Joint written evidence for Committee Stage of the Border Security, Asylum and Immigration Bill submitted by Public Law Project (PLP) and Freedom from Torture (FfT)[1] (BSAIB33)

Public Law Project (PLP) is a national legal charity committed to advancing government accountability and fair systems through a mix of strategic and individual litigation, research, events, public affairs and communications, and training. One of our priority areas is a fair and humane immigration system. PLP represented the lead claimant in the recent judicial review against the Rwanda scheme.[2]

Freedom from Torture (FfT) is the only human rights organisation dedicated to the rehabilitation of torture survivors who seek refuge in the UK. We do this by providing clinical, legal and welfare services to approximately 1,000 torture survivors every year at our specialist centres across the UK.[3]

Using this opportunity to repeal parts of the Nationality and Borders Act 2022

Public Law Project and Freedom from Torture welcome the Government's intention to repeal the Safety of Rwanda (Asylum and Immigration Act) 2024 and much of the Illegal Migration Act 2023 in the Border Security, Immigration and Asylum Bill. These are necessary but not sufficient steps towards fixing what the Government itself has called a "broken" asylum system,[4] and beginning to build one that is efficient, fair and humane.

Our organisations jointly submit this written evidence to urge Parliament not to miss this opportunity to also repeal other harmful aspects of the previous Government's immigration legislation, namely the Nationality and Borders Act 2022 (NABA). NABA was a precursor to the Illegal Migration Act 2023 and the Safety of Rwanda Act 2024 and laid the foundation for multiple unworkable and unfair immigration procedures. The NABA, the IMA, and the SoRA were all enacted in quick succession and all have the effect of violating the UK's international obligations, undermining human rights protection for those who need it most, and unfairly rushing legal procedures.

In particular, we believe that four of the most concerning schemes in NABA should be repealed, namely:

1. Priority removal notices (PRNs) (section 20 to 25);

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[1] This joint evidence submission is in addition to our separately submitted evidence on other aspects of the Border Security, Asylum and Immigration Bill.
[2] Public Law Project.
[3] Freedom from Torture.
[4] The King's Speech 2024

2. Penalties for the late provision of evidence in asylum or human rights claims (section 26);
3. Accelerated detained appeals (section 27); and
4. The creation of a complex, higher standard of proof to determine whether a fear of persecution is "well-founded" (section 32).

Each provision will add complexity, increase unfairness, and worsen the risk of violations of human rights, building further delays into the asylum system through legal challenges and judicial reviews. At a time when the number of asylum appeals has risen by 264%, it is critical to urgently remove unworkable provisions from the statute book.[5]

As the Home Secretary, the Rt Hon Yvette Cooper MP, said at the Border Security Bill's second reading: "[T]he Bill…restores order to the asylum system by putting an end to some of the failed gimmicks and unworkable mess that the previous Government left us. That includes sorting out the chaos created by the unworkable and contradictory provisions in the Illegal Migration Act 2023…and the Safety of Rwanda (Asylum and Immigration) Act 2024."[6]

This sentiment was echoed by the Immigration Minister, Dame Angela Eagle MP, who said: "I like a tidy statute book; we are not going to leave the rubbish that the Conservatives put on the statute book to clutter it up."[7]

NABA is as unworkable and unfair as the IMA and SoRA. As such, Parliament should use the opportunity of the Border Security, Asylum and Immigration Bill to repeal the most concerning parts of NABA alongside the SoRA and most of the IMA.

Priority removal notices

Priority removal notices (PRNs) are contained in sections 20 to 25 of NABA. PRNs are intended as a warning to an individual that they are being prioritised for removal by the Home Office. The notice gives them a period of time (known as the 'cut-off period') within which to access legal advice and inform the Home Office of any grounds or evidence they want to provide in support of a claim to be allowed to remain in the UK (section 20). Claims lodged after the cut-off date will normally be considered as damaging the claimant's credibility (section 22). In addition, appeal rights are severely curtailed, with a single, final appeal to the Upper Tribunal which is also expedited (sections 23 and 24). Unlike the normal position, if the claimant loses that first-instance appeal, there are no further opportunities to appeal an erroneous decision.

[5] Joe Tomlinson 'Why Has There Been a 264% Increase in Asylum Appeals?', UK Constitutional Law
[6] Border Security, Asylum and Immigration Bill Second Reading Debate, 10 February 2025
[7] Border Security, Asylum and Immigration Bill Second Reading Debate. 10 February 2025

This is concerning because the mere fact that a claim is made after the PRN cut-off period does not mean it is unmeritorious, vexatious, abusive, repetitious, or – crucially – that it can fairly be decided on an expedited basis. The presumptions underpinning PRNs are that (1) late claims should not be believed (2) late claims should be treated differently and should not be subject to the same level of judicial scrutiny provided in the normal appellate process.

But there are numerous perfectly legitimate reasons why late claims are made, including difficulties in accessing legal advice; lack of understanding of the scheme; the emergence of new evidence; changes in the law; changes in Home Office guidance on the relevant country; shame and fear of disclosure of, for example, torture; and the impact of trauma on disclosure and memory.

A February 2025 PLP report '*Punishing the Victim'* found that individuals often struggled to make the disclosures necessary to the Home Office:

> The asylum system requires people to make highly personal and often traumatic disclosures about their private lives, which are often the source of great shame or fear. Yet, throughout the process, the Home Office does not provide the conditions or safe spaces to support individuals to share their experiences and needs. The result is too many wrongful refusals of initial claims; too many successful appeals in the tribunals; and the consumption of additional resources through the necessity for fresh claims.[8]

While the Home Office is not obligated to assess credibility negatively if there are 'good reasons' for lodging after the cut-off date (section 22(4)), the risk is that the whole purpose of PRNs is to make the Home Office structurally sceptical towards claims after the cut-off date and to weaken judicial scrutiny after that date. Therefore, the Home Office will be primed to refuse otherwise valid claims from people in urgent need of protection – in circumstances that may be beyond the individual's control – and where the individual has only a single opportunity to correct the error (section 23).

Given these risks, PLP and FfT believe that the provisions relating to PRNs in NABA – sections 20 to 25 – should be repealed.

Penalties for late evidence in asylum or human rights claims

Section 18 of NABA permits the Home Office to serve an "evidence notice" on an individual making an asylum or human rights claim. This requires the individual to provide evidence in

[8] 'Punishing the victim: How the UK's broken asylum system fails the people it should protect. A case study of Albanian nationals.' Public Law Project, February 2025, p.6.

support of their asylum or human rights claim by a specified date. In a similar vein to PRNs, section 26 of NABA requires decision-makers - including the Home Office and independent tribunals, such as the First-tier Tribunal and the Upper Tribunal - to "have regard…to the principle that minimal weight should be given to the evidence", if it is provided after the specified date in the "evidence notice". This applies unless the decision-maker decides that there were "good reasons" for the lateness.

Section 26 is, thus, a significant legislative intrusion into Home Office decision-makers' and - more fundamentally - judges' right and ability to decide cases independently on their own facts, according to their own judgement.

In addition, as highlighted in the discussion on PRNs, there are many reasons why it may not be possible to present all relevant information at the earliest opportunity. The applicant may be too traumatised to recall coherently the events that led to flight, particularly if they are a survivor of torture, sexual violence or trafficking.[9] Home Office guidance recognises that 'survivors of such harm may find it difficult to recount or disclose details of what has happened to them because of the traumatic and sensitive nature of those experiences' and that 'it is vital that all relevant evidence is properly considered and given appropriate weight'.[10] In seeking to pre-judge how Home Office decision-makers and judges should treat evidence, section 26 undermines this guidance.

In addition, systemic failings in the current Home Office process contribute to the delayed or failed identification of vulnerable people, such as difficulty finding legal advice, inadequate screening processes, a poor-quality interview, and the dysfunctionality of the Adults at Risk process, which is designed to support the Home Office to identify and safeguard vulnerable adults in immigration detention.[11]

Freedom from Torture's *Beyond Belief* report found that asylum caseworkers failed to apply the mandated principles and standards for interviews with the result that torture survivors were unable to give a full account and explain the relevance of their evidence. The report found evidence of poor questioning technique, prejudgment of the claimant's credibility, and a failure by caseworkers to maintain a sensitive and professional approach to claimants at all times. Torture was not consistently identified as a key fact in the asylum interviews and caseworkers too often failed to follow up a disclosure of torture appropriately, to find out more and to inform claimants of the option to seek support or treatment as well as medical evidence documenting their experience.[12]

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[9] Impact of sexual violence on disclosure during Home Office interviews (2007).
[10] Home Office Guidance: Medical evidence in asylum claims (Version 2.0)
[11] Home Office Guidance: Adults at risk in immigration detention (Version 10.0)
[12] 'Beyond Belief: How the Home Office fails survivors of torture at the asylum interview' Freedom From Torture (2020)

Furthermore, in his inspection of adults at risk in immigration detention the Independent Chief Inspector of Borders and Immigration (ICIBI) found a culture of suspicion in the Home Office that hampered the effective implementation of the safeguarding mechanisms used to identify and protect vulnerable detainees.[13]

Given its intrusion into decision-making independence and the systemic failure of appropriate safeguards, PLP and FfT believe that section 26 should be repealed and that decision-makers should be permitted to decide claims and cases fairly on their facts.

Accelerated detained appeals

Section 27 of NABA creates a fast-track legal process where individuals who are detained by the Home Office will have their appeals heard more rapidly than is usual.

A Detained Fast Track (DFT) for appeals previously existed in the First-tier Tribunal Procedure Rules. In our experience, the decision to fast-track an asylum case was made when very little was known about the person's situation and, as a result, vulnerable people with complex cases, including victims of torture and trafficking, were regularly detained on the DFT. The screening process was often inadequate: the questions asked did not address the details of the person's case and were unlikely to elicit information that would demonstrate unsuitability, such as an experience of torture, trafficking or mental ill health. Poor quality Rule 35 reports, which require detention centre medical staff to report any person who may have been a victim of torture, proved to be an ineffective safeguard.

Ultimately, the DFT Rules were found to be unlawful by the Court of Appeal in 2015 because they created an unfair system in which asylum and human rights appeals were disposed of too quickly to be fair.[14]

The Court of Appeal described the timetable for such appeals as "so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their cases".[15] It held that the policy did not sufficiently appreciate "the problems faced by legal representatives of obtaining instructions from individuals who are in detention",[16] nor did it "adequately take account of the complexity and difficulty of many asylum appeals [and] the gravity of the issues that are raised by them".[17]

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[13] Independent Chief Inspector of Borders and Immigration, 'Third annual inspection of 'Adults at risk in immigration detention' June – September 2022

[14] Lord Chancellor v Detention Action [2015] EWCA Civ 840.

[15] [38]

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[17] [45]

Since the DFT procedure was overturned, the Home Office twice sought to persuade the Tribunal Procedures Committee (TPC) to recreate it in Tribunal Procedure Rules. The TPC refused to do so because it was not satisfied that it could be created in a way that was compatible with the fair hearing of asylum and human rights appeals. NABA thus attempts to use primary legislation to enact a scheme regarded as unfair by both the courts and the TPC.

The only condition for using section 27 is that the Home Secretary has a person in detention and that the appeal would likely be disposed of expeditiously using the fast-track procedure. There is no requirement to ensure that the appellant has access to competent legal advice and representation. There is no requirement to ensure that they have adequate time to secure essential evidence, such as medico-legal reports, country expert evidence, or other documentary or witness evidence.

The only situation where section 27 permits the removal of a case from the expedited process is where a tribunal is "satisfied that it is the only way to secure that justice is done in a particular case". Such a provision also existed in the old Detained Fast Track but it operated in a way that was grossly unfair and resulted in very few appeals being removed from the Fast Track.[18]

Given these risks, PLP and FfT believe that the provision related to accelerated detained appeals in NABA – section 27 – should be repealed.

Complex, higher standard of proof for determining a "well-founded" fear of persecution:

Section 32 of NABA imposes a higher, complex standard of proof, making it more difficult for the Home Office to decide that an asylum seeker's fear of persecution is well-founded. A number of leading immigration organisations drafted a briefing on this provision specifically while NABA was a Bill.[19]

A successful asylum claim involves several elements, including satisfying the Home Office or tribunal of the basis for an applicant's fear of persecution (such as race, religion, nationality or membership of a particular social group or political opinion) and whether that fear is well-founded. Section 32 creates complexity and confusion by setting out two separate standards of proof. First, it requires applicants to prove the factual basis underlying their claim and the basis for their fear to a higher legal test of 'a balance of probabilities' (section 32(2)). However, the second part of the test concerning whether the

[18] [42]-[44].
[19] Joint Briefing on Clause 31 Well-founded Fear Test: Nationality and Borders Bill, House of Lords Report Stage

applicant's fear of future persecution is well-founded remains at the legal standard of 'reasonable degree of likelihood' (section 32(4)).

This complexity and confusion of requiring two separate legal standards within the same test risks increasing delays, adding to an already unwieldy asylum casework backlog,[20] and increasing costs by requiring Home Office officials to be trained in a variety of different tests.

Beyond increasing complexity, raising the standard of proof to 'a balance of probabilities' will increase the risk of refugees wrongly sent back to face death or torture and, as such, risks contravening Article 33 of the 1951 Refugee Convention, which requires the UK not to commit "refoulement" - or returning individuals to countries where they could be killed or persecuted.

The pre-NABA legal standard of 'reasonable degree of likelihood' is a test grounded in an understanding of the nature of persecution, the reality of an asylum seeker's experience of flight, and the serious implications of setting evidentiary expectations too high. Freedom from Torture's *Proving Torture* report demonstrated how hard it is, even to the relatively low pre-NABA standard of proof, for survivors of torture to prove their claim.[21]

This was because the decision-maker often has to make an assessment of the claim on the basis of fragmented, incomplete and confused information. This is complicated by the need to assess the plausibility of accounts given by people who are bewildered, frightened and desperate. Mental health problems arising from trauma and a very genuine fear of persecution can seriously affect consistency and coherence, and the ability to recall and present facts.[22]

A recent audit by the UN High Commissioner for Refugees of the UK's further submissions procedures and decision-making[23] found evidence of the misapplication of the pre-NABA standard of proof including '*one case in which the language used in the decision suggested that a standard higher than "reasonable degree of likelihood" or even "balance of the probabilities" had been used by the decision-maker*.'

As the Independent Chief of Inspector of Borders and Immigration has often concluded, the Home Office has fostered a culture of disbelief which has encouraged its decision makers to

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[20] Home Office Accredited official statistics: How many cases are in the UK asylum system? Published 28 November 2024

[21] Freedom from Torture, 'Proving Torture Demanding the impossible Home Office mistreatment of expert medical evidence' (November 2016)

[22] Freedom from Torture, 'Proving Torture Demanding the impossible Home Office mistreatment of expert medical evidence' (November 2016)

[23] Further Submissions in the UK | UNHCR UK, January 2025

deny protection to too many refugees on the grounds that they must be lying.[24] Section 32 elevates the culture of disbelief to a statutory footing which will raise the bar for anyone, genuine or otherwise, seeking protection in the UK.

Given the risks of breaching Article 33 of the Refugee Convention, PLP and FfT believe that section 32 should be repealed.

Suggested new clause: To move the following Clause -

"Repeal of certain provisions of the Nationality and Borders Act 2022

(1) The following provisions of the Nationality and Borders Act 2022 are repealed -

(a) Sections 20 to 27;

(b) Section 32.

Members explanatory statement: This new clause would repeal certain provisions of the Nationality and Borders Act 2022.

March 2025

[24] Independent Chief Inspector of Borders and Immigration, 'Third annual inspection of 'Adults at risk in immigration detention' June – September 2022