family and in the refugee context are detailed and can be found at Articles 9, 10, 20, 21, 22 of the Convention on the Rights of the Child. For a general exposition on the rights of refugees in international law, see Guy Goodwin-Gill and Jane McAdam 'The Refugee in International Law' (OUP, 2007) and James Hathaway 'The Rights of Refugees Under International Law' (CUP, 2005). LASPO has been the subject of general international disapproval from the Human Rights Committee (Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc CCPR/C/GBR/CO/7, 7 August 2015, para. 22); the Committee on Economic Social and Cultural Rights (observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc: E/C.12/GBR/CO/6, 14 July 2016, paragraph 20); the Committee on the Elimination of Discrimination against Women (Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc: CEDAW/C/GBR/CO/7, 30 July 2013, paragraph 22); and the Committee on the Rights of the Child (Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc: CRC/C/GBR/CO/5 3 June 2016, paragraph 29).
125. UNHCR 'The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied. (Research paper, December 2017) sets out the legal basis in international and regional law for the right to family life and family unity. See UNHCR, "Summary Conclusions: Family Unity, Expert roundtable organised by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001", in Feller et al (eds.) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (CUP, 2003) 604-608 "A right to family unity is inherent in the universal recognition of the family as the fundamental group unit

- of society, which is entitled to protection and assistance. This right is entrenched in universal and regional human rights instrument and international humanitarian law, and it applies to all human beings regardless of their status. It therefore also applies in the refugee context.”
126. Hathaway, n 124, p 543; Jastram & Newland, ‘Family unity and refugee protection’, in Erika Feller, Volker Türk, Frances Nicholson, eds. ‘Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection, Cambridge’ (CUP 2003) p 568; Grahl-Madsen, ‘The Status of Refugees in International Law’ (1966), p 41; based on consistent state practice and opinion juris.
 127. Directive 2003/86/EC on the right to family reunification states common rules for exercising the right to family reunification in EU Member States (excluding the UK, Denmark and Ireland, who have not signed the Directive). Although the UK has opted out, it remains indicative of the regional standard for family reunion cases regarding procedure and the content of rights for affected families. It also provides for conditions that Member States may apply to family reunification. For more information on the human rights of refugees in the European context see: Cathryn Costello, ‘The Human Rights of Migrants and Refugees in European Law’ (OUP, 2016).
 128. Submissions of the Intervener, n 123, para 48.
 129. Immigration Rules paras. 352A-F.
 130. UNHCR ‘Global Trends: Forced Displacement in 2017’ (25 June 2018), p 7 confirms that children without family are particularly at risk of abuse and exploitation.
 131. Article 9(1) requires active measures by the State to ensure that a child is not separated from his or her parents against their will unless separation is in the best interests of the child. Articles 10 and 22 acknowledge the special situation of the recognised refugee and the need for family reunification.
 132. Article 11 of the EU Directive on Family Reunion confirms that the particular rights of children should be respected with regard to family reunion, Beswick, n 17, p 15 on the recognised vulnerability of children.
 133. Article 11 of the EU Directive on Family Reunion also notes the need to recognise the rights of women in family reunion.
 134. United Nations Security Council Resolution 1325 on Women Peace and Security (31 October, 2000) registers “... concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and are increasingly targeted by combatants and armed elements”. For additional commentary on women’s refugee experiences see: UNHCR Executive Committee 56th Session ‘Conclusion on Women and Girls at Risk’ 105 LVII (6 October 2006) UN Doc A/AC.96/1035; UNHCR Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HRC/GIP/02/01, (2002); UNHCR ‘Action against Sexual and Gender-Based Violence: An Updated Strategy, Division of International Protection’ available at <http://www.unhcr.org/4e1d5aba9.pdf> (2011); UNHCR ‘Position Paper on Violence against Women and Girls in the European Union and Persons of Concern to UNHCR’ available at: <http://www.refworld.org/docid/5326ab594.html> (2014); NHCR, UNFPA and Women’s Refugee Commission, ‘Initial Assessment Report: Protection; Risks for Women and Girls in the European Refugee and Migrant Crisis’ (January 2016); International Rescue Committee n 73; Human Rights Watch, n 73, p 55; Amnesty International, n 74; Women’s Refugee Commission, ‘No Safety for Refugee Women on the European Route: Report from the Balkans’ (January 2016).
 135. Beswick, n 17, p 15.
 136. Anders B Johnsson ‘The International Protection of Women Refugees; A summary of Principal Problems and Issues’ 1 Int’l J. Refugee L. 221 (1989) for an early exposition on the peculiar harm faced by women in refugee settings; Phoebe Greenwood ‘Rape and Domestic Violence Follow Syrian Women into Refugee Camps’ The Guardian (25 July, 2015) quoting Melanie Megvand, a specialist in gender based violence at International Rescue Committee on the particular predicament of women in the refugee setting.
 137. Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
 138. Foreign and Commonwealth Office ‘United Kingdom Action Plan on Women, Peace and Security’ (2014), which followed UN Security Resolution 1325 on Women Peace and Security.
 139. Amnesty International, n 42, p 15 for more detailed discussion.
 140. Amnesty International, n 42, p 15 outlines the more limited Equality Impact Assessments (EIAs) carried out by the Government (to satisfy domestic equality law) and which considered whether groups with protected characteristics would be disproportionately affected by legal aid cuts, suggesting proposed cuts would have a disproportionate effect on women. This impact was justified on the basis the cuts to legal aid were a proportionate means to achieve the legitimate aim of reducing costs to the public purse, although there was nothing substantive as part of the EIA which would reasonably support that conclusion.
 141. White & Hendry, n 15, p 41; Beswick, n 17, British Red Cross, n 19. Amnesty International, Submission to the United Nations Committee on Economic, Social and Cultural Rights (58th Session, 6-24 June 2016), submitted in advance of the examination of the UK by the Committee, with detailed arguments on the impact of cuts to legal aid on access to justice and the enjoyment of economic, social and cultural rights.
 142. Ministry of Justice ‘Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)’ (February 2019) 4
 143. Ministry of Justice ‘Legal Support: The Way Ahead (An action plan to deliver better support to people experiencing legal problems)’ (February 2019) sets out the Ministry’s approach to the future delivery of legal aid.
 144. Ministry of Justice ‘Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)’ (February 2019) 68 para 305 notes the argument that refugee family reunion is not an immigration matter but does not discuss this in detail. The report reviews the history of ECF (p 132, para 568) and considers refugees more generally on additional occasions; as a “vulnerable and disadvantaged group” (p 38 para 181 and p 66, para 296); on the capacity gap and providers not finding it profitable to take legal aid work (p 195 para 819).
 145. Ministry of Justice ‘Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)’ (February 2019) 4.
 146. Ministry of Justice ‘Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)’ (February 2019) 70, para 313. Despite the clear improvements since 2010, the Home Office

recognises that further improvements are needed to the sustainability of decisions and the quality of engagement with applicants.

147. Home Office 'The Home Office Response to the Independent Chief Inspector of Borders and Immigration's Report: An Inspection of the Home Office Borders, Immigration and Citizenship System's policies and practices relating to charging and fees' (June 2018–January 2019) 5 para 6.1
148. Rosie Brennan, University of Plymouth & British Red Cross, 'Response to Call for Evidence on Family Reunion by the Chief Inspector of Borders and Immigration' (23 June 2019) 24 (unpublished).
149. Ministry of Justice 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (February 2019) 8 para 29. See also, David Bolt, Independent Chief Inspector of Borders and Immigration, 'An Inspection of Family Reunion Applications' (June–December 2019), where this development is welcomed, while also suggesting that further improvements can be made.
150. Ministry of Justice 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (February 2019) 136 para 585.
151. We spoke to three separate charitable and not-for-profit organisations for this update and each one confirmed it is more likely ECF will now be granted in relation to refugee family reunion applications.
152. Ministry of Justice 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (February 2019) 8, para 24.
153. Ministry of Justice 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (February 2019) 196.
154. Ministry of Justice 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (February 2019) 196.
155. Jo Wilding 'Droughts and Deserts: A report on the immigration legal aid market' (Report, April 2019). Where there are advisers they may be at capacity generally or have reached the maximum number of 'matter starts' in a given year (even when an uplift allowance is catered for).
156. Jo Wilding 'Droughts and Deserts: A report on the immigration legal aid market' (Report, April 2019) 3. Anecdotally, practitioners we spoke to reported their deep concern with the failure of the legal aid provision and gaps in provision, and their related concern that the restoration of legal aid for refugee family reunion would not solve capacity gaps on its own. Rather, a wholesale recognition of a broader failure is needed; practitioners cannot operate in a way that is sustainable with low legal aid fees, nor can they recruit to find assistance easily. In turn, this results in gravely overburdened practitioners who do large amounts of work for free, but who eventually become so overwhelmed they stop doing the work. All of these things result in an unmanageable burden being placed on the voluntary and charitable sectors.
157. A relatively small number of applications for family reunification are currently made by people who are in a member state of the European Union and wish to join a family member (this includes siblings, uncles and aunts, parents, children and spouses in the UK).
158. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 (commonly known as 'Dublin III') allows people to join their UK based family members and have their asylum claim considered there.
- It establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>).
159. This compares with 1,940 in 2018. The requests that were accepted in 2019 and 2018 were 1197 and 1234 respectively, although this data is not entirely reflective of the yearly trend as some acceptances relate to applications made the previous year (EUROSTAT, available at <https://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>).
160. The Immigration, Nationality and Asylum (EU Exit) Regulations 2019 come into force on 31 December 2020. Regulation 54 provides for the revocation of direct EU legislation listed in Schedule 1. Schedule 1, paragraphs 3 (c), (h) and (i) of Part 2 specifically revoke the Dublin Regulations and the two Implementing Regulations.
161. FN European Union (Withdrawal Agreement) Act 2020 and 'The Future Relationship with the EU – The UK's Approach to Negotiations (27 February 2020) states the Government's commitment to negotiating an agreement which mirrors the family reunion elements of Dublin III for unaccompanied children. In an immigration white paper the Government committed to negotiating an agreement with the EU in connection with the UK's withdrawal, so that separated children applying for asylum in the EU can still be reunited with family members in the UK, as they would have been able to under Dublin III. However, this commitment is yet to become a reality. The commitment as stated also leaves out the possibility of transferring a claim for adults who are seeking asylum in the EU and who have family in the UK.
162. The Decision of the Minister of Public Order as of December 2019, which regulates the imposition of the geographical restriction since 1 January 2020, states the following: "A restriction on movement within the island from which they entered the Greek territory is imposed on applicants of international protection who enter the Greek territory through the islands of Lesbos, Rhodes, Samos, Kos, Leros and Chios. Said restriction is mentioned on the asylum seekers' cards". Available at: https://www.asylumineurope.org/reports/country/greece/reception-conditions/access-and-forms-reception-conditions/freedom-movement#_ftn16 The Children's Society Judicial Review claim against the UK Government was settled out of court. The Secretary of State for Justice announced in the House of Lords that the Government would amend LASPO for unaccompanied children. When making her statement to the House of Lords, Lucy Frazer, the Parliamentary Under Secretary of State for Justice at the time, said: "Following a judicial review brought by the Children's Society, we have examined both the evidence presented as part of the case and our data on applications for funding. Based on the distinct nature of the cohort in question, and of our data regarding them, I have decided to bring these cases into the scope of legal aid to ensure access to justice".
163. HC Deb Public Bill Committee, Immigration and Social Security Co-ordination (EU Withdrawal) Bill (Eighth Sitting) (18 June 2020). Available at: [https://hansard.parliament.uk/commons/2020-06-18/debates/99fd2caf-a9ea-4445-91fb-f97329ad2eae/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill\(EighthSitting\)](https://hansard.parliament.uk/commons/2020-06-18/debates/99fd2caf-a9ea-4445-91fb-f97329ad2eae/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill(EighthSitting)), accessed 22 October 2020.
164. HL Deb Immigration and Social Security Co-ordination (EU Withdrawal) Bill (21 October 2020)

806. Available at: [https://hansard.parliament.uk/Lords/2020-10-21/debates/84EE8238-F96E-4C8F-AF34-27312C2F4048/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill?highlight=amendment%204b#contribution-BA73D35E-5A31-400D-8BE5-B3351C99BE43](https://hansard.parliament.uk/Lords/2020-10-21/debates/84EE8238-F96E-4C8F-AF34-27312C2F4048/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill?highlight=amendment%204b#contribution-BA73D35E-5A31-400D-8BE5-B3351C99BE43), accessed 22 October 2020.
- 165.** British Red Cross ‘Refugee Family Reunion after Brexit: What Brexit will mean for separated families seeking to reunite in the UK’ (August 2020).
- 166.** The explanatory memorandum to The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid For Separated Children) (Miscellaneous Amendments) Order 2019 can be found here: <https://www.legislation.gov.uk/ukdsi/2019/9780111188903>
- 167.** The 2015 Children’s Society Report ‘Cut Off From Justice: the impact of excluding separated migrant children from legal aid’ found that “Many of our participants highlighted that, for young people out of scope who had failed to resolve their immigration issues before turning 18, living with the pervasive fear of being returned at this point, was exposing them to higher risks of severe mental health and existential crises”. Full report available at: https://www.childrensociety.org.uk/sites/default/files/LegalAid_Full_0.pdf
- 168.** Providing they are ‘being treated by the Director as being under the age of 18’, referring to the Director of the Legal Aid Agency. The amendment also applies to children whose age is being disputed by the authorities and to children who are in the care of a person who is not their parent or someone with parental authority; this includes looked after children pursuant to section 22 of the Children Act 1989.
- 169.** When LASPO was introduced, the UK Government estimated that around 2,500 vulnerable unaccompanied children in the UK would be prevented from accessing legal aid every year. The two reports on this topic published by the Children’s Society are available at: <https://www.childrensociety.org.uk/judicial-reviews#:~:text=With%20support%20from%20several%20legal,this%20group%20of%20young%20people.>
- 170.** ‘Without my family: The impact of family separation on child refugees in the UK’, prepared collaboratively by Amnesty International UK, the Refugee Council and Save the Children, contains a detailed and up-to-date analysis of the UK Government’s policy on preventing child refugees who have sought safety in the UK from sponsoring family reunion applications.
- 171.** Ministry of Justice guidance (February 2019) summarising the post-implementation review and the Government’s new approach states, “We are wholly committed to continuing to work constructively with our partners and stakeholders to explore different and innovative ways of supporting people to access the justice system of today, and into the future.” (<https://www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo>)
- 172.** May Bulman, “No Earthly Reason”: Thousands of refugees denied sanctuary in UK after settlement scheme frozen during lockdown’, The Independent (Friday 28 August 2020). For a report on the impact of COVID-19 on women in refugee settings, see: CARE, ‘Gender Implications of COVID-19 Outbreaks in Development and Humanitarian Settings’ (March 2020). Available here: https://insights.careinternational.org.uk/media/k2/attachments/CARE_Gender-implications-of-COVID-19_Full-Report_March-2020.pdf, accessed October 2020.
- 173.** The UN Global Compact on Refugees was affirmed by the UN General Assembly on 17 December 2018 (A/RES/73/151). The global compact is not legally binding on states, but represents the political will and ambition of the international community as a whole in cooperating to support refugees and host countries.

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