

The Rt Hon Suella Braverman KC MP

cc: John Tuckett, Immigration Services Commissioner; David Phillips, Legal Aid Agency

1 March 2023

Dear Home Secretary,

RE: Remediating the 'Asylum Questionnaire'

We write as concerned organisations and individuals supporting and representing individuals seeking asylum in the United Kingdom and their interests.

We welcome the Government's recognition that there is an urgent need to clear the backlog of undecided asylum claims. Too many people are waiting unacceptable lengths of time for a decision, leaving them unable to rebuild their lives, to be granted permission to work, and to reunite with their families, while all too frequently being left to languish in inappropriate contingency accommodation. We are pleased that the Government recognises this to be an issue and is willing to take action to conclude manifestly well-founded claims more efficiently. However, we believe the Government's approach to doing so is fundamentally flawed.

As accepted by the Government, the countries specified for inclusion, Afghanistan, Eritrea, Libya, Syria and Yemen, have high grant rates of over 95%. The aim should be for the Government to obtain only the information it needs in the questionnaire to make a quick positive decision to grant refugee status.

We are dismayed that the new 'Streamlined Asylum Process' and the 'Asylum Questionnaire' upon which it relies have been introduced without stakeholder consultation and engagement, in a manner contrary to Wendy Williams' Windrush Lessons Learned Review Recommendations.

The essence of the problem is the false assumption that a person seeking asylum, who may not be literate in English or at all, who may be experiencing mental health problems or trauma, who may not have mental capacity, and who may be homeless, will be able to receive and complete this long, complex, and poorly drafted questionnaire without legal representation. It is essential that people who need it are able to access legal representation before being required to return this questionnaire. The Home Office has imposed short deadlines for responding - they are too short for a person who is unrepresented to find a legal representative and give sufficient instructions to respond to the form. A poorly completed questionnaire will only result in the Home Office needing to seek more information or conduct interviews, defeating the aim of this policy: to make decisions swiftly without a substantive interview.

Individuals seeking asylum should be informed, in the policy, the questionnaire, and any information provided, that if they wish to have access to legal advice in order to complete and return the

questionnaire, they are permitted to do so and will be given the time they need to do so. This is to ensure that individuals are able to meaningfully participate in the decision-making process, and that decisions are made fairly and in accordance with the Refugee Convention, the procedural fairness guarantees inherent in the European Convention on Human Rights, and the constitutional right of access to justice.

Failure to complete the questionnaire places an individual at risk of their pending asylum claim being treated as withdrawn, losing their asylum support, being subjected to the hostile environment, and being considered inadmissible or a 'Group 2 refugee' in any future asylum claim. This proposed plan of withdrawing claims will only give the appearance of reducing the backlog, whilst in fact adding to the backlog of fresh asylum claims being made.

We urge the Government to rethink its plan and to remedy it.

The system of legal representation for those seeking asylum is already at breaking point. Legal representatives are over-stretched. There is an extreme shortage in capacity. Many individuals making asylum and human rights claims are without any legal aid representation. The Government must take urgent action to make immigration legal aid sustainable and address advice deserts, including by urgently increasing legal aid fees.

Due to the crisis in immigration legal aid, there are simply not enough immigration legal aid representatives to assist 12,000 individuals who must complete their questionnaires within short timeframes, or face the grave repercussions of their claim being withdrawn. No statistics have been published regarding the number of individuals in this cohort or the further 70,000 pending asylum claims made before 28 June 2022 who are presently without legal representation.

Appropriately qualified legal practitioners in the third sector, who are not legal aid funded, are unlikely to have the time, capacity or the funds to complete these questionnaires outside of the scope of legal aid. These organisations are not funded for the thousands of hours of interpretation that would be required to take instructions, advise, and complete these questionnaires in English.

The Government has said 'local refugee organisations' might be able to assist, or that a 'friend who does understand English can also assist'. Individuals who are not appropriately qualified but provide immigration advice are at risk of committing a criminal offence. We understand that the [OISC's position](#) is that persons who are not regulated to the required level can offer assistance related to language issues, the technicalities of completing and submitting the forms, and requests for time extensions, so long as it does 'not stray into giving immigration or asylum advice'. However, our position is that there is a very high risk that anyone attempting to assist someone to complete the questionnaire would stray into giving regulated advice. Immigration advice is defined in statute in very broad terms. A discussion with an individual seeking asylum about what information is relevant to a question will almost always involve immigration advice.

The lack of capacity among legal representatives combined with the threat of a claim being withdrawn may drive vulnerable and desperate individuals, who have objectively strong claims, to incur debt to pay

for this work privately and place them at risk of financial exploitation. We are concerned that it will encourage a culture of assistance and advice from unregulated organisations, undermining the protections sought to be imposed by a rigorous regulatory framework.

As for the reality facing individuals who cannot find free representation or afford private representation, the Government has placed them in a position where they must complete the questionnaire in English, by themselves, using 'online translation tools', or face withdrawal of their claim.

Therefore, we call on the Government to:

1. Confirm that the Home Secretary will not treat an asylum claim as implicitly withdrawn if the questionnaire is not completed. Completion should not be mandatory. Further or alternatively, the Home Office should create a process for reinstating any withdrawn claims that individuals wish to continue, and treat them as never having been withdrawn. If a questionnaire is not returned, including within any extended timeframe for completion, then unless the Home Office is able to grant protection on the information already available to it, it should result in the Home Office reverting to the ordinary interview process.
2. In consultation with legal representatives and others in the sector:
 - urgently simplify the questionnaire;
 - write it in plain English;
 - have it accompanied by a translation in the relevant language, and ensure that it can and will be made available in any language requested, to make it better accessible to unrepresented individuals who have that level of literacy;
 - only ask for information which the Home Office truly needs to quickly grant refugee status to individuals from these high-grant nationalities, in order to clear the backlog, and consider children's best interests;
 - create a user-friendly guide for the completion of the questionnaire that accompanies it; and
 - make it very clear to families whether they need to fill in a separate questionnaire for each child or not.
3. In the first instance, only issue the questionnaire to individuals with legal representatives, and ensure the Home Office has the correct details for the representative, until lessons can be learned from the first cohort and the guide and questionnaire can be further adapted if necessary. If this results in grants of status to those with legal representatives, it will also free up capacity to enable those legal representatives to assist others.
4. Provide an option for individuals to decline to complete the questionnaire, on receipt, and instead request an interview. This will be particularly important for individuals who cannot access interpreter services.

5. Make explicit both in the policy, the questionnaire, and any information provided to individuals who receive the questionnaire, that if they wish to have access to legal advice in order to complete and return the questionnaire, they are permitted to do so and will be given the time they need to find and access legal representation. The Home Office should confirm it is willing to take these steps and if it is not, it should confirm how the policy in its existing form guarantees procedural fairness and respects the right of access to justice.
6. Provide a published blanket extension for all unrepresented individuals to complete the questionnaire. The Home Office must check its records or make relevant enquiries to determine whether an individual has a legal representative. If an individual does not, a blanket further extension of at least 20 working days should be granted, pending the caseworker making enquiries to ensure the individual has received the questionnaire and knows how to access legal advice should they want it. Failure to do so will leave the Home Office processing a great number of applications for an extension of time.
7. Accept identity documentation without accompanying translations from individuals without legal aid representation, as such individuals are highly unlikely to have funds for translations. Digital copies should be accepted initially, so that identity documents are not lost in the system, and originals can be provided on specific request.
8. Ensure the Home Office contacts individuals to verify their up-to-date contact details. If the aim of the policy is to identify whether an individual still wishes to make an asylum claim, this is a better method of ensuring an individual remains in touch than requesting complex information under threat of withdrawing their claim.
9. Confirm in the guidance that no adverse credibility inference will be drawn from inconsistencies or gaps between this questionnaire and any other past or future representations or statements (whether in writing, interviews, or at appeal). We are particularly concerned about adverse credibility inferences being drawn if the questionnaire is completed without the benefit of legal representation. If it is truly the case that what is provided in the questionnaire 'doesn't need to be perfect', reflect this in the credibility guidance.
10. Confirm in the guidance that the Home Office will only grant refugee status, and never refuse asylum claims, without a substantive interview. Thus, the grounds in Immigration Rule 339NA will not be invoked on the basis of questionnaire responses/non-responses.
11. Publish clear guidance on the regulatory requirements a person must meet to assist an individual seeking asylum to complete the questionnaire and the extent of assistance that can be provided at different levels of accreditation/qualification.
12. Publish a service standard for decision-making following submission of the questionnaire.

These suggestions are made solely on the basis that this policy applies only to adult and family asylum claims made before 28 June 2022 by nationals of five high grant nationalities, Afghanistan, Eritrea, Libya, Syria and Yemen. A different set of concerns may apply for other nationalities, unaccompanied children, and for cases made on or after 28 June 2022 for which a person may be given Group 2 refugee status.

It is not too late for the Government to make our recommended changes and remedy its approach. We remain willing to engage with the Government to find the best way to process asylum claims efficiently and fairly.

Yours sincerely,

Action for Refugees in Lewisham
Action Foundation
Advice NI
African Rainbow Family
After Exploitation
Amna Refugee Healing Network
Anti Trafficking and Labour Exploitation Unit
Ashiana Network
Asylum Aid
Asylum Link Merseyside
Asylum Matters
Asylum Support Appeals Project
Asylum Welcome, Oxford
Baobab Women's Project CIC
Bees & Refugees
Bevan Foundation
Belfast City of Sanctuary
BHT Sussex, Immigration Legal Service
Big Leaf Foundation
Big Help Project
Bindmans LLP
Birmingham City of Sanctuary
Birmingham Schools of Sanctuary
Birnberg Peirce Solicitors
Bristol City of Sanctuary
Bristol Defend The Asylum Seekers Campaign
Bristol Refugee Rights
British Red Cross
Broudie Jackson Canter
Cambridge Refugee Resettlement Campaign
CARAS

Cardinal Hume Centre
Care4Calais
Choose Love
Citizens Advice Staffordshire and North Stoke
City of Sanctuary UK
Coram Children's Legal Centre
Deighton Pierce Glynn
Detention Action
Doncaster Conversation Club
End Deportations Belfast
Entraide
Eritrean Coordination For Human Rights
Evesham Vale Welcomes Refugees
forRefugees
Freedom From Torture
Govan Community Project
Goldsmith Immigration and Public Law Team
Greater Manchester Immigration Aid Unit
Hackney Community Law Centre
Hansen Palomares solicitors
Haringey Welcome
Helen Bamber Foundation
Herts Welcomes Refugees
Home4U (Cardiff)
Hope Projects
Humans for Rights Network
Hummingbird Project
Immigration Law Practitioners' Association (ILPA)
Islington Law Centre
Jesuit Refugee Service UK
Joint Council for the Welfare of Immigrants (JCWI)
JustRight Scotland
Kent Law Clinic
Latitude Law Solicitors
Laura Devine Immigration
Law Centres Network
Lawstop
Leeds Anti-Raids Action
Legal Aid Practitioners Group
Leigh Day Solicitors
Lifeline Options CIC
Manchester Migrant Solidarity

Manuel Bravo Project
Medical Justice
MGBE Legal
Migrants At Work LTD
Migrant Legal Action
Migrant Legal Project
Migration Justice Project at Law Centre NI
Migrants Organise
Migrants' Rights Network
Migrant Voice
Mishcon de Reya LLP
Napier Friends
Nottingham Arimathea Trust
North East Law Centre
Oxford Refugee Health Initiative
Positive Action for Refugees and Asylum Seekers (PAFRAS)
Positive Action in Housing
Portsmouth City of Sanctuary
Praxis
Public Interest Law Centre
Public Law Project
Rainbow Migration
Rainbow Refugees NI
Refugee and Migrant Forum of Essex and London (RAMFEL)
Refugee Action
Refugees at Home
Refugee Council
Refugee, Asylum Seeker and Migrant Action (RAMA)
Refugee Education UK
Refugee Legal Support
Refugees in Effective and Active Partnership
Refugee Support Group, Reading
Right to Remain
Rights of Women
Safe Passage International
Sanctus Stoke on Trent
Sante Refugee Mental Health Access Project
Scottish Refugee Council
Southampton Action
South London Refugee Association
South Yorkshire Refugee Law and Justice
Southwark Day Centre for Asylum Seekers

Southwark Law Centre
St Augustine's Centre
Staffordshire North & Stoke on Trent Citizens Advice
Student Action for Refugees
Suffolk Refugee Support
Sutovic & Hartigan Solicitors
Thames Valley Immigration Alliance
The Bell Foundation
The Care Rights Project
The Jewish Council for Racial Equality (JCORE)
The Magpie Project
The No Accommodation Network (NACCOM)
The Pickwell Foundation
The Refugee Buddy Project
Together with Migrant Children
University of London Refugee Law Clinic
VITA
Voices in Exile
Voices Without Borders
Wilson Solicitors LLP
Women for Refugee Women
Work Rights Centre
Wycombe Refugee Partnership
Wyre Forest Supports Asylum Seekers
Young Roots
Adam Pipe, No8 Chambers' Immigration Team
Aderonke Apata
Althea Radford, Barrister
Amira Elwakil, ESOL teacher and community organiser
Dr Brenda Kelly, Consultant Obstetrician
Caroline Wilson-Brown, Solicitor
Dr Catherine Briddick, University of Warwick
Chloe Crowther, Resettlement Support Worker
Dalia Al-Dujaili, Refugee Week Producer at Counterpoints Arts
Daniel Allum, Advocate
Emma Atherton, Advice Coordinator
Frances Webber
Greg Ó Ceallaigh, Barrister
Helen Mountfield KC, Principal, Mansfield College, Oxford
Helene Santamera, Solicitor Non Practicing
Cllr Dr Hosnieh Djafari Marbini, Oxford City Council Migrant Champion
Isaac Shaffer, Solicitor

Ms Jackie Fearnley, volunteer support to Cameroonian torture survivors
Dr Jo Wilding, University of Sussex
Karen Halliwell, Solicitor at Paragon Law
Keelin McCarthy, Barrister
Keith Lomax, Solicitor
Kirsten Arding - Student Social Worker
Lucrezia Canzutti, Research Associate (King's College London)
Madeleine Evans, General Manager at Haringey Migrant Support Centre
Mina Fazel, Professor of Adolescent Psychiatry, University of Oxford
Prof Myria Georgiou, London School of Economics and Political Science
Nikki Walters, Southampton Action
Pete White, CLEAR Project
Raggi Kotak, Barrister, 1 Pump Court Chambers
Ros Gowers, Volunteer with Asylum Seekers and Refugees
Rosie Brennan, University of Plymouth Immigration and Refugee Law Clinic
Rudolph Spurling, Barrister
Ryan Bestford, Solicitor
Sharon Dixon, General Practitioner
Sinead Marmion, Phoenix Law
Tim Buley KC
Tori Sicher, Solicitor
Vanessa Delgado, Solicitor
William Nicholas Gomes, Human rights activist and Freelance Journalist