



“Unequal Impacts”: How UK immigration law and policy affected migrants’ experiences of the Covid-19 pandemic

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**Public Interest
Law Centre**

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Cover Photograph:

Close Derwentside Immigration Removal Centre Protest, Palace Green, Durham. Agnes Tanoh, Detention Campaign spokesperson at Women for Refugee Women, former asylum seeker from Ivory Coast West Africa, is emotional and tearful as she remembers her detention at Yarl's Wood Immigration Detention Centre.

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Executive summary

Report summary

This report explores how UK immigration policy, law and government decision-making have exacerbated the impact of Covid-19 on migrants, particularly those with insecure immigration status. It focuses on access to justice, Home Office applications, state support, healthcare, and the asylum accommodation system, as well as immigration enforcement. Across all these areas, we highlight how the government's anti-migrant approach has exposed migrants to increased risk from Covid-19, undermined public health efforts and introduced greater dysfunctionality into an already-broken immigration system.

Key findings

Access to justice

Covid-19 and the government's response have compounded existing barriers to justice for migrants in the UK. The legal system was already close to breaking point when the crisis began, after a decade of austerity and restrictive anti-migrant policies. The Legal Aid Agency's failure to adapt to the pandemic and the government's decision to uphold Hostile Environment policies during a public health crisis have combined to increase the barriers migrants face in accessing the advice and support they need to exercise their rights.

Home Office applications & processes

The Home Secretary's efforts to adapt the immigration system to function during a pandemic have been at best inadequate and, at worst, unlawful. They have created avoidable delays and administrative burdens, incurred huge cost to the public purse and led to a drastic increase in the already-significant backlog of applications, which will have serious consequences for years to come.

State support, healthcare and asylum accommodation

At a time when access to safety and security has never been more important, the government has excluded migrants from the state safety net, deterred them from seeking healthcare, and housed asylum seekers in detention-like conditions. The Home Office has

chosen to prioritise anti-migrant policies above all else, putting migrants' lives at risk and undermining public health efforts.

Detention and immigration enforcement

The Home Secretary's decision to continue detaining and seeking to remove migrants during a pandemic flies in the face of the government's stated commitment to protecting vulnerable people during the crisis. Further, over the past two years the government has introduced sweeping changes to the asylum system and ramped up the criminalisation of people seeking refuge. Once again, the government has pursued a political strategy that endangers and dehumanises migrants, undermining public health efforts and any purported commitment to fundamental rights.

Analysis

1. Covid-19 and the Government's handling of the crisis have further compromised an already-broken immigration & asylum system

Covid-19 did not happen in a vacuum. It arrived in the UK in the wake of a decade of government-imposed austerity measures which had already left the immigration system in a severely underfunded and overstretched state, with reduced access to justice for migrants. This creaking system was unable to cope with a public health crisis, which exacerbated existing problems, including an enormous backlog of immigration applications, and ingrained new ones. As a result, we are left with a system far less able to cope with future hardship or crises.

2. The immigration system, including Hostile Environment policies, have exacerbated the impact of Covid-19 on migrants and undermined public health efforts

Anti-migrant policies and processes, including the No Recourse to Public Funds regime (NRPF), right-to-rent and work checks, NHS data sharing and charging and the asylum accommodation system, have served to increase the risks of Covid-19 for migrants and undermined public health efforts. These policies already made life extremely difficult for many

migrants before the pandemic. The government's decision to maintain them during a public health crisis recklessly endangered migrants' lives and intensified the negative impact of these policies, most acutely for undocumented migrants.

3. Migrant communities, particularly those with insecure immigration status, have been disproportionately impacted by Covid-19.

Covid-19 has exposed and exacerbated existing inequalities. There is clear evidence that black and minority ethnic people, disabled people and other marginalised communities have experienced worse outcomes from Covid-19.¹ While migrants are often marginalised on the basis of their race, ability and other statuses, the distinct experiences of migrants as a group are often neglected, and the government has failed to monitor the relationship between immigration status and Covid-19 outcomes or consider the impact of Hostile Environment policies. If disparities in Covid-19 outcomes are to be addressed, migrants must be recognised as a demographic group disproportionately impacted by the pandemic.

4. Changes brought in by the Home Secretary during the pandemic mark the start of a wider set of sweeping changes to the immigration & asylum system

The changes to the immigration system introduced by the Home Secretary during Covid-19 did not happen in isolation but mark the beginning of a paradigm shift in immigration law & policy. The government's decision to begin prosecuting and criminalising asylum seekers for arriving in small boats and the use of former army barracks as asylum accommodation are not just dangerous policies, but also set the tone for the Nationality & Borders Act 2022. This Act

introduces far-reaching changes to the asylum system, further criminalising people seeking refuge and severely curtailing the rights of refugees. In doing so it undermines the principles of the 1952 Refugee Convention.

Recommendations

Our recommendations are focused on learning lessons from how existing systems created greater vulnerability during the pandemic. They aim to build in greater resilience and safeguards in preparedness for future crises.

1. Learning the lessons of Covid-19

- Migrant experiences and the effects of Hostile Environment policies must be fully considered by the Covid-19 inquiry
- The Home Office must engage meaningfully with external advice and scrutiny

2. Reforming broken systems and culture

- The Home Office needs radical reform to ensure quick, effective decision making and the prioritisation of fundamental rights throughout the system
- A new, simplified route to regularisation based on five years' residence should be introduced

3. Ending enforced vulnerability

- Real access to justice for migrants must be instituted through legal aid and expanded appeal rights
- The Hostile Environment and harmful asylum housing practices must be scrapped
- The government must put an end to inhumane immigration detention and removals

Background

Covid-19 arrived in the UK in March 2020 in the wake of a decade of government-imposed austerity measures. Already underfunded and overstretched public services and bureaucratic systems were unequipped to steer the country through a public health crisis. This was felt most acutely in the NHS and the wider health and social care system, which was already in an extremely fragile state in early 2020 and quickly buckled under the pressure of the pandemic. Frontline staff were forced to work overtime to manage extremely low capacity and a severe shortage of beds.

Within the Home Office, a decade of funding cuts and lack of investment in training and support meant that caseworkers, like many others employed in public service, were already overstretched and under-resourced before Covid-19. Instead of being supported to make quick and fair decisions,

caseworkers were under pressure to meet targets while massive profit was generated from skyrocketing application fees.² Meanwhile, huge cuts to legal aid continued to impede the work of immigration advisors and reduce access to justice for those who needed it most.

To compound matters, the government's Hostile Environment policies, introduced from 2012 with the aim of making life in the UK impossible for anyone without the right papers, extended into almost all areas of life in the UK, including for migrants with permission to live and work in the country.³ The NRPF regime, right-to-rent and work checks, NHS charging and data-sharing made it harder for migrants to access decent working conditions and secure housing, or to obtain vital state support and NHS care. The public health crisis occasioned by Covid-19 brought the harm caused by these policies into sharp relief.

Methodology

This report is an analysis of the impact of immigration and asylum law and policy during the Covid-19 pandemic through the prism of JCWI's front-line casework. JCWI's legal team provides hundreds of migrants with free immigration advice or representation

every year. The authors have gathered information by: working within the legal team at JCWI; interviewing members of the team; conducting desk-based legal research; and tracking developments in legislation, policy and case law over the past two years.

Introduction

The aim of this report is to provide an overview of UK immigration and asylum law and policy during the Covid-19 pandemic (March 2020 – March 2022), to explore how the UK immigration system affected migrants' experiences of the pandemic and understand how the legacy of the last two years may impact migrants in years to come. We also highlight the vital changes that must be made to ensure that the migration system is fit for purpose in the event of future crises. Our report shows how government policy, legislation and decision-making have shaped and exacerbated the effects of Covid-19 for migrants, particularly those with insecure immigration status.

With the onset of Covid-19, it quickly became clear that, while in some respects we were 'all in the same boat', we did not all have the same tools to manage the storm. The pandemic has exposed and exacerbated existing structural inequalities, with black and minority ethnic communities, disabled people and other marginalised groups facing higher rates of infection and hospitalisation.⁴ Emerging research shows that migrants, particularly people of colour and/or with insecure immigration status, have felt the sharp end of the coronavirus crisis.⁵

Migrant communities have been forced to face the pandemic from a position of precarity while navigating a broken immigration & asylum system. As JCWI has shown in a recent report, structural issues within the system create insecurity, with many migrants being condemned to 'temporary' immigration status for years, forced to pay extortionate visa application fees and asked to meet excessively high thresholds when renewing their leave.⁶

During the pandemic, the Home Secretary made some temporary positive adjustments, including changes previously deemed 'impossible' or 'unthinkable'. These changes made things easier for some migrants—sometimes overnight. Overall, however, the government has consistently chosen to prioritise anti-migrant policies and legislation above all else. The Home Secretary's use of discretion and flexibility in limited cases reveal that the immigration system in its current form, and the government's anti-migrant approach, represent a political choice and that their devastating effects are largely avoidable.

The effects of Covid-19 and the government's handling of the crisis will be felt long into the future. Migrants' lives will continue to be put at risk and Covid-19 recovery undermined unless the Home Office prioritises public health ahead of immigration enforcement, removes Hostile Environment policies from all areas of public life and commits to comprehensive reform of the immigration and asylum system in a way that genuinely prioritises access to justice and fundamental rights.

If future crises are to be prevented from having a similarly devastating impact on migrant communities, and particularly people of colour, lessons must be learned. The upcoming public inquiry into Covid-19 must ensure the 'unequal impacts' of the pandemic remain central to its investigations, as described by Chair Baroness Hallett.⁷ As such, it must adequately consider the role of the Hostile Environment and austerity within the Home Office in exacerbating the effects of the pandemic for migrants.

Chapter 1

Access to Justice

Introduction

Covid-19 has compounded existing barriers to justice for migrants in the UK, with the legal system already close to breaking point when the crisis began. A decade of austerity, including severe cuts to legal aid and community and mental health services, have combined with restrictive anti-migrant policies, resulting in migrants' exclusion from state support (often resulting in destitution), social isolation and fear of immigration enforcement.

The Legal Aid Agency's failure to successfully adjust to pandemic-related uncertainty has contributed to an even further reduction in the capacity of the legal sector. At the same time, the government's decision to persist with anti-migrant policies amid the chaos and disruption caused by the pandemic have made it more difficult than ever, both financially and practically, for migrants to access the advice and support needed to establish their rights.

In this chapter we highlight how Covid-19 and the government's response to it have impacted supply and demand when it comes to effective affordable legal advice and access to justice.

Demand for legal advice

At the start of the first national lockdown in Spring 2020, an increased demand for free immigration advice services quickly became apparent, particularly among vulnerable migrants. As Covid-19 restrictions upended people's lives, disrupting advice services and court processes, many migrants were left in legal limbo and in desperate need of advice. Even those who were able to access advice faced new, often physical barriers to establishing their legal rights.

Since the introduction of the Legal Aid, Sentencing & Punishment of Offenders Act (LASPO) in 2012, demand for accessible legal advice has far outstripped capacity across the sector,⁸ meaning there was no spare capacity to soak up the new demand generated by the pandemic. As a result, increasing numbers of people were left without desperately needed legal advice and already overstretched lawyers had to work harder than ever to meet the needs of people facing irregularity or destitution, who often had nowhere else to turn.

Case study: Isatu

Isatu was trafficked to the UK from Sierra Leone more than twenty years ago and was enslaved in sexual exploitation for seven years. She suffers from serious mental health difficulties and relies on local community and medical support to manage her day-to-day life. She has been a JCWI client for many years and is now on the 10-year-route to settlement.

On the evening that Isatu's leave to remain was due to expire, JCWI received a call from an officer at her local council informing them that she was about to become undocumented. In the stress of the initial lockdown, during which all of Isatu's regular routines and support systems had been disrupted, she had been unable to seek immigration advice.

JCWI lawyers were forced to act pro-bono and submit an urgent application for Indefinite Leave to Remain, covering the fees from their own funds. However, the timing of the application meant that Isatu's benefits temporarily stopped, triggering a serious mental health crisis. Had Isatu become undocumented, she would have been barred from access to vital public funds and NHS treatment on a long term basis, as well as becoming liable for detention and removal.

A lack of access to technology acts as a significant barrier to receiving timely and effective legal advice. This was particularly the case during Covid-19 when most face-to-face front-line services moved 'online'. Access to technology (such as a computer or smartphone) is increasingly assumed to be universal but for those living in destitution, as many undocumented migrants and others with NRPF do, this is often not the case. Without these tools, many have struggled to make basic progress with their legal cases, such as signing necessary forms or providing their lawyers with essential documents

Access to justice through the courts

Significant changes to the functioning of the statutory appeals process were necessary in order keep the wheels of justice in motion whilst the country was in lockdown. The courts undoubtedly achieved significant success in the face of hugely challenging circumstances, but there have also been errors. There cannot, and should not, be any circumstances in which access to justice through the courts is impeded, particularly in the immigration and asylum jurisdiction, where fundamental rights are at stake.

The fast-tracked Reform Project

The government-led Reform Project is a programme aimed at transforming the justice system through modernisation and digitalisation. It was created in 2016.⁹ In late March 2020, with the onset of Covid-19 in the UK, the Senior President of Tribunals issued a series of 'practice directions', ushering in changes to the functioning of the immigration courts that had been in the pipeline for several years.¹⁰ The President of the Immigration and Asylum Chamber (IAC) confirmed that all steps being taken in response to Covid-19 were 'fully consistent with the Reform project... we expect to make full use of the online digital-platform we are piloting across the jurisdiction in the coming weeks.'¹¹

The fast-tracked Reform Project has had limited success in improving migrants' access to justice in the context of a pandemic. There are significant benefits to the project, including improved case management and built-in time for review. These measures are beneficial to all parties and have the potential to lead to more effective access to justice. Nevertheless, the speed at which these changes were rolled out raised several concerns. At the end of March 2020, the Immigration Bar – via ILPA – wrote to the President of the First Tier Tribunal highlighting the potential detrimental impact on access to justice of fast-tracking the introduction of the Reform Project. The letter raised qualms about the impracticality of vulnerable people – often without access to technology – giving evidence remotely, and the foreseeable limitations to open justice.¹² Over the last two years, little has been done to address these concerns. Crucially, there remain serious questions about how effective the Reform Project can be in the long term given that the Home Office still repeatedly refuses to engage meaningfully in the appeal process, and the IAC's routine failure to hold the government to account in this respect.

Remote Hearings

Attending court hearings from home has quickly become the norm. Yet it was entirely new territory for many appellants and lawyers in early 2020. In a world

where meetings via online platforms have become, and may remain, the norm, the virtues of remote justice remain unproven. In protection appeals, where credibility is key, the loss of nuance and tone that can occur when hearings take place via webcam is a cause for concern. Moreover, it is not always easy for those living in asylum support accommodation or other insecure housing to find a quiet, private space with secure internet. Many applicants feel unable to request in-person hearings, even where these might be beneficial for their cases, due to fear of prolonging an already drawn-out case determination process.

Upper Tribunal

In March 2020 the President of the Upper Tribunal introduced a Guidance Note which made a paper hearing the default position for all error-of-law hearings,¹³ in effect withdrawing the long-established right to an oral hearing for migrants at this stage in their appeal. The aim of the Guidance Note was to cut down as far as possible on the need for hearings during Covid-19.

However, concerns were raised immediately through ILPA and the Bar Council about the potentially unfair and far-reaching ramifications of this decision.¹⁴ The March 2020 Guidance Note was later successfully challenged through a judicial review brought by JCWI.¹⁵ In a detailed judgment, Mr Justice Fordham found that the Note was beyond the President's powers, misstated the law and was contrary to the common law principles of fairness.¹⁶ This case is a reminder to law makers and judges that fairness and fundamental rights cannot be sacrificed at the altar of speed, even in unprecedented times.

Legal aid

The Legal Aid Agency has failed to adapt effectively to Covid-19, deepening existing problems within the legal-aid sector. There has been a crisis of access to affordable, high-quality legal advice for migrants since the introduction of LASPO in 2012. The onset of a health crisis has heaped additional pressure on an already beleaguered sector and further reduced capacity, leaving many without the advice they so urgently need. Research conducted by PLP found that Covid-19 has had a significant impact on the operation of the justice system, including access to legal aid and Exceptional Case Funding (ECF). For example, they report that at the start of the pandemic the number of ECF applications reduced considerably, by 23% in the first half of 2020 as compared to the previous year. Further, they found that 60% of legal aid providers stated that the pandemic had a direct impact on their ability to make ECF applications.

Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020

The roll out of the Reform Project in the First Tier Tribunal in March 2020 was accompanied by new legal aid regulations, which were introduced without any prior consultation with the legal sector. These regulations introduced a new fixed fee for cases subject to the reform procedure, resulting in an overall reduction in recoverable fees when compared to the increase in work required.¹⁷

It is difficult to overstate the potential impact of these amendments on a legal-aid sector that was already on its knees, as well as the knock-on impact on the ability of migrants to access immigration legal advice. In a briefing on the regulations, Young Legal Aid Lawyers (YLAY) warned the changes would make “legally aided asylum and immigration work financially unviable and harm access to justice.”¹⁸

In response to the reforms, all leading chambers at the immigration bar refused to take instructions in immigration and asylum appeals,¹⁹ YLAY launched a campaign against the regulations and a legal challenge was commenced.²⁰ On 4 August 2020, the Lord Chancellor accepted that the introduction of the regulations had been unlawful due to the inadequacy of the consultation and introduced a new and much improved fee regime. This episode highlights how much we stand to lose with any further cuts to legal aid and shows that such an eventuality can and must be resisted on all fronts.

Detention Duty Advice Scheme (DDAS)

The Legal Aid Agency operates free legal advice surgeries for migrants detained under immigration powers in Immigration Removal Centres (IRCs) in England under the Detention Duty Advice Scheme (DDAS). Through the scheme immigration detainees can receive up to 30 minutes of free legal advice, irrespective of financial eligibility or the merits of their case.

Issues with the DDAS were already apparent before the pandemic. Serious concerns about its functioning were raised with the Joint Committee on Human Rights in the course of its inquiry into legal advice in immigration detention in February 2019.²¹ The committee heard that detainees sometimes had to wait more than two weeks to see a legal advisor, by which point they had sometimes already been removed from the country.²² Additionally, a survey conducted by BID, published in February 2020, found that the scheme had resulted in a “severe dilapidation” in the quality of advice being provided to immigration detainees.²³

Case study: JCWI's DDAS surgery

On 9 September 2020, JCWI lawyers were due to run a DDAS surgery at Yarl's Wood IRC. Yarl's Wood is normally a detention facility for women but was repurposed during Covid-19 to accommodate new arrivals in the UK—a change which was not communicated to JCWI.

On the day before the surgery was due to take place, JCWI was informed that there were no detainees to advise due to a lack of demand. This contradicted previous experience, which had seen JCWI lawyers routinely advised up to 10 detainees per surgery. It was also surprising in light of high demand for advice at other centres such as Brook House IRC.

In October 2020, JCWI discovered that a new client, Nasir, had in fact been at Yarl's Wood IRC at the time of the cancelled surgery, and in need of urgent advice. Nasir's case was eventually resolved, but he waited a month longer than necessary to access the advice he needed because he did not access the advice he was entitled to while in detention.

Migrants detained under immigration powers in IRCs and prisons have had an extremely difficult time accessing legal advice during the pandemic. Problems that existed before Covid-19 have been exacerbated during the crisis, firstly by the decision to make the DDAS a remote service delivered by telephone and subsequently by the failure of the Lord Chancellor to promptly address and adapt to the Home Secretary's re-structuring of the detention estate.

Recent litigation challenging the government's monitoring of DDAS contracts was dismissed by the High Court but succeeded in clarifying the functioning of the service and highlighting the extent of issues with access to justice in detention centres.²⁴ The Government is now facing a fresh legal challenge to its failure to provide in-person legal advice at the new women-only detention centre at Derwentside.²⁵

Conclusion

Covid-19 has accelerated the erosion of migrants' access to justice. After a decade of austerity and cuts to legal aid and community provision, poorly thought-through governmental decisions further hampered the ability of practitioners to reach and assist migrant applicants during the pandemic, leading to an increase in the already-significant backlog of applications. These decisions will reduce migrants' ability to withstand such problems if and when another crisis should occur. As such, the pandemic has brought to light new, urgent needs for migrants to access justice, challenge discrimination and have their voices heard.

Chapter 2

Home Office Applications

Introduction

On 24 March 2020 the Home Secretary promised migrants that “nobody will be punished for circumstances outside of their control.”²⁶ However, this has not been the reality for many of those navigating the UK’s immigration system. As the pandemic ebbed and flowed and government restrictions were tightened and relaxed accordingly, migrants and legal representatives alike struggled to keep abreast of changes to immigration policy and procedure. Migrants have borne the brunt of this mismanagement, with many left in legal limbo, destitution or forced to risk their health in the hope of progressing their immigration case.

Some disruption to Home Office applications and processes from Covid-19 was inevitable. However, the department compounded the situation by refusing to heed warnings or implement simple changes proposed by migrants’ rights advocates that could have vastly improved matters. The pandemic has also laid bare the threat posed to migrants by an increasingly privatised immigration system.

The piecemeal measures taken by the Home Secretary to adapt the immigration system to function during a pandemic were inadequate and, in some cases, unlawful. While the adjustments assisted some, overall her failures have served to erode migrants’ rights, harm public health and increase the already-significant backlog of applications to a level that threatens the collapse of the immigration and asylum-decision making system. The limited number of positive changes that were introduced have demonstrated that the government’s anti-migrant policies that have prevailed over the past decade are a matter of political choice rather than necessity.

This chapter explores the effects of Home Office changes to visa requirements and front-end services during the pandemic, and the department’s management of an ever-increasing backlog in asylum and immigration applications.

Visa requirements

Covid-19 forced tens of thousands out of work, plunged many into economic crisis and placed significant limitations on everyone’s ability to cross

borders. This, in turn, left significant numbers of people unable to pay already extortionate visa fees or meet other visa requirements. As early as March 2020, a letter signed by over 80 organisations alerted the Home Secretary to these mounting problems and outlined how the challenges could be resolved.²⁷

The Home Affairs Select Committee’s June 2020 report on the Home Office’s preparedness for Covid-19 echoed the calls made in the March 2020 open letter and recommended that the Home Secretary ‘[i]ssue guidance to caseworkers stating that they should exercise flexibility when considering applications which, on the balance of probabilities, would have met all relevant criteria had it not been for the Covid-19 crisis.’²⁸

The limited amendments made to some visa requirements (e.g. suspension of the need to meet the minimum income requirement in some cases²⁹) fell far short of the holistic flexibility required to ensure that no one was left in legal limbo or forced to become undocumented as a result of the pandemic. Visa extensions and exceptional assurances offered a welcome reprieve for some. However, even these measures contributed to a state of ongoing uncertainty due to poor communication by the Home Office, and a lack of clarity as to their legal basis.³⁰

In January 2021, guidance was issued which belatedly introduced a concession for people who were stuck outside the UK as a result of Covid-related travel restrictions. However, this guidance applied principally to those who had travelled prior to 17 March 2020 and the concession was only made available until 19 July 2021, despite the fact the pandemic and travel restrictions continued well beyond that date.³¹

Many people will not benefit at all from the limited changes made to visa requirements during Covid-19. For example, the children of refugees who have turned eighteen in the last year and been unable to submit applications for family reunion as a result of illness or local restrictions may now have lost their right to reunite with their parent or will at least face a significantly more complex application process. The impact of such decisions will be far-reaching and potentially life-altering and could easily have been avoided.

The economic consequences of Covid-19 are likely to continue for years to come and will continue to impinge on people's ability to meet visa requirements unless flexibility is introduced and maintained within the immigration system. We welcome the concessions that have already been introduced, which allow a degree of flexibility that would have been inconceivable before the pandemic and demonstrate that it is entirely within the Home Secretary's power to go further.

Front end services and privatisation

This period of crisis has confirmed existing concerns that the Home Office's largely privatised front-end services are unsuitable for administering the fundamental rights of vulnerable people. For example, in 2018, French IT consultancy firm Sopra Steria was awarded the contract to deliver a new, digitised service for people applying for a work or study visa, settlement or citizenship from within the UK.³²

For some with access to technology and money to spare, the new systems made things smoother. However, for many who are marginalised or vulnerable, these systems generated confusion and threw up new barriers to asserting their rights. Documents which could previously be submitted via post or email must now be submitted at 'service centres', of which only a small number provide appointments free of charge. This has made it harder for people on low incomes or living outside of major cities to secure their immigration status. The implications of these barriers should not be understated: at worst they can force people out of status, leaving them vulnerable to destitution, detention and enforced removal.

Given the pandemic-related closure of service centres and generalised restrictions on movement, the need for discretion and flexibility in the processing of immigration applications was greater than ever. Yet the Home Office failed to implement clear policy to this effect, while communication from Sopra Steria remained poor. As a result, it was extremely difficult for legal representatives to predict the administrative course applications would take, with lawyers forced to spend limited legally-aided time crowdsourcing information.

In the context of a public health crisis, such inflexible and opaque application processes have posed a public health risk to groups, such as black and minority ethnic people, who were already at increased risk from Covid-19.³³ People without legal support to challenge unfair or unsafe requirements were forced to accept the often risky options given to progress their application. For some, this meant breaking government guidance and "stay at home" orders to travel long and expensive distances for an

Case study: Saira

Saira is from Guyana and has lived in the UK since September 2003. Shortly after arriving, she met her British partner, whom she married in 2012. In 2015 Saira was granted Limited Leave to Remain on the basis of her marriage. Saira's husband is in poor health, and she is his carer, supporting him to get dressed, cook his meals and wash every day.

JCWI assisted Saira to renew her visa in April 2020. At the beginning of the process Saira explained that she would be unable to travel to a Sopra Steria or UKVCAS centre to enrol her biometrics due to the health risk this would pose to her husband, who was shielding. However, it took several months of advocacy from JCWI before the Home Office agreed to consider alternative arrangements such as a home visit or the re-use of previously submitted biometric information.

Saira had a strong and straightforward immigration case and should have been granted Further Leave to Remain quickly and without complication. However, it was only in March 2021, almost 12 months after she applied for Further Leave to Remain, that she was finally able to enrol her biometrics following a home visit. One month later, she was granted leave to remain.

appointment, or to submit documents or biometrics, exposing themselves to heightened risk of contracting and passing on Covid-19 in the process.

Adding to the confusion and frustration, others, seemingly at random, were invited to submit all their documents online and register their biometrics at local Post Offices.³⁴ In August 2020, a special app was introduced allowing some applicants to use their phones to register their biometrics.³⁵ This was a welcome if overdue change, but once again those invited to use the app seemed to be selected at random. Concerningly, no adjustments were made for many others at risk of exclusion from the application process due to limited digital access, language barriers or a lack of support.

The Covid-19 crisis has been an object lesson in the danger of sub-contracting vital public services to private companies.³⁶ By doing so, the Home Office has obfuscated vital points of contact, reduced its accountability and introduced an element of financial profiteering that is simply incompatible with the administration of a system in which fundamental rights are at stake, especially at a time of crisis.

Delay

One of the most serious failures of government in respect to migrants' rights during Covid-19 has been its management of an ever-increasing backlog of immigration and asylum applications. Like other underfunded government departments, the Home Office was in no position to sustain the shock and disruption caused by Covid-19. Administering the backlog of applications has come at huge public expense. Meanwhile, those waiting for their applications to be processed have been left in legal limbo and, in many cases, forced into destitution.

While Covid-19 has exacerbated the backlog, its roots lie in the systemic failures of pre-pandemic times. It is evident that the Home Office has no clear or effective plan to deal with the enormous backlog of applications within the system or to tackle associated delays and waiting times. Without urgent reform, the far-reaching consequences of this ongoing logjam will extend far into the future.

Asylum applications

Delay is particularly endemic in asylum decision making, where its effects are felt most acutely. Asylum seekers in the UK are not allowed to work, rent accommodation, or access mainstream state support. They receive a weekly asylum support payment of £39 to cover food, toiletries, travel and clothing, and are frequently housed in cramped, inadequate and unsafe accommodation.³⁷ Living this way even temporarily is extremely challenging, and over a prolonged period, can push people to their physical and mental limits.

Covid-19 revealed and heightened the backlog of cases that has been a feature of the asylum system for at least 20 years. In the first quarter of 2020, over 30,000 people waited longer than six months for a decision on their asylum claim, with this figure increasing to well over 50,000 in the third quarter of 2021.³⁸ Most of JCWI's clients who claimed asylum in 2020 waited well into 2021 for their substantive asylum interviews. Recent statistics show that the UK's asylum backlog has doubled since 2020, and the Home Office cannot say how many interviews it conducted last year.³⁹ These figures are deeply concerning and point to a huge number of vulnerable people stuck in a failing system.

In January 2021 as the backlog in the asylum system was escalating, the Home Secretary introduced the Inadmissibility Rules which give the Home Office powers to deem an asylum claim 'inadmissible' based on that person's mode of entry to the UK and whether they have passed through another 'safe country' en route.⁴⁰ While a claim is being considered under these rules, it cannot move forward. Not only do these changes undermine the very principle of refugee

protection in the UK; they also bake further delay into the asylum process for anyone who has not travelled here directly, which accounts for the vast majority of people seeking protection.

It is clear that the long-standing issues around delay in the asylum system show no sign of improvement. Indeed, they are likely to get worse now that the Nationality & Borders Act has become law. In a report on an inspection of asylum casework published in November 2021, the ICIBI identified delay as a major issue.⁴¹

Immigration

It is not only asylum seekers who have experienced long delays in the processing of their applications, but people in almost all areas of the immigration system. At the start of the pandemic, ILPA raised concerns about the Home Office's capacity to process and grant visa extension requests in a timely manner, given the backlog which already existed prior to the crisis.⁴² In late 2021, the number of cases awaiting a decision under the EU Settlement Scheme (EUSS) exceeded 400,000.⁴³ Many applicants have waited months for a decision. Some have been left unable to access work or state support owing to a lack of clarity around their immigration status.⁴⁴

To make matters worse, the Home Secretary has since introduced changes that have created further EUSS delays. Home Office policy, updated in April 2021, requires decision makers to pause most EUSS applications where an applicant has a pending prosecution until the criminal matter is resolved. Given that only around 1% of such cases will eventually face deportation, the policy, which has caused massive delay to thousands of applicants, is an unjustified waste of time.⁴⁵ It is currently being challenged in court by the Public Interest Law Centre (PILC).⁴⁶

Biometric Residence Permits (BRPs)

People whose immigration applications are successful are experiencing additional delays within the system, with some forced to wait months to receive a Biometric Residence Permit (BRP) confirming their rights and entitlements. This administrative delay keeps people trapped in legal limbo even longer, and often in destitution without access to vital services despite their right to remain in the UK having been acknowledged.

Case study: Stella

Stella came to the UK from Zimbabwe in 2010 to study. When her student visa expired, she was forced to claim asylum as it was unsafe for her to return to Zimbabwe. Stella's asylum claim was wrongly refused, leading to a ten-year battle with the Home Office. During this time she was left extremely vulnerable as a result of her lack of immigration status, and experienced homelessness, domestic abuse and serious mental health difficulties. During the pandemic, Stella and her baby were housed in crowded NASS accommodation, where they both caught Covid-19. At one point Stella's weekly support payments stopped as a result of an administrative error by the Home Office and she did not have enough money to pay for formula for her baby.

After a decade, and on the morning of Stella's appeal hearing, the Home Office decided to withdraw their refusal and grant her asylum. Yet she still had to wait another four months for her and her daughter's BRPs to be issued, during which time the pair remained in crowded NASS accommodation, often without electricity. Stella, who has complex mental health needs, spent this period in a state of acute anxiety. She feared that the Home Office had tricked her and were not going to grant her status after all. She could simply not believe that the UK Government would continue to subject her and her child to such dire conditions after recognising them as refugees.

Conclusion

The Home Secretary has failed to take the steps recommended by experts to keep the immigration system functioning effectively during the pandemic. This has created significant challenges for Home Office staff and immigration lawyers, but it is migrants who have suffered the worst consequences of the mismanagement. Covid-related adjustments to visa requirements helped some people, but fell well short of the flexible and holistic approach required to ensure that no one was penalised as a result of the crisis.

Ongoing lockdowns and Covid-related staff shortages caused a huge increase in the backlog of Home Office applications, trapping significant numbers of people in legal limbo and/or destitution, with many left with no choice but to either pay huge sums or endanger their health to progress their applications. Even as the Covid-19 crisis has eased, the Home Office has remained engulfed in chronic delay at every level, with no real acknowledgement of the scale of the problems that beset the system and no effective plan to resolve them.

Chapter 3

State Support, Healthcare & Housing

Introduction

By upholding the Hostile Environment throughout the pandemic, the government excluded thousands from state support and secure housing, deterring others from seeking healthcare at a time when access to safety, support and free healthcare was never more important. Where exceptions and support were introduced, their benefits were often undermined by the fear and distrust created in migrant communities by long-standing hostile policies.

Meanwhile, changes to asylum accommodation policies subjected large numbers of people to inhumane living conditions and significantly increased risk from Covid-19. Most notably, the Home Secretary made the decision to begin housing asylum seekers in detention-style military barracks at the height of a public health crisis, with this change epitomizing her cruel approach towards people seeking refuge. Finally, already-overstretched migrant-support charities have been forced to step up and fill the gaps in state provision to meet the needs of migrants, many of whom would have been left with nothing without this vital support.

This chapter explores how the pandemic has impacted migrants' financial security, access to healthcare (including the Covid-19 vaccine), and safe and secure housing. Across all these areas, anti-migrant policies have exacerbated the negative effects of Covid-19.

No Recourse to Public Funds

The 'No Recourse to Public Funds' (NRPF) condition bars most migrants from accessing most forms of state support.⁴⁷ The government does not publish figures on the number of people subject to NRPF, but the Citizens Advice Bureau (CAB) estimates that nearly 1.4 million people are affected.⁴⁸ In addition to those with an NRPF condition attached to their visa, undocumented migrants and asylum seekers are also barred from access to mainstream welfare support and homelessness assistance. The policy disproportionately impacts black and brown people, women, low-income families and disabled people.⁴⁹

NRPF restrictions have been pushing migrants – particularly those who are black and brown – into

poverty, unsustainable debt, destitution, homelessness, and unsafe and overcrowded housing since long before Covid-19.⁵⁰ A study led by Migrants Rights Network found that Covid-19 impacted people with NRPF most severely, with 14% unable to pay their rent or mortgage on time compared to 2% of others and 64% of those with NRPF saying they couldn't afford to miss work, as compared to 46% of those with recourse to public funds.⁵¹ This is not surprising given that Universal Credit, a lifeline to many over the past two years, is not available to people subject to the NRPF condition. Many also struggle to access the Coronavirus Job Retention (Furlough) Scheme and Statutory Sick Pay despite being entitled to them, due to their own or their employers' lack of awareness that these are not classed as public funds.

Since the start of the pandemic, the government has failed to heed urgent and repeated warnings about the dire consequences of maintaining the NRPF regime for migrants and public health more generally.⁵² In March 2020, JCWI and several other organisations called for NRPF to be abolished.⁵³ In June 2020, the condition was found by the High Court to be, in part, unlawful.⁵⁴ In the same month, the Home Affairs Select Committee recommended that the government 'immediately make arrangements for the temporary lifting of NRPF conditions during the... pandemic.'⁵⁵ Remarkably, the government has remained steadfast in its commitment to the NRPF regime despite mounting evidence of the serious harm it causes.

A group experiencing particularly serious effects as a result of NRPF are migrant survivors of domestic abuse. Survivors with NRPF are currently excluded from life-saving refuges and homelessness support, with the result that they are more likely to find themselves trapped in abusive situations for lack of alternative accommodation. Further, there is evidence to suggest that insecure immigration status is exploited by some perpetrators as a means of control.⁵⁶ As instances of domestic abuse rose as a result of the pandemic and associated lockdowns,⁵⁷ support organisations sounded the alarm about the potentially drastic impact of NRPF on survivors.⁵⁸

The government's claim that people in need can simply apply to have the NRPF condition lifted does not stand up to scrutiny. When a person needs

Case study: Blessing

Blessing is originally from the DRC and came to the UK aged 6. She grew up in South London with her four British siblings. As a child, Blessing experienced abuse and suffered from mental health difficulties. In 2018, she was granted limited leave to remain on human rights grounds, with a NRPF condition attached. With no access to state support, Blessing was forced to continue living at home with her abusive family and find work rather than pursuing her studies.

Blessing contacted JCWI in June 2020 after discovering she was pregnant and being thrown out of the house by her mother. She was unable to continue working in the hospitality sector due to serious morning sickness, and Covid-19 regulations meant she was unable to stay with friends. To prevent her from becoming street homeless, JCWI covered the costs of Blessing's accommodation while making an application to have the NRPF condition lifted from her leave to remain.

Despite the severity of Blessing's situation, the Home Office refused JCWI's request to consider her application urgently. Her lawyer was forced to seek an urgent order from the Upper Tribunal for the Home Office to lift the NRPF condition on the basis that Blessing's Article 3 ECHR rights—prohibiting torture and inhumane treatment—were being breached. The Upper Tribunal granted the order, and the Home Office was forced to allow Blessing access to public funds. She was provided with housing later the same day.

support, particularly in a pandemic, that need is often urgent, yet the Home Office regularly take weeks or months to respond to straightforward applications to have the condition lifted. Contrary to claims made by the Immigration Minister in parliament,⁵⁹ applicants for an 'NRPF lift' very often require legal assistance. The fact that lawyers are regularly granted ECF from the Legal Aid Agency for such cases is tacit acknowledgment that people's human rights would be at risk without such assistance.

Moreover, measures vaunted as designed to prevent destitution and homelessness among people with NRPF during the pandemic have been of limited value. The Government has pointed to increased local authority funding and the 'Everybody In' scheme as evidence of its commitment to providing emergency accommodation for all regardless of immigration status.⁶⁰ Yet a report co-authored by PILC, Migrants' Rights Network, Project 17 and the University of Wolverhampton found that many homeless people with NRPF found it extremely difficult to access emergency accommodation and basic-needs support

during the first year of the pandemic.⁶¹ Overall, the 'Everyone In' scheme produced mixed outcomes for migrants with insecure immigration status, with local authorities exhibiting highly divergent responses to requests for support by people with NRPF.⁶²

Access to healthcare and vaccines

Hostile Environment policies such as NHS charging and data-sharing have engendered a climate of fear that deters many migrants from seeking healthcare and makes it more difficult for medical professionals to do their jobs.⁶³ Undocumented migrants have reason to fear using the NHS: they are not eligible for free secondary care under most circumstances and their data may be passed by NHS trusts to the Home Office—which could result in them being targeted for immigration enforcement.

Despite the government's decision that Covid-related healthcare, including vaccines, should be freely available to all, entrenched distrust and fear have instilled hesitancy in migrant communities when it came to accessing these services. A JCWI study of the experiences of migrants with NRPF during Covid-19 found that almost half of those surveyed (43%) would be scared to access healthcare if they became unwell during the pandemic. Data was not collected on respondents' ethnicity, but it is indicative of the systemic racism of the Hostile Environment that 60% of respondents from Africa and the Caribbean and 56% of those whose country of origin was in Asia reported being scared of seeking healthcare, compared with just 16% from North America, Australasia and Europe.⁶⁴

The lack of trust caused by Hostile Environment policies within the NHS has increased the risk that migrants, particularly those who are undocumented, will not get vaccinated. One detailed study by the Migrant Health Research Group and others found that 72% of migrants felt hesitant about accessing the vaccine,⁶⁵ while the British Medical Journal reported that "the Hostile Environment has led to migrant uncertainty about free entitlement to the vaccine and a fear of data sharing of personal information collected for vaccination with the Home Office for immigration control purposes."⁶⁶

Moreover, the UK's Covid-19 vaccination strategy depends on people being registered with GPs, and on people's willingness to attend hospital when sick and share information with medical personnel. Yet concerningly, a mystery shopping exercise by the Bureau of Investigative Journalism revealed that a significant majority of GP surgeries in England, Scotland and Wales would wrongly refuse to register migrants who could not provide proof of their immigration status, despite NHS guidance clearly stating that such proof is not needed.⁶⁷

Once again, the government refused to listen to warnings from experts, this time about the life-threatening risks of such hostile policies within healthcare during a pandemic. In March 2020, JCWI, Medact and Liberty wrote to the Home Secretary urging her to drop NHS charging regulations and warning that exemptions for Covid-19-related treatment were not enough to protect migrants and public health,⁶⁸ a call echoed a month later by the British Medical Association, Royal College of Physicians, the UK Faculty of Public Health, Doctors of the World UK and others.⁶⁹ The Covid crisis made it clearer than ever that Hostile Environment policies within healthcare are quite literally a matter of life and death. In a public health crisis, policies that deter migrants from accessing NHS care are likely to result in unnecessary deaths. According to a Kanlungan report, several undocumented people died at home with symptoms of Covid-19 after failing to seek medical assistance due to fear of being deported.⁷⁰

Despite migrants facing disproportionate barriers to Covid-related and other healthcare, the Government does not collect or monitor data on immigration status, hindering efforts to understand or tackle outcome inequalities. There is clear evidence that communities of colour have experienced higher rates of serious illness, hospitalisation and death from Covid-19.⁷¹ Many migrants, particularly those who are undocumented and/or subject to the NRPF condition, are part of this cohort, yet their experiences are often neglected. If disparities in Covid-19 outcomes are to be addressed, migrants must be recognised as a demographic group disproportionately impacted by the pandemic

Mental health

The detrimental impact of Covid-19 on mental health has been well documented, as has the reduction in access to mental health services brought about by the pandemic. For migrant communities, including refugees and victims of trafficking, who are at particular risk of mental ill health and whose access to support services was already severely constrained, the effects have been particularly acute. JCWI has been able to help clients navigate some of these issues through community support and, crucially, the presence of a full-time support worker. However, in most legal settings, this level of liaison and support - which is not funded by Legal Aid - would be not available.

Housing for asylum seekers

During Covid-19, delays in asylum decision making, widened eligibility and the need to limit the spread of the virus created increased demand for asylum accommodation.⁷² Over the last two years, the government has ramped up the existing harmful

practice of housing asylum seekers in hotels and introduced an even more inhumane policy allowing former military barracks to be used as contingency asylum accommodation. Successful legal challenges, public outcry and mounting evidence of the serious harm caused by the UK's asylum accommodation system have failed to deter the government from housing vulnerable people in unsuitable and regularly unlawful conditions. The impacts of these policies are seen in the shocking increase the number of deaths in asylum accommodation, which grew ninefold from 2019 to 2020.⁷³

Hotel accommodation

The Home Office announced early in the Covid-19 crisis that hotels, which had emptied of tourists, would be repurposed as asylum accommodation. The government states it is 'not typical for asylum seekers to be accommodated in hotels', which should only be used as a temporary and initial measure. Yet this practice - which pre-existed the Covid-19 crisis - has been increasingly relied on in recent years.⁷⁴ This policy is unsuitable by any standard, but in the context of a public health crisis was particularly misjudged and left many vulnerable people in isolated, precarious and unsafe positions, often struggling to access healthcare.

By recklessly rushing through the sub-contracting of asylum housing to hotels, the Home Office made the UK's system for accommodating and supporting

Case study: Amani

Amani came to the UK in 2020 from Sudan, where he was forced to leave his business and family, including six children, in order to seek safety. Amani experienced a long and difficult journey to the UK. He was enslaved for several months in Libya and nearly lost his life attempting to escape. These experiences, on top of the torture to which he was subjected in Sudan, left Amani with serious mental health issues, as well as chest pain and headaches.

After being released from a period of immigration detention, Amani, who speaks no English and has no family or community connections in the UK, was accommodated in a hotel on the outskirts of London. When he was dropped off at his hotel, he was distressed and desperate to see a doctor, but had no idea where to find one. The Home Office offers no local support or advice in hotel accommodation and no welfare assessment is carried out. Even with the assistance of a JCWI support worker, it took several weeks for Amani to successfully locate and register with a local GP. In the meantime, JCWI covered the transport costs for Amani to attend his local A&E.

asylum seekers significantly less transparent and accountable, inflicting harm on vulnerable people in the process. Compounding this was a worrying trend towards 23-hour curfews being imposed on asylum seekers in some hotels. Following a High Court challenge, the Home Secretary accepted that the practice was unlawful, yet disavowed any responsibility for it.⁷⁵

The tragic and violent incident that occurred in the Park Inn Hotel in Glasgow in June 2020 - in which a resident stabbed six people - sadly came as little surprise to many of those supporting asylum seekers living in hotels during the pandemic.⁷⁶ Research into the use of hotel accommodation to house asylum seekers in Glasgow has shown that residents experienced such housing as akin to detention.⁷⁷ This policy has ultimately been implemented with very little regard for the basic needs or dignity of residents and has resulted in significant physical and mental harm to already vulnerable and traumatised people.⁷⁸

Barracks

In September 2020, at the height of the pandemic, the Home Secretary made the decision to begin housing asylum seekers in disused, remote, military barracks. Such an arrangement would be harmful for asylum seekers at any time. Its introduction during a public health crisis only underscores the cruelty and recklessness that has been characteristic of the Home Office's treatment of asylum seekers during the pandemic.

Reports quickly emerged of filthy conditions, a detention-like environment and a lack of Covid-19 safety measures in these facilities. Public Health England and Public Health Wales both raised concerns about the level of Covid safety in such accommodation, yet both Penally and Napier barracks were opened before any of the recommendations made by the two bodies were actioned.⁷⁹ The ICIBI visited the two sites and took the highly unusual step of publishing an emergency report. The report raised 'serious safeguarding concerns', in particular about people who had self-harmed, who were being held in a 'decrepit' isolation block that was 'unfit for habitation'.⁸⁰

Reports have also emerged that some asylum-seeker residents of barracks accommodation were denied access to healthcare by non-medically trained employees of the private companies administering the accommodation. Concerningly, such staff members were apparently making their own assessment of people's medical needs and effectively acting as gatekeepers to GP services.⁸¹ The ICIBI also highlighted the government's failure to ensure that adequate healthcare was available for residents who were unable to use local services.⁸²

Case study: Abdullah

Abdullah is a Syrian national from Raqqa, who fled Syria with his brother when his hometown became a target of the Assad regime. The brothers experienced a long journey to the UK, where they arrived in 2020 and were separated shortly after.

After lodging an asylum claim, Abdullah was moved to Napier barracks at the end of September 2020. He was housed in a block with 28 others, and became very concerned about the poor hygiene conditions and lack of Covid-19 safety measures. When another person on the block contracted Covid-19, Abdullah went on hunger strike to protest the failure of staff to put appropriate Covid safety measures in place. Abdullah asked for the block to be cleaned, or for cleaning products to be provided. Not only were both requests refused, but he was told by barracks staff that his behaviour would harm his asylum claim.

By December 2020, due to several confirmed cases of Covid-19 within Napier, residents were no longer allowed to leave. Abdullah reports that police were stationed at the gate to ensure that people complied. Abdullah eventually contracted Covid-19 in January 2021. He also began to suffer from toothache but was denied access to a dentist for two months, during which time his face became badly swollen. Abdullah's mental health deteriorated significantly during his time at the barracks, where he felt as if he was in detention.

Abdullah, who was only able to access legal assistance after leaving Napier in March 2021, was granted asylum in October 2021. His brother is in the UK and has also been granted refugee status.

On 3 June 2021, the High Court ruled that the Home Office acted unlawfully in housing asylum seekers in 'inadequate' conditions in Napier barracks. Evidence presented to the court showed significant political pressure being exerted by ministers upon Home Office officials to house asylum-seekers at the barracks, despite the risk of a Covid-19 outbreak being well known.⁸³ Such an outbreak was, the court found, 'inevitable', and did in fact occur in January 2021, with nearly 200 people testing positive. Despite the court's judgment, and the fact that Covid-19 is far from over, the Home Office continues to house asylum-seekers at the 'detention-like' site.

The government's wholesale disregard for this group of people's fundamental right to liberty is cause for grave concern, and its effects will be felt long into the future. For a start, the Home Office will now face a slew of unlawful detention claims for compensation,

at huge public expense. Most concerningly, this practice sets the tone for a new, barbaric approach towards asylum seekers in the UK, which has recently been fixed into legislation with the Nationality & Borders Act's assent in Parliament.

Charities filling the role of the state

During the pandemic, already-overstretched charities and grassroots groups have extended their remit considerably to meet the needs of migrants, particularly those with irregular immigration status, many of whom would have been left with nothing without this vital support. These organisations have taken on the work of providing supermarket vouchers, delivering groceries, providing accessible information on access to healthcare and the Covid-19 vaccine, helping people to register with GPs, and providing advice around how to secure homelessness assistance.

In some cases, charities have been forced to step up to fill the gaps in state provision, including where the government has explicitly excluded migrants from state support or where people have been deterred by from accessing the limited support available to them by anti-migrant policies that run into all areas of public life. As JCWI notes in its report on undocumented people's experiences of the pandemic, some front-line organisations have also directly

shouldered public health responsibilities, for example by running popup vaccine clinics for migrants.⁸⁴ These well-attended clinics have been a lifeline in difficult times, but they also demonstrate how the Hostile Environment has excluded many migrants from formal healthcare settings.

Conclusion

The government's decision to persist with the Hostile Environment during a pandemic has increased the risk posed to migrants by Covid-19, endangering lives and undermining public health efforts. Many, particularly those with insecure immigration status, have been forced into destitution or unsafe and overcrowded housing. Others have been deterred from seeking potentially life-saving medical care. The Home Secretary's decision to accommodate asylum seekers in hotels and disused barracks during a health crisis actively endangered the physical and mental health of vulnerable people and blurred the line between accommodation and detention to the point of being indistinguishable. The limited positive changes that were introduced, such as universal entitlement to free Covid-related healthcare and vaccines, were impeded by the fear and distrust caused by existing anti-migrant policies. As a result, charities and grassroots organisations were forced to work beyond capacity and take on functions that should have been fulfilled by the state.

Chapter 4

Detention & Enforcement

Introduction

The continued use of immigration detention and implementation of removals during 'essential travel only' periods of the pandemic flew in the face of advice from public health experts, as well as increasing the risk of Covid-19 transmission and causing avoidable harm to vulnerable people. Despite the introduction of some limited flexibility in the Home Office's enforcement approach, overall the department's decision-making prioritised its political strategy of making migrants' lives as difficult as possible over Covid-19 recovery efforts.

The pandemic was also the backdrop for the government to bring forward its Nationality and Borders Act, which implements sweeping changes to the asylum system and will significantly curtail the rights of refugees.⁸⁵ Amongst other measures, the Act will ramp up immigration enforcement measures by further criminalising people seeking refuge, mandating the creation of offshore detention centres, and prosecuting people for making the dangerous crossing across the English Channel. The last two years have shown that the Home Secretary is not afraid to push the limits of undermining refugee protections, even during a public health crisis.

This chapter explores the Home Office's use of immigration enforcement measures during the pandemic, focusing on detention and removals and reporting requirements.

Detention and removals

Even on the Home Office's own terms, detention has been almost impossible to justify over the last two years. Immigration detention can only be lawful when used "sparingly, for the shortest period necessary" with the aim of facilitating a person's removal from the UK.⁸⁶ As a result of the pandemic and its associated lockdowns and travel restrictions, the possibility of removals has been severely constrained. Yet the Home Office has persisted with policies that entail holding large groups of vulnerable people in a confined space, to the detriment of detainees' safety and wider public health.

In keeping with a general tendency not to engage meaningfully with external advice and criticism, the Home Office did not heed experts' warnings about

the implications of persisting with immigration detention during a public health crisis. In a joint press release on 31 March 2020, the OHCHR, IOM, UNHCR and WHO urged Governments that, "considering the lethal consequences a COVID outbreak would have, [immigration detainees] should be released without delay."⁸⁷ Similarly, in a global statement on migrant health at the beginning of the pandemic, Lancet Migration called for the "[urgent] transfer of migrants & refugees held in overcrowded reception, transit and detention facilities to safer living conditions."⁸⁸

The Home Secretary chose to ignore these calls and was quickly met with litigation challenging her failure to safeguard detainees. A legal challenge brought by Detention Action in March 2020 forced the government to release almost one thousand immigration detainees, update guidance on the detention of people under immigration powers to include Covid-19 considerations, and publish new guidance on hygiene standards in detention.⁸⁹ It is both worrying and remarkable that litigation was required to compel the Home Secretary to take straightforward action that was so clearly required to protect migrants' fundamental rights during a public health crisis.

The dramatic fall in the number of people held in detention notwithstanding, the government has continued to detain individuals where there is no real prospect of removal. The number of people held in immigration detention rose again in the second half of 2020 as the Home Secretary pushed hard to expel asylum seekers from the United Kingdom to Europe before the conclusion of Brexit.⁹⁰ Research published by BID in May 2020 showed that the First-tier Tribunal was granting bail in 94% of cases the charity acted in, compared to a success rate of 59% prior to the pandemic. As the report concluded, 'it is clear that Home Office use of detention during this period does not appear to be justified in the findings of the independent courts.'⁹¹

A second ICIBI report on the functioning of the 'Adults at Risk in Detention Policy', published in October 2021, painted a bleak picture of a detention system riddled with delay, disbelief and incompetence.⁹² The report emphasised that the

Case study: John

John arrived in the UK in the 1970s as a teenager and has lived here ever since. He has lived in Guildford with his British wife for 22 years. John suffers from mental health difficulties and a heart condition, both of which leave him vulnerable to Covid-19. John had to report regularly to the Home Office for years, and was detained while doing so in April 2019. However, since John's parents were citizens of the UK and Colonies, he was eligible to apply for settlement under the Windrush Scheme. JCWI assisted John to submit an application under the scheme in February 2020.

JCWI had to make a bail application to the Tribunal to get John released from detention during the first national lockdown in March 2020, despite him being clinically vulnerable as a result of his age and health conditions. Without legal representation, John's period of detention would likely have been much longer, putting him at increased risk of contracting Covid-19.

existing systemic issues relating to the identification, care and release from detention of vulnerable adults had been exacerbated by Covid-19.

The Home Secretary responded to this criticism by stating that the issues faced by vulnerable adults in detention would be addressed by her Nationality and Borders Bill, which 'will deliver the most comprehensive reform in decades to fix the broken asylum system.'⁹³ Clearly, legislation that further criminalises migrants and bakes delay into an already overwhelmed system will do nothing of the sort. What is urgently needed instead is a complete overhaul of the UK's cruel and harmful detention practices.

Reporting

When Covid-19 hit, it was immediately clear that requiring people to regularly travel long distances to report at immigration centres would be at odds with public health measures and the government's 'Stay at Home, Save Lives' guidance. On 17 March 2020, Migrants Organise and the Helen Bamber Foundation wrote to the Home Secretary seeking confirmation that all immigration reporting would be urgently suspended, noting that, 'any public interest in managing the risk of individuals absconding is far outweighed by the public interest in managing the serious health risks posed by [Covid-19], both to individual migrants asked to report and society at large.'⁹⁴ In March 2020, the Home Office made the welcome announcement that reporting would be suspended until July 2020.⁹⁵

Case study: Khalil

Khalil arrived in the UK as an asylum seeker in July 2020 after fleeing civil war in Yemen. He is a victim of slavery and torture. Khalil was detained at Brook House in November 2020 after removal directions were set for him to be returned to Belgium, a country he had passed through on his way to the UK. Khalil had been attacked in Belgium and felt unsafe there. He was also suffering from serious medical conditions that meant he was medically unfit to fly. Being detained caused Khalil to have flashbacks to the torture he had undergone at the hands of Al Qaeda. He attempted suicide in detention days before his scheduled removal, yet the Home Office persisted with his detention and plans to remove him.

Khalil's case was referred to JCWI just 48 hours before he was scheduled to be removed. Thankfully, JCWI lawyers were able to stop the removal from going ahead by making urgent legal submissions, including a request that he be referred into the National Referral Mechanism. Despite this, even after his removal directions were deferred, the Home Office initially refused to release Khalil from detention. After further legal action, he was eventually released and has since been granted Humanitarian Protection in the UK. He is now pursuing a compensation claim against the government in relation to his unlawful detention.

However, the government's subsequent approach was far less positive. When the country began opening up in summer 2020 after the first UK lockdown, the vaccine rollout programme was not yet underway, and many clinically vulnerable people were still required to shield. Despite this, the Home Office failed to amend reporting policy in line with national Covid-19 restrictions until December 2020, by which point it was too little too late to protect vulnerable people or the wider public. Crucially, the policy was not applied effectively in practice. In the meantime, many clinically vulnerable individuals were put at unnecessary risk of contracting and transmitting Covid-19 by being forced to attend reporting centres.

Case study: Rajan

Rajan came to the UK from Sri Lanka in 2011 on a student visa before claiming asylum based on his fear of the government in his country of origin. He was accused of supporting the Liberation Tigers of Tamil Eelam—sometimes known as the Tamil Tigers—and is a survivor of detention and torture. He suffers from PTSD and depression as a result of these experiences. Rajan is deemed 'high risk' by the Home Office because he has a historic criminal conviction for a relatively minor, non-violent offence. Before Covid-19, he had been complying with weekly reporting conditions for around five years.

Following the Home Office's initial suspension of reporting requirements during the first national lockdown, Rajan was asked to recommence reporting in September 2020. At this time, his home town of Leicester was a Covid-19 hotspot. Rajan himself was suffering from Covid symptoms but had been unable to access a test.

When the Home Office refused a request to suspend Rajan's reporting, JCWI brought judicial review proceedings, resulting in the Home Office disclosing a previously unpublished Covid-19 reporting policy and ultimately agreeing that Rajan could report by telephone, rather than in person, until further notice. Rajan was granted asylum in February 2022.

Conclusion

During the pandemic, the government has stubbornly prioritised immigration enforcement over the protection of public health. It has maintained the practice of detaining migrants throughout the pandemic, regardless of whether there was any possibility of removing them and despite clear advice from experts that the use of immigration detention exacerbates the public health risk posed by Covid-19. It also maintained the requirement for some migrants to report in person to the Home Office during most of the pandemic, including at times when the public as a whole was being told in no uncertain terms to stay home in order to save lives.

Conclusions & Recommendations

Conclusions

The Covid-19 pandemic and the government's handling of this crisis have further weakened an already broken immigration & asylum system

The pandemic and the government's response have further entrenched existing problems in the legal system and produced new ones that have reduced migrants' access to justice and left us less equipped to cope with future crises. The Covid-19 crisis did not occur in isolation but followed ten years of severe government-imposed austerity measures. As such, the crisis limited migrants' access to justice and left the immigration & asylum system weakened, underfunded, overstretched and completely unable to cope with a public health crisis. With the onset of the pandemic, the Legal Aid Agency failed to make necessary adjustments, further reducing capacity in the legal sector. In addition, the government's decision to uphold Hostile Environment policies during a public health crisis have further increased migrants' barriers to advice and support required to exercise their rights.

The immigration system and Hostile Environment policies have shaped and intensified the negative effects of Covid-19 for migrants and undermined public health

The way the government has designed the immigration & asylum system, with the Hostile Environment policies that lie at the heart of it, has exacerbated the risks of Covid-19 for migrants and undermined public health efforts. Policies such as NRPF, right to rent and work checks, NHS charging and data sharing have excluded migrants from the state safety net, reduced their access to decent working conditions and safe housing, and deterred them from seeking healthcare at a time when access to safety and support has never been more important. This crisis has heightened the already-harsh impacts of Hostile Environment policies for migrants, particularly those with no formal immigration status.

Migrants – particularly those with insecure immigration status – must be understood as a community facing disproportionately worse outcomes from Covid-19

The Covid-19 pandemic has highlighted and intensified already-existing inequalities, with marginalised groups suffering disproportionately negative outcomes from the virus. There is clear evidence that black and minority ethnic communities, as well as disabled people and those from deprived socioeconomic backgrounds, experience higher rates of serious illness, hospitalisation and death. In addition, there is growing awareness of the increased risk migrants face from Covid-19 due largely to dangerous Hostile Environment policies. Yet the government has failed to monitor the relationship between immigration status and risk posed by Covid-19, making it impossible to adequately tackle disparities in health outcomes. Migrants, particularly those without formal immigration status, must be understood as a community facing disproportionately worse outcomes from Covid-19.

Changes brought in by the Home Secretary during the pandemic mark the start of a broad set of sweeping changes to the immigration & asylum system

Many of the changes brought in by the Home Secretary during the Covid-19 pandemic did not happen in isolation, but mark the beginning of a wider set of sweeping changes to the UK's immigration & asylum system. The Nationality & Borders Act introduces far-reaching changes to the asylum system, further criminalises those seeking refuge, severely curtails the rights of refugees and undermines the very principles laid out in the 1952 Refugee Convention.

Recommendations

Covid-19 has exposed how longstanding flaws in UK immigration and asylum law and policy have created a system unable to withstand a crisis such as the pandemic without disastrous results. If the system is to be equipped to cope with the next major crisis, lessons must be learned from the experience of the pandemic—and radical reforms undertaken.

Implementation of the following recommendations would go a long way to creating an immigration system that can survive shocks such as Covid-19 while upholding the rights of migrants.

1. Learning the lessons of Covid-19

- Migrant experiences and the effects of Hostile Environment policies must be fully considered by the Covid-19 public inquiry

We welcome Baroness Hallett's decision to include the experiences of migrants in the draft Terms of Reference for the forthcoming Covid-19 Inquiry, as well as her recent recommendation to the Prime Minister to ensure that "investigation into any unequal impacts of the pandemic runs through the whole Inquiry."⁹⁶

The inquiry must also consider changes to the immigration system to ensure it can sustain future pandemics or crises without compromising migrants' rights. The inquiry represents an opportunity for accountability and change—we urge it to give careful consideration to the impact of Hostile Environment policies and insecure immigration status on migrant communities in the context of a pandemic, and to include voices representing all migrants, including those without immigration status.

- The Home Office must engage meaningfully with external advice and scrutiny

If the Home Office is to create an immigration system that is capable of withstanding future crises, it must engage meaningfully with external stakeholders and be open to scrutiny and criticism. Departmental policy and practice must be based on evidence and expert advice and must take into account the impact of immigration law and policy on migrant communities. With this in mind, we urge the Home Office to fully adopt Wendy Williams's recommendations as outlined in the *Windrush Lessons Learned Review*.⁹⁷ In particular, the government must: 'engage meaningfully with stakeholders and communities' by implementing recommendations 8, 9, 10, 11, 12 and 13.

2. Reforming broken systems and culture

- The Home Office needs radical reform to ensure quick, effective decision making and the prioritisation of fundamental rights throughout the system

The Home Office in its current form is not fit for purpose. The department regularly breaches fundamental rights, while the backlog of immigration and asylum casework, which was compounded by the

Covid-19 crisis, has once again reached crisis proportions.

A radically new system of decision making must be introduced to ensure that the public can trust the Home Office to properly apply the law in immigration and asylum cases. Published service standards committing to timeframes for decision making must be introduced and maintained, as must effective systems for prioritising urgent applications. This will help ensure that people's rights are not breached by them being forced to wait months or years for a decision. The Home Office must stop incentivising the refusal of applications and profiteering from the immigration and asylum system.

- A new, simplified route to regularisation based on five years' residence should be introduced

The government must ensure that people are supported to regularise and maintain their status through an affordable and straightforward process. The current system is so complex and restrictive that it frequently pushes migrants' out of status and into destitution and precarity, as well as rendering them vulnerable to criminalisation and/or immigration enforcement measures. A route to regularisation based on five-years' residence would provide simplicity within the immigration system, and offer a clear route back to secure status for people who have been forced out of it. This would be a realistic, permanent solution for many long-term residents.

3. Ending enforced vulnerability

- Real access to justice for migrants must be instituted through legal aid and expanded appeal rights

Legal aid must be reinstated for all immigration matters so nobody is forced to challenge government decision-making on their own. Access to legal aid must be made easy for those in detention and all forms of asylum accommodation, and rates must be improved to raise the quality and capacity of legal advice for migrants.

Independent appeal rights against all Home Office decisions should be introduced (or reinstated) to ensure no one is forced to live with the life-altering consequences of mistakes by government officials. Processes for internal administrative review should be made easier and more accessible, so that fewer decisions end up having to go to Tribunal. At times of crisis in particular, such mechanisms are a vital safeguard to ensure the most vulnerable are not placed at risk.

- The Hostile Environment and harmful asylum housing practices must be scrapped

The government's Hostile Environment policies and asylum-housing policies have been shown to put migrants' lives at risk and undermine public health efforts. Any common-sense approach to Covid-19 recovery and future preparedness for crises must include scrapping the Hostile Environment and funding safe, humane housing conditions for asylum seekers. It is crucial that the government abolishes the NRPF condition—this is the only way to ensure migrants are not forced to choose between their own and the public's health and being able to feed and house their families. The crisis has also shown the need for genuinely free accessible healthcare for everyone in society, regardless of immigration status. The government must therefore immediately end NHS charging and data-sharing.

- The government must put an end to inhumane immigration detention and removals

Immigration enforcement measures, particularly immigration detention, are inhumane under any circumstances. The Covid-19 pandemic has shown the extent of the harm that can be caused by these brutal policies, which put migrants' lives at risk and hamper public-health efforts. The government must end immigration detention and fund community-led alternatives in the limited circumstances where enforcement is necessary. It must also put an end to the use of secretive charter flights so that enforced removals cannot take place away from public and judicial scrutiny.

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