HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Uncorrected oral evidence: Legislative Scrutiny: Immigration and Asylum Bill, HC 556

Wednesday 21 October 2026

3.30 pm

Watch the meeting

Members present: Alex Sobel (Chair); Baroness Chakrabarti; Tom Gordon; Baroness Hamwee; Afzal Khan; Baroness Maclean of Redditch; Lord Murray of Blidworth; Lord Rook; Euan Stainbank; Peter Swallow; Sir Desmond Swayne.

Also present: Tony Vaughan.

Questions 10 – 20

Witnesses

Zoe Bantleman, Legal Director, JUSTICE; Ronan Toal, Barrister, Garden Court Chambers.

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Examination of witnesses

Zoe Bantleman and Ronan Toal.

Q10 **Chair:** I would like to welcome our second panel, Ronan Toal of Garden Court Chambers and Zoe Bantleman of JUSTICE. I will start with the first question, which is regarding the interpretation of Article 8 of the European Convention on Human Rights. Clauses 18 to 20 of the Bill amend the way in which the courts and tribunals must interpret and apply Article 8 in the context of immigration, asylum and deportation cases. Is there a problem with the way the domestic courts and tribunals are currently applying Article 8 in these types of cases? If so, is there a need to give a clear steer in the legislation?

Ronan Toal: No, there is not a problem with the way that the tribunal currently interprets and applies Article 8. We have had Section 117A, Part 5A of the 2002 Act, for some years now and it has probably been one of the most heavily litigated pieces of legislation that we have. Most of the key provisions in that part of the Act have been to the Supreme Court at least once. Litigation of that kind is good for no one apart from lawyers. It would be great to have these amendments to Section 117 or to Part 5A from the point of view of being a lawyer keen to take points of law to court, but, in terms of deciding applications and appeals in accordance with the UK's Article 8 obligations, it will be disastrous.

At the moment we have a tribunal of highly experienced, highly qualified lawyers who have been very carefully selected for the positions that they occupy. By and large, they make properly reasoned decisions of very high quality. They conscientiously address the factual and legal issues that are before them. They make decisions of the highest quality. If the decisions are not of the highest quality, whoever is unhappy with them can appeal to the Upper Tribunal and thereafter. There is a huge body of guidance in the form of domestic and Strasbourg jurisprudence to help those decision-makers. I simply do not see that it is a constructive thing to do to further amend Part 5A.

There is a very recent case in the Court of Appeal called IA v Secretary of State, which looked at a lot of the issues that the Bill addresses, in particular what family life is. It was a very comprehensive consideration of Strasbourg jurisprudence on that very subject. If anyone wants to know how Strasbourg interprets Article 8 family life, one need do not much more than look at this case called IA and, if one wanted to go further, the Strasbourg jurisprudence that it refers to.

A very important thing that the Court of Appeal did, having reviewed the Strasbourg jurisprudence and set out its own views on Article 8, was to say, "In our judgment it is undesirable to lay down hard and fast rules as to how the additional elements of dependency test should be applied". That was the aspect that it was looking at, but I would say that that applies equally to the whole of Article 8.

If a lawyer or a barrister is given a chance to talk, they like nothing more than to talk about cases that they have been involved in, but I would like to talk briefly about the most famous case in my career. The most well-known case that I have been involved in was about a couple who said that it would breach Article 8 to remove the Venezuelan half of the couple who was with a British citizen. The Home Office had decided that they were not a genuine couple and that they were claiming to be a couple for the purpose of establishing a claim to stay in the United Kingdom. If what the couple said was true, which was that they had been together in a relationship for many years, the Venezuelan man would have been allowed to stay. It was Home Office policy at the time that, if somebody had been in a relationship of more than two years' duration, they would not normally be removed.

The key issue in the case was whether this couple were truly a couple as they claimed. In the way that such cases are typically done, you have to provide evidence first to the Home Office and then, if unsuccessful, to the tribunal to show that you are a genuine couple. It is a bit like that programme, "Mr and Mrs", where each person is asked questions about their relationship and they compare the answers. In this case, in order to demonstrate that they were a genuine couple committed to each other, they talked about how one thing that they loved doing together was looking after this cat that they had bought. They talked about the cat. As is typical in these cases, they brought along loads of witnesses, people who knew them and were able to say, "This is a genuine couple". These people, their witnesses, also talked about the cat.

The tribunal, absolutely properly, allowed the appeal and found that they were a genuine couple. Having made that finding, the judge made some comments about pets and how important pets are. He referred to a Canadian Supreme Court case about pets. The Home Office did not like this decision. It appealed to the Upper Tribunal. The Upper Tribunal found that the First-tier Tribunal had made a perfectly proper decision, was entitled to find that they were a genuine couple and did find that they were a genuine couple. With the benefit of hindsight, the judge unwisely included in her decision a little joke at the end saying that that means that the cat is not going to have to get used to chasing Venezuelan mice, because the couple will be able to stay and the cat as well.

There was some sort of conduit from the tribunal to the *Daily Telegraph*, so that somebody in that paper got hold of this decision, or rather it was presented to them. They wrote this grotesque article about how Article 8 allows a couple to stay in the UK because they own a cat. It was shocking to see something so grossly misrepresented by the *Daily Telegraph*.

What was even more shocking was, quite a long time after that, to see the then-Home Secretary, Theresa May, addressing the conference of her party saying, "You will never believe what Article 8 entitles people to do. It entitles people to stay in the United Kingdom because they have a relationship with a cat". That was advanced by the then-Home Secretary as the preface to the plans to withdraw from the ECHR.

That seems to me to be a template for what has been going on now with a lot of these issues with Article 8 in particular but with immigration more generally. What goes on in the decision-making process is grossly, outrageously misrepresented by the press for various mischievous reasons. Then politicians feel that they need to act upon that.

Chair: We are straying a little, and Baroness May is still a serving member of the Lords, so we will try to move on. Maybe Zoe can come in. Your testimony also reminded me of the US film "Green Card" a little, but I will move on to Zoe's response.

Zoe Bantleman: I agree with Ronan's comments entirely. Judges are applying the law carefully. Last November, in that case of IA that Ronan has already mentioned, the Court of Appeal said that UK courts have universally demonstrated their willingness to follow Strasbourg. The share of human rights appeals allowed by the tribunal has fallen every year, from 53% in 2022 to 2023, to 44% last year, so it is quite difficult to see how this narrative of domestic judges being overly generous holds any water. When judges do get it wrong, as Ronan said—and we are all human—the appeal system corrects it. That is what it is there for.

The other infamous case, other than Ronan's cat case, is the chicken nuggets case. In that unreported case, it was already overturned by the Upper Tribunal by the time the papers reported on it. As the former Attorney-General Lord Hermer told this committee last year on 2 April, that is why we have appeal courts. Where is the problem? It is not the law. I completely agree with Ronan. It is sensationalisation of both the law and human suffering. What was the chicken nuggets case really about? It was about a young boy with emotional dysregulation and sensory difficulties.

The other problem that we have is, again, not the law. It is initial decision-making. Last quarter, more than half of human rights appeals ended with either the appeal being allowed or the Home Office withdrawing its decision. Only half of the sampled asylum decisions met the Home Office's own quality standard.

Is change needed? No, not like this. The Government can clarify the law, but it needs to stay within what Strasbourg allows. The Bill removes the flexibility that keeps the current scheme compliant with the European Convention on Human Rights. Reopening a 12-year-old framework will only tie us up in litigation, as Ronan said, for another 12 years. That money and time of the Government, all of us lawyers and civil society would be better spent getting decisions right the first time and dealing with other problems in the justice system.

Crucially, people at the sharpest end of these changes in law and policy are going to face legal uncertainty caused by these changes in this Bill. It is going to take years for it to be clarified and in that time erroneous decisions might be made. We need to remember the people at the heart of what is at stake.

Q11 **Tony Vaughan:** Ronan, I wondered whether you could explain a little bit more to this committee, not all of whom are lawyers, as to what the Court of Appeal was talking about when it was saying why it was undesirable to try to codify Article 8. Some people might think that, if you just create a longer list of tick-box elements, it might avoid appeals being allowed on an erroneous basis. I would be interested to hear what your analysis is as to why they are saying that codification is not something that needs to be taken to the next level.

Ronan Toal: The Strasbourg court loves repeating certain phrases and you see them recurring in many of its cases. On this subject, the Strasbourg court repeatedly says about the question of whether there is family life that it "is essentially a question of fact depending upon the real existence in practice of close personal ties". That is it. It is a question of fact. Each family situation is unique and to arrive at a decision as to whether there is family life depends upon the very unique circumstances of each particular family.

The Strasbourg court gives indications or statements of principle as to the way in which that factual investigation might be conducted. The danger is of principles solidifying into rules that must be applied by the decision-maker. That is a particular danger that we would have if the amendments to Part 5A are enacted. They have the flavour of quite prescriptive descriptions of the ingredients of family life and, absent those ingredients, it is unlikely that one will have family life. They are numerous.

Going back to the discussion about replacing the First-tier Tribunal with the new system of not legally qualified decision-makers, the likelihood is that such decision-makers will place even more reliance than maybe qualified professional immigration judges would upon a single piece of legislation that seems to set out a code for deciding whether there is family life. What the Strasbourg court intends to be general principles that give guidance as to how to assess a particular set of facts will be ossified into a set of rules.

One particularly troubling feature of the rules set out in the amendments to Part 5A is that they are, virtually without exception, rules that tell you why there is not family life. They do not guide a judge to a conclusion that there is family life. They look very much like rules as to why there is unlikely to be family life in a particular situation.

In the replacement of the tribunal, I would expect that a very substantial proportion of appellants will be unrepresented, because lawyers doing this work are so few and far between and legal aid is even more scarce. It is available only in exceptional cases. You have to make a special application to get legal aid for an Article 8 case. The likelihood is that many appellants will be unrepresented and will be having their cases decided by non-professional judges, whose primary source of reference is likely to be Part 5A as amended. They will see there a whole list of factors that tell against a finding of family life being in existence.

That is why, as a general matter, it is a bad idea. If one looks at the actual substance of the provisions, they would be directing judges to make errors of law, but that may be something we come on to.

Q12 **Lord Murray of Blidworth:** One of the bugbears of this committee over a period has been the fact that First-tier Tribunal decisions are not published, which of course has led to the fact that a lot of the reasoning of the First-tier Tribunal has been the subject of reporting that cannot be immediately verified. Lord Alton, a former member of this committee, and I laid amendments to the last immigration Bill in an attempt to require the court service to publish judgments. That was rejected by the Government. I would very briefly ask for your views, Mr Toal and Ms Bantleman, as to whether they should be published.

Ronan Toal: In fact, I believe that they now are being published. There is a pilot where certain judges' decisions are routinely published. As I understand it, the intention is that they should generally be published. I actually think that it is undesirable on the whole that tribunal decisions as a matter of course should be published, because they contain a lot of very personal, sensitive information.

Lord Murray of Blidworth: Obviously I mean published in anonymised form.

Ronan Toal: Not necessarily, no.

Lord Murray of Blidworth: No, I am saying that that was the provision in our amendment.

Ronan Toal: To be honest, I am not sure what practice has been adopted as to anonymisation and whether they are routinely anonymised. From my point of view, it is undesirable that the rule for non-anonymised first-tier decisions should be for publication because of the confidentiality and sensitivity of the information that they contain.

Lord Murray of Blidworth: Thank you, Mr Toal. I do not agree with you, but I hear your answer.

Zoe Bantleman: There is a careful balance to be struck and of course open justice is a relevant principle here. If they are published, one thing that I would encourage the committee to consider is that judicial independence and the safety of judges will be all the more important if they are targeted, because their names are unlikely to be anonymised, even if the parties' names are anonymised.

Ronan Toal: A lot of judges have been receiving advice from the police about what steps they need to take to protect their safety. In the chicken nuggets case mentioned, I think that that judge has had numerous visits from the police and been advised about all kinds of precautions that she should be taking to protect her safety. Judges feel and are advised by the police that they are endangered by a lot of the reporting that has taken place.

Lord Murray of Blidworth: The names of Upper Tribunal and Court of Appeal judges are regularly published.

Ronan Toal: It is not quite so controversial, or so hotly and vehemently—

Tony Vaughan: Presumably it is because they are not the fact-finders.

Chair: We are straying slightly, so we will move on to the next section, which is on the definition of family life and risk of discrimination.

Q13 **Baroness Maclean of Redditch:** Clause 18 of the Bill, as we have just been discussing, sets out the definition of family life for the purpose of applying Article 8 of the ECHR. I presume the Government's intention here is to deal with certain high-profile cases. The one I am thinking of may be sub judice so I am not going to mention it, but I am sure we will all know what that involves. In your opinion, will this new definition change the way the courts interpret and apply Article 8 and, if so, how? You have obviously touched on this already, but what about in terms of this specific aspect?

Zoe Bantleman: In part, the question is whether a fixed definition of what family life is, and the relevant matters to be considered being fixed in statute, fixes the complexity of human life that courts are going to have to consider—Ms Finch in the previous session covered this—but also how the courts understand family life, and how the Strasbourg court has understood family life. Our answer is that the Bill goes further than Strasbourg case law in ways that will hurt children the most, in our opinion.

Just turning back to IA and to Mr Vaughan's earlier question to Mr Toal, the Court of Appeal confirmed that family life is normally the core family and that adults need to show some dependence beyond normal emotional ties. We do not dispute that definition, which was set out carefully by the Court of Appeal, but the court was clear that it is undesirable, as Mr Toal has said, to lay down hard and fast rules because dependency may take many forms. Those were the words of the Court of Appeal because every case turns on its facts.

Clause 18 does exactly what the court warned against. It lists the kinds of dependency that will not count: financial dependence, emotional reliance and illness, unless someone needs constant care alone. The Court of Appeal said the opposite. Financial dependency and disability both play a part in that. No one has to show complete dependence on another person.

The bigger change is not contained in the Bill as introduced. It is through amendments 44 and 45. Now, every parent, even one living with their own child, must produce evidence of a genuine and subsisting relationship before the law recognises family life. If they have only recently moved back together, that can count against them.

It is completely different from the Strasbourg starting point, which is that the bond between a parent and a child exists from birth absent exceptional circumstances. Think of a parent who has only just moved back to the home because of illness, a stay in hospital, a family court order or release from detention. The Government's own supplementary human rights memorandum says that, if a test is failed, Article 8 generally is not engaged. The child's interest, their family life, is not even considered. It is children who are likely to bear the cost.

On the Government's own figures in the revised impact assessment, two-thirds of first-time in-country Article 8 grants involve a child who is British or has lived here for seven years. This is not codification. It is narrowing what is currently good law, including good law from Strasbourg. It is being done without a proper assessment of the rights of children. Where is our children's rights impact assessment?

Ronan Toal: I would add a few specific points that are wrong or risk going wrong. First of all, the requirement of cohabitation is not a requirement imposed by Strasbourg jurisprudence. A case called Kroon v The Netherlands found that there was family life between a couple who had never lived together for years and years.

Secondly, it confines family life to children under the age of 18 living with their parents. In fact, the Strasbourg court and the domestic courts have recognised that family life between children and parents continues beyond the age of 18, at least for as long as the children are living at home or while the children are studying away or in prison but are likely to come home. In essence, imposing a rule that family life finishes at 18 is wrong.

Article 8 also recognises and protects family life as it may develop. It is not just currently existing family life but family life as it is to be allowed to progress. There is a case called Cılız v The Netherlands, which was about an estranged husband trying to litigate to establish a right of contact with his child. It was accepted that he had family life protected by Article 8 with his child, even though he had had little dealings with the child for a long time. His right to litigate his contact with the child was protected by Article 8.

Strasbourg jurisprudence recognises a whole range of family relationships that get no mention at all in the schedule. For example, what about the relationship between siblings, especially where one or both of the siblings is under the age of 18? Surely there is family life between them, and surely that is a profoundly important aspect of family life. It is potentially the longest-lived family relationship that one will have, yet that gets no mention.

There is a case called Marckx v Belgium, one of the early family life cases, which recognised that family life includes at least the ties between near relatives, such as grandparents and grandchildren, because of the considerable part they may play in family life. In another case called Boyle v The United Kingdom, an uncle was found to have family life with

his nephew in spite of the fact that they had never lived together because of the role played by the uncle in his nephew's life. There is another case called Nazarenko v Russia, which recognised that the relationship between a child and the child's foster carer fell within the scope of family life.

By setting out in a piece of legislation all these fairly strict-looking rules and narrowly defining family life, there is a very significant risk that judges and, even more so, whoever is to replace the judges will be led astray and fail to find family life where they should find it.

Baroness Maclean of Redditch: Mr Toal, may I ask a quick clarificatory follow-up? The question was not so much about your opinion on these changes but whether you thought these changes will have a serious impact on how the courts interpret it. From what you have said, I take it that you think the courts will interpret and apply it in a significantly different way to how they are at the moment. Is that correct?

Ronan Toal: That is correct. I am sorry not to have directly said so, but that is the real risk. The approach to family life will be changed.

Baroness Maclean of Redditch: You think there will be material impact in the way that the courts interpret it.

Ronan Toal: I do. Very definitely, there will be a material impact.

Q14 **Afzal Khan:** Before I ask my question, can I just simply say this? I agree with you in the sense that the family relationship does not stop at 18. I have one who is over 40 and has brought another young one at two. I enjoy both of them.

Are there any groups of people who would be particularly affected by the proposed definition of family life? If so, does this clause run the risk of unfairly discriminating against certain people?

Zoe Bantleman: Ronan has already done some of the work of answering this question in his previous response. These clauses are going to fall the hardest on those with the least voice. Children, the young adults at home who Ronan already mentioned and people facing legally unqualified adjudicators, likely without a lawyer in many cases, will all be groping around in the dark without any legal help or assistance with severe consequences of getting it wrong: exposure to the hostile environment, losing regular status, familial separation and other harms.

On the discrimination point, one needs only to look at the Government's equality impact assessment because it accepts that "children may be significantly affected by the package". It accepts that the new family definition is "more likely to affect disabled applicants", that people over 60 may face more refusals, that women, who are 83% of lone parents, may be more affected and that the impact may fall more often on particular nationalities.

It even says that a child in the UK sponsoring a parent will carry significant responsibility that, in the words of the Home Office, "may cause additional pressure and anxiety". As a starting point, you need only look at the impact assessment.

Q15 **Chair:** We recently did an inquiry on the Northern Ireland legacy Bill. We have had the remaining stages just in the last two days. One of the committee's recommendations for changes to that Bill was around the status of next of kin, particularly where a close family member had deceased. That was under the aegis of the European Convention on Human Rights. The same thing applies here.

How important is family life and family connection when people come from war-torn countries and their nearest relative may be a fairly distant relative, an aunt, uncle or grandparent? Zoe, do you have a view on that in terms of family life?

Zoe Bantleman: It is well set out in Strasbourg jurisprudence. Again, our domestic courts are following and applying that as well as they can and being corrected when they get it wrong. There is no need to unnecessarily foreclose the definition of family life.

Parliamentarians, brilliant as they may be, have no crystal ball to look into the future and imagine every future family's circumstances, to write them down and then to ensure that they have written them down and understood the elements of dependency that they may have. There could be unimaginable future families, separated by wars and other things that we cannot imagine now, who would have dependency and who a court would find to have family life, which, indeed, the ordinary British citizen would accept as well.

Q16 **Tom Gordon:** Clause 19 amends the public interest considerations that decision-makers must consider when assessing Article 8 claims. It would be helpful to hear from you about those proposed considerations and whether they are compatible with the balancing exercise required by Article 8.

Zoe Bantleman: The principle in law is simple. Parliament can tell judges what to weigh, but it cannot tell them to stop weighing. It cannot tell them to close their eyes to relevant matters in the balancing exercise.

Section 117B already says that only little weight should be given, for example, to family life formed at a time when someone was here unlawfully. The Supreme Court, in a case called Rhuppiah, said that that kind of provision cannot put decision-makers in a straitjacket. There has to be some room for the exceptional case, and that room is what keeps the current law, the current legislative framework in Part 5A, compatible with the European Convention on Human Rights.

What Clause 19 attempts to do, in my view, is to narrow that room, to take it away in two places. The first is the "little weight" provision, which becomes a "no weight" provision for family life that is formed when a person is here without leave or during an undefined serious breach of

conditions. The Government's own explanatory notes call this a starting point and say that courts can still depart from it. There is a question here. It is a bit of a conundrum. Does it bind courts and tribunals, and is it therefore incompatible with Strasbourg jurisprudence, or does it not bind courts? Is it only a starting point?

The second place where it narrows the room is in the provisions for children. A child can be found unable to leave the UK if and only if—this is the phrase the Bill uses—they would get no education at all, they would face very significant obstacles or they would suffer harm that is very significant and long-lasting. That applies even where the parents have no convictions. It is important for this public interest point to make that point.

It implies that serious adverse effects to children that are not long-lasting but are still serious, however short-lived, are fine. That sits relatively uneasily with the statutory obligation on the Secretary of State to consider the best interests of children and to safeguard and promote their welfare and the Supreme Court's warning in the case of Zoumbas that children must not be blamed for their parents' conduct.

I would ask the committee to probe the Government on this point. In its human rights memorandum, it says that decision-makers carry the ability to carry out an individual proportionality assessment. Its impact assessment calls the child test "non-exhaustive", but the Bill says "if and only if" and "no weight". The text of the Bill should more clearly reflect the non-exhaustive nature of the principles that it is trying to outline or the factors it wants courts to consider, if we want to uphold clarity and legal certainty. These are, of course, key components of the rule of law.

Q17 **Euan Stainbank:** Clause 20 amends the test for assessing Article 8 in the context of deportation cases. It removes the current sentencing threshold and provides that deportation will be disproportionate only in exceptional circumstances. Any and all criminal offences under the sentencing threshold are very serious, but, in your view, is it proportionate to apply an exceptional circumstances framework to people who have not committed sufficiently serious crimes to be above the sentencing threshold at the moment?

Zoe Bantleman: One way that we can conceive of today's deportation scheme, set out in Section 117C, is that it is graded by seriousness, which is exactly what the Strasbourg court expects. Someone sentenced between one and four years must meet one of the statutory exceptions. Someone sentenced to four years or more must in addition show exceptional circumstances.

Strasbourg has already accepted, when it looked at this in 2020, that that framework is compatible with the European Convention on Human Rights. The bar is already very high. "Unduly harsh" means more than the ordinary pain of separation. The Supreme Court has described it as "elevated", "severe" or "bleak", and very few people meet it. It is also important to make that point. Only 0.73%, so less than 1%, of foreign

national offenders have won deportation appeals on human rights grounds according to the Bonavero Institute's report last year. There are more lottery millionaires each year than foreign offenders who win on Article 8 alone.

The Minister told the Bill Committee on 15 October that just over 1,000 foreign offender deportation appeals were allowed on human rights grounds between April 2016 and November 2021, 70% of which were solely on Article 8. That works out at about 125 per year on average during that time.

Clause 20 removes the grading that we have on the basis of seriousness. It drops the 12-month threshold altogether so that the toughest tests for deportation apply to someone who has never been sent to prison. Conducive deportation does not even require a conviction for a criminal offence.

It further adds another hurdle, which I cannot quite wrap my head around. I do not know whether Ronan—because he is more intelligent than me—can. Even if you meet one of the exceptions outlined in the new Clause 20, you must still show that the public interest does not justify deportation. Previously, the exceptions told us how the public interest was to be applied. If you met one of those exceptions, that meant your human rights would be breached. Now, it is not enough to meet one of the exceptions. You must also somehow show that the public interest does not justify your deportation. That is incredibly confusing for lawyers but also incredibly confusing for the new not legally qualified adjudicators to look at.

The Government call this a stricter and more rigid regime, but rigidity is precisely the problem. Strasbourg treats the seriousness of the offence as central to the proportionality exercise. Treating a shoplifter in the same way as someone serving a long sentence is the opposite of proportionate.

Finally, this is not going—and is not needed—to get removals up. Already, 5,900 foreign national offenders were returned in the year ending this March, which is up 13%, under current law. Is it going to add more confusion, more litigation and waste more of the time of lawyers and the Government, or is it going to address the underlying problems that mean that people cannot be deported, such as poor data, casework delays and documentation, all of which the chief inspector found in his report in 2023?

Ronan Toal: I will just go back a step, if that is okay, and start with the public interest considerations. I wanted to highlight a couple of those before talking about deportation. I just want to give you an idea of the people who are likely to be affected by the statutory requirement to give no weight to private or family life established while the person required but did not have leave to remain.

There are huge cohorts of people whose private and family life would have been established in such a situation. For example, there are people

who are born in the United Kingdom and do not apply for or do not get leave to remain and live all their lives without leave. There are children brought to the United Kingdom as very small people, maybe as visitors, who then overstay. There are huge numbers of people.

I repeatedly represent people, maybe in a deportation case or an ordinary immigration case, who look and sound exactly like a British person. They look, sound, dress and act as if they are from Tottenham, Brixton, Birmingham or wherever. They have lived their whole lives thinking that they are British until something happened that made them realise they were not.

For example, when they were at school, it was only when they were going on a school trip and had to get their passport that they realised, by not being able to go on the school trip, they were not in fact British, as they had always thought. The family life and private life developed by people like that will be given no weight, however old they might be. They might be in their 20s, 30s or 40s, never having had leave but always having required it.

For example, there are people who are trafficked to the United Kingdom. A lot of them are trafficked into the country. They do not have, although they require it, leave to enter or remain. They remain and develop private and family life while here unlawfully. There are people who spend years waiting for decisions on their asylum cases and develop private and family life during that time.

For all those people, no weight is to be given to their private and family life. I would ask that consideration be given to the way in which that interacts with Section 94 of the 2002 Act, which is a provision that allows or in some circumstances requires the Secretary of State to certify a human rights claim as—

Lord Murray of Blidworth: It is "manifestly unfounded".

Ronan Toal: Yes, manifestly unfounded. Thank you. The consequence of certifying a claim as manifestly unfounded is that the person does not have a right of appeal. If, for example, a person who has got to 30 without ever having had leave has an immigration decision, perhaps a deportation decision, made against them, the Secretary of State is likely to certify their human rights claim because the tribunal will be bound to give no weight to whatever private or family life they may have developed. It is a subterranean way of stripping rights of appeal, potentially, the combination of that certification power with the "no weight to be given".

There is a whole list of countries from which people may come where the Secretary of State does not just have a discretion to certify but must certify. People from those countries listed in Section 94 will be without access to the tribunal.

The other point that I wanted to highlight about the public interest considerations is the reliance on public health facilities. I find that really quite a shocking provision. If somebody is not able to show that they are not going to need to rely on healthcare, the public interest is in getting rid of that person. That is a sinister, shocking and extremely ugly provision. I am astonished to see that in what may become a piece of legislation. I really hope it does not get as far as an Act.

Lastly, in terms of the deportation provisions, for the reasons I have suggested, a lot of people who now have appeals against deportation and have to deal with these exceptions may well find that they simply do not have a right of appeal. I will stop at that point.

Euan Stainbank: Could I just contextualise the point about foreign national offenders? I am interested in understanding the proportionality around the types of offences that are currently underneath the sentencing threshold. You referred to shoplifting. Can you just elaborate on the types of offences and why it would be disproportionate to remove the sentencing threshold, especially in the context of deportation decisions?

Zoe Bantleman: It is now for any crime at all. There is no threshold. Whether your sentence was one day or a life sentence, you have to show the same exceptions under the Bill. That is a question that the committee has to ask itself. Does that make sense? How is that going to be applied by courts and tribunals to which this particular section of the law is directed? It is not directed to the Home Office in its consideration. It is directed towards courts and tribunals.

It is putting all the proportionality and balancing exercise back there, but it is a levelling-down of the legal system. Everyone is subject to the same test now. If that is what people think is fair, people with the most serious offences just need to show those exceptions plus whatever this anomalous "public interest" means, which I still do not know and I do not think is clear. If the intention was codification and clarity, it is mission failed.

Q18 **Tom Gordon:** I just wanted to get your thoughts, views and opinions on the child test, pushing it a little bit further. One of the most significant changes is that in effect we could end up with a situation where British children have the child test applied to them and where British children, who are British citizens, are removed as a result of decisions arising from this process.

At the moment, the Home Office does not consider it reasonable to expect a British citizen child to leave. This would be quite a turning point in that regard. I wondered whether you might give your views and thoughts on how that would change the fundamental landscape for British children.

Ronan Toal: It would seem like the principle that the best interests of the child are to be the primary consideration has been thrown out by

these proposed provisions, especially for British children, as you highlight. The Supreme Court in the ZH (Tanzania) case recognised the fundamental importance of British citizenship and the right for a child to grow up in the country of its nationality. The idea that British children may have to leave the country with their parent unless they satisfy the very high test imposed by the Bill seems to fly in the face of the best interests principle.

The best interests principle has been in effect incorporated into Article 8. Article 8 has to be applied in accordance with the Convention on the Rights of the Child, recognising the child's best interest as a primary consideration. It would seem to me hard to imagine how Strasbourg would accept as Article 8 compliant what is suggested here.

One of the specific provisions that I found particularly shocking is the idea that, for it to be not reasonable for the child to go to another country, it has to be shown that the child would not receive any education. One could imagine a British citizen child of Afghan parents who was born in the United Kingdom, a British girl. If her parents were to be sent to Afghanistan, the British girl would be able to go along and would not be able to show that it was not reasonable by reference to education because girls get primary education in Afghanistan. As long as she manages to get a few months of primary education, she is not able to say, "It's not reasonable for me to go there".

Q19 **Peter Swallow:** This question requires me to know how to say "Chișinău". Is that right? In May this year, the Council of Europe agreed the Chișinău declaration, which sets out how parties to the ECHR think the convention should be applied in migration cases. The committee has been very interested in what practical effect this may have.

Ronan Toal: I am sorry to say that I have to display my ignorance of this and defer to my colleague.

Zoe Bantleman: You are left with only me. The first thing to say is that the Chișinău declaration—I hope I am pronouncing it correctly—is a political declaration. It does not change a word of the convention, and interpreting the convention remains the job of the Strasbourg court. That is Article 32 of the European Convention on Human Rights.

It is helpful to acknowledge that the convention is different in nature from the previous declarations. It is different from Interlaken. It is different from Copenhagen. It is different from Brighton. Those were about the convention system as a whole, about the court's backlog, about subsidiarity and the margin of appreciation. They apply to every right and every person equally.

This declaration, the Chișinău declaration, has a different emphasis, as you have said. It focuses on migration and it zooms in on two articles of the convention, Article 3, the right to be free from torture and inhuman and degrading treatment, and Article 8, the right to respect for private and family life, specifically looking at the expulsion of foreign nationals

and those rights in the context of migration. That is what makes it concerning.

Peter Swallow: To be clear, the question was about what effects it will have, not your personal view of it. You say it is political; you say it is different from other declarations. Is your position, therefore, that it will not be regarded by the court or that it will?

Zoe Bantleman: What I do not have, which none of us has, is a crystal ball as to how it will affect the courts, but the reason that I was setting out that context was to make clear the point that it is different in nature from the previous declarations. We cannot assume that what applied to the previous declarations would apply to this new and different declaration and how the courts will consider it.

That matters, of course, because political statements—that is what this declaration is: a political declaration, not a legal declaration—must not be allowed to influence judges. They must not be allowed to impede their independence, whether domestically or in Strasbourg, in any way. I hope that is something that we can all agree on.

Peter Swallow: It is a well-established convention under the ECHR that declarations can be made by agreement of member states.

Zoe Bantleman: Yes.

Peter Swallow: You are saying that that should not have happened in this case.

Zoe Bantleman: I am not saying that it should not have happened in this case. I am explaining why it is different from the previous declarations, which were not the same. I am saying that it ought not to have the effect of compromising judicial independence here or abroad.

One would hope that the practical effect on Article 8 cases, which is what I know this session of the committee is particularly interested in, will be limited because at most it reinforces a margin of appreciation that states already have. UK courts take Strasbourg judgments into account. That is Section 2 of the Human Rights Act. A declaration is not a judgment of Strasbourg and nor does it impact the words of the convention in any way, as I have already set out. I hope that answers your question, Mr Swallow.

Chair: We will have a final follow-up question from Baroness Hamwee, and then we will close the session.

Q20 **Baroness Hamwee:** It is not a follow-up to this. Going back to adjudicators, in our system of magistrates' courts, lay magistrates have access to legal advice through a clerk. I have not heard anything about what might happen in the tribunal. Are you aware of what the arrangements might be?

Zoe Bantleman: No. As far as I am aware, there is no promise that lay adjudicators will have access to a legal adviser in the way that magistrates do. There has also been no promise that they will sit with legally qualified adjudicators. It is wholly unclear to me, as it was to many of the previous panel, how they will be able to navigate this increasingly legally complex landscape, including in relation to the changes to the human rights interpretation in these clauses of the Bill that we have just looked at.

Chair: Thank you. With that, I will close the session formally.