The sound of silence

Rethinking asylum seekers' right to work in the UK

Jonathan Thomas

SMF Social Market Foundation

The sound of silence

Rethinking asylum seekers' right to work in the UK

Jonathan Thomas

FIRST PUBLISHED BY

The Social Market Foundation, July 2023
5-6 St Matthew Street, London SW1P 2JT

THE SOCIAL MARKET FOUNDATION

The Foundation's main activity is to commission and publish original papers by independent academics and other experts on key topics in the economic and social fields, with a view to stimulating public discussion on the performance of markets and the social framework within which they operate. The Foundation is a registered charity (1000971) and a company limited by guarantee. It is independent of any political party or group and is funded predominantly through sponsorship of research and public policy debates. The views expressed in this publication are those of the authors, and these do not necessarily reflect the views of the Social Market Foundation.

CONTENTS

ABOUT THE AUTHOR

Jonathan Thomas

Jonathan is a Senior Fellow, and has been the Migration Researcher at the Social Market Foundation since 2018. After a career as a senior legal professional in the investment world, he completed an Immigration Law LLM in 2017. He then worked for a number of organisations representing migrants in the UK, including serving on the board of a migrant rights charity, before turning his attention to analysing the opportunities and challenges for the UK that are presented by the many aspects of international migration.

AUTHOR'S PERSONAL INTRODUCTION OF THIS ISSUE

My first contact with both the concept and the reality of refugees and asylum seekers came on a sunny June day in 2002 at the Refugee Council's offices in Brixton, London. I was there as part of a small group of people from the business world who had volunteered to spend a day helping asylum seekers – many of them, on that day, Somalian men – with their CVs and giving them mock job interviews. My abiding impression of that day was of the chasm between most of those people's worlds and the reality of the UK labour market and what UK employers were looking for, the chasm those people were, with help, now trying to bridge. And thinking how challenging it was going to be for most of those people to actually secure employment.

At that stage I had no idea that their right to work was even at issue. Little did I know that I had stumbled into the midst of one of the hottest topics in immigration and asylum policy; asylum seekers' right to work. That just a month later the Labour government would fundamentally restrict this – no more CV and interview practice days. And that, over twenty years on, the debate would be continuing about whether to return asylum seekers' right to work back to where it was on that sunny June day.

It was only at the *end* of that June day that I even looked up 'What is the difference between an asylum seeker and a refugee?'. I had been very busy in my then day job, but I was still embarrassed that I had not taken the time to find this out before. From that point on though, I compensated by paying a *lot* of attention to what was happening to asylum seekers and refugees in the UK. And what was generally happening to them in the years thereafter involved a lot of concrete and barbed wire, as the then government felt the need to get tough and be seen to get tough with asylum seekers.

I was perplexed. Upset. Particularly by the right to work being taken away. The answer seemed so simple, and obvious, and most certainly not what the government was doing. Over twenty years on, the answer does not seem so simple or obvious to me.

But I still consider the asylum seeker right to work debate through the prism of the purpose of that June day at the Refugee Council, when there was no question of rights. How to best achieve the practical outcome of asylum seekers actually getting jobs? Why might employers even consider employing them? And why not?

Our most recent SMF migration report focused on labour shortages and immigration policy.[1] As part of this we spoke to, and surveyed, a range of UK employers and industry bodies. A key takeaway was how open UK employers are to the whole range of the different categories of potential overseas workers – we set out seven of these categories, in addition to asylum seekers, in Chapter Four of this report. But, also, how practically driven employers are; the premium they place on avoiding wasted time and money, on minimising risk, complication and disruption.

Deciding to hire an asylum seeker who may subsequently have their asylum claim negatively determined, and as a result have their right to lawfully work in the UK removed, is a risk, a complication and a potential disruption for an employer. Rights are important. But only if allied to policy approaches that provide the best chance for those with the rights to be able to practically and meaningfully take advantage of them. That is the spirit which animates this report.

EXECUTIVE SUMMARY

The debate around asylum seekers' right to work is at an impasse

- The policy around asylum seekers' right to work addresses what right a person claiming asylum should have to work in the UK before their asylum claim has been determined – when it is not yet clear whether they will be granted refugee status and the right to lawfully remain and work in the UK.
- Over the recent past, in the context of a 'firm but fair' approach to asylum policy, governments of all parties have viewed it as 'fair' to let asylum seekers work after a certain wait-period, but are 'firm' on not allowing asylum seekers who are not refugees to use the system in order to work.
- For all the rhetoric around a 'ban':
  - asylum seeker right to work is a question of balance, not an 'all or nothing' question; those in favour of a more restrictive approach defend the status quo – asylum seekers must wait twelve months and can only work in jobs on the Shortage Occupation List (SOL) – while the more permissive side want to turn the clock back to 2002 – when the policy set a six-month waiting period and no restriction on jobs;
  - a far greater number of asylum seekers in the UK currently have permission to work, and jobs they can do, than has been the case for many years.

The debate ignores key practical questions raised by the challenge of failed asylum seekers

- Compared to other immigration debates, the asylum seekers' right to work looks like a model one, with shared terms of reference and genuine engagement between the opposing arguments.
- But the debate has been too narrowly framed and over-simplified, ignoring the policy challenge at its heart; the question of the failed asylum seeker – for asylum seekers are not all simply refugees-in-waiting.
- As a result of this silence around failed asylum seekers, core practical considerations and concerns from the perspective of the UK's society and economy, and of working asylum seekers themselves and their employers, are not aired and addressed.
- The issue of failed asylum seekers throws up a number of questions fundamental to achieving fair, clear, practical outcomes from this policy:
  - From an employer's perspective: why take the risk of hiring and investing in an asylum seeker when their asylum claim may fail, and they will then lose the right to lawfully remain and work in the UK?
  - From an asylum seeker's perspective: might this mean that, whatever right and permission they have to work in theory, in practice it will be hard for them to get jobs?
  - Might there be particular concerns about the sort of employer who is most likely not to be concerned about, and *is* willing to take, the risk of employing an asylum seeker?

- Should asylum seekers who have found employment in the UK, and their employers, be given some clarity and certainty around what happens if their asylum claim fails, and allowed some form of temporary, conditional right to lawfully remain and work in the UK in that case?
- If there are circumstances in which failed asylum claimants are allowed to lawfully remain and work in the UK even after their asylum claim is denied though, what is the effect of that on the British public's trust in the fairness of, and support for, the asylum system and the protection obligations owed to refugees?

The numbers of asylum seekers currently having permission to work in the UK means we have a unique opportunity now to help answer these questions

- A combination of (1) recent larger numbers of asylum claimants; (2) the slothful asylum determination process; and (3) the addition of care roles to the SOL from February 2022 means that, for the first time in a long time, large numbers of asylum seekers in the UK:
  - are eligible to apply for permission to work – over 66,000 currently;
  - are applying for permission to work – almost 22,000 in 2022;
  - have been granted permission to work – over 15,000 in 2022.
- This provides a unique natural experiment and opportunity to build up a much fuller, rounded knowledge and understanding of how asylum seekers' right to work is operating in practice, based on actual outcomes.

Breaking the impasse requires not turning back the clock, but doing better not only by asylum seekers, but also by their employers, and the public

- There are three approaches to an asylum seeker in work whose asylum claim is rejected: (1) remove them anyway, or (2) tolerate their continued unlawful stay and working, or (3) what this report refers to as the 'planned approach'; a clear, initially temporary and conditional, lawful right to remain and work.
- In the absence of (3), the UK's official policy is (1), but the reality is mainly (2), which clearly exposes that worker to risk of unfair and exploitative practices.
- Instead of turning the clock back to an approach that has been tried and discarded, a new approach is needed, securing asylum seekers' right to work in a way that:
  - seeks to address the practical challenges many asylum seekers face in working, not just providing a theoretical right to do so;
  - provides confidence and transparency to potential employers of asylum seekers, and better protects lawfully working asylum seekers from unfair labour practices and exploitation;
  - bolsters public support in the fairness and importance of the international refugee regime and the protection of refugees, but also, as part of that, in the controls applied to failed asylum seekers.

The policy should target the right to unrestricted working at those asylum seekers most likely to be determined to be refugees, and let employers know this

- The approach of both sides of the debate fails to account for the difference between an asylum seeker from a country with a 99% success rate in the UK and one with a 5% success rate.
- Instead, the right to work should be targeted at those asylum seekers statistically most likely to be refugees – those from what we call 'green' list countries, with high asylum recognition rates in the UK, such as Syria and Afghanistan.
- Asylum seekers from green list countries should be fast-tracked, allowed to work as quickly as possible – subject to identity and security checks – with no restrictions on the jobs they can do.
- Asylum seekers in this category should be formally designated with the 'green' label to demonstrate their status to would-be employers, in order to give those employers the necessary confidence and transparency to be more willing to employ them.
- At the same time, the right to work should be restricted or strictly controlled for those asylum seekers statistically most likely not to be refugees – those from what we call 'orange' list countries, with low asylum recognition rates in the UK, such as India and Albania – with three possible options:
    - *Option 1*: prevent them from working entirely while their claim is determined, which is logical and simple, but may be excessively restrictive and wasteful of productive potential.
    - *Option 2*: allow them transparent, controlled, temporary rights to work in shortage areas that can be rapidly filled.
    - *Option 3*: recognising that not all asylum seekers will be removed if their claim fails, there may be circumstances under which failed asylum seekers should have their working status regularised in order to avoid clandestine living and risk of exploitation, although given the political and public perception challenges, this option should be used on a restricted and carefully controlled basis.

Asylum seekers need support into work, and oversight of their working

- The debate about the potential public finance benefits of allowing asylum seekers earlier right to work risks presenting a dangerously misleading picture and underplaying the significant challenges and risks that many asylum seekers face, even if provided with the right to work.
- The risks of poor treatment and exploitation of lawfully working asylum seekers have been significantly underestimated and understated, and to secure fair and productive employment many asylum seekers will need access to significant support and better oversight over their employment arrangements.

- In terms of support, it is important to be realistic about the first jobs most asylum seekers are likely to be able to get after arrival in the UK, and that, for many, the right to work may have little value without job application assistance, preparatory volunteering opportunities, language training, and help in understanding what are the shortage roles in their area.
- In terms of oversight, the risks to asylum seekers in work are compounded by the UK's relatively lightly policed labour market and woeful record on labour market enforcement, and the fact that:
  - not only is the employment of asylum seekers outside of the oversight, scrutiny, accountability, and minimum salary requirement of the UK's employer sponsorship system of overseas workers;
  - but also there are no specific additional checks or requirements on employers hiring asylum seekers at all, nor even an awareness of who those employers even are.
- There should at the least be consideration of a register of those employers employing asylum seekers, but, more fundamentally, whether structural enhancements could better provide oversight and protection of asylum seekers who are working.
- The oversight structure of the UK's seasonal worker scheme to oversee employers' fair treatment of overseas horticultural workers provides one potential model, but the key here is that this challenge presents potential opportunities for both sides of the debate to collaborate and cooperate in ways that could achieve mutually beneficial outcomes and help mitigate these risks for asylum seekers working.

To bring the public along, emphasise openness, consequences and control

- The evidence clearly points to the fact that majority British public opinion towards asylum seekers is founded on three key concepts, which policy therefore needs to work with, rather than against:
  - *Openness*: relatively open to refugees and accepting of an asylum system which serves to identify and offer protection to refugees.
  - *Consequences*: more inclined to believe asylum claimants are refugees than the public in most other countries, but do not believe that all asylum seekers are refugees, and believe that there should be consequences if an asylum claim fails.
  - *Control*: the system should both be, and appear to be, in control, and the consequences to be appropriately applied.

Reforming asylum seekers' right to work must be timed appropriately and not be viewed as reactive

- Given the chaotic state of the asylum determination system, it is tempting to view liberalising asylum seekers' right to work as a safety valve to alleviate the current pressures in the system.

- This would be a mistake: effective long-term reform should not be potentially jeopardised for the sake of what would likely not be a very effective short-term fix.
- To be accepted and successful, a reformed asylum seeker right to work needs to be seen as a sensible and fair adjustment made to a properly functioning asylum system, from a position of control having been re-established, not misrepresented and misconstrued as part of a package of seemingly increasingly desperate attempts to re-establish that control.

CHAPTER ONE – IN THE MEANTIME: THE BALANCING ACT OF ASYLUM SEEKERS' RIGHT TO WORK IN THE UK

The current context

Asylum seekers[i] are those arriving in the UK claiming to meet the international legal definition of a refugee and in need of protection as such. Their claim is determined by the government, appealable to the courts. Their rights to work are clear once their claim has been finally determined. If it is determined that:

- they do meet the legal definition of, and are recognised as, a refugee[2]; they then have full, unrestricted, rights to lawfully work in the UK.
- they do not meet the legal definition of, and are not recognised as, a refugee; then they are not permitted to lawfully work in the UK.

The policy question around asylum seeker right to work then is about what happens *in the meantime*, i.e. during the period when the asylum seeker's claim remains to be finally determined. When it is not yet known whether the asylum claimant will be determined to be a refugee or not. And, therefore, it is not yet known what their ultimate right will, or will not be, to lawfully remain and work in the UK.

It is this 'in the meantime' feature which makes asylum seeker right to work policy a strange policy from a number of angles. It would not need to exist at all as a policy area if asylum decisions were instantaneous and final. In the light of recent developments in the UK it might be argued that discussions over the policy may be otiose, that very soon there will be no, or at least not very many, asylum seekers for whom 'in the meantime' will be applicable.

Either because, under the Government's Illegal Migration Bill, the UK will have effectively closed off the right for those arriving in the UK to make asylum claims. Or because the asylum determination process in the UK, which is under such scrutiny for the time it is now taking to determine asylum claims, becomes so transformed by better resourcing and improved procedures that not only is the asylum claim backlog cleared, but the duration of the 'in the meantime' period going forward is so short that the right to work during it in effect never arises.

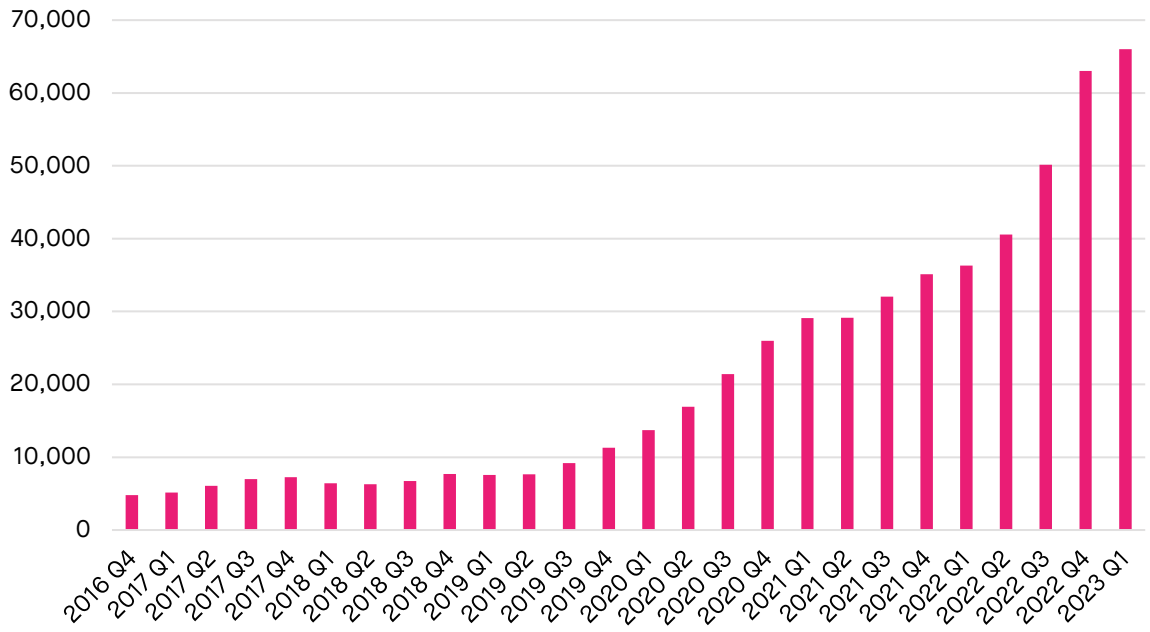
We do not assess the likelihood of either of these outcomes. But we believe it prudent to assume that the issue of asylum seeker right to work will likely continue to be one that UK immigration and asylum policy has to continue to practically address.

[i] We are aware that there are those concerned that the term 'asylum seeker' may be viewed as a pejorative and de-legitimising term. We have though used the term throughout this report as defining a person seeking asylum. We do not use the term with any adverse connotation; it is perfectly legitimate to seek asylum. We also use 'asylum claimant' in certain places in the report to mean the same thing.

In any event, regardless of what happens going forward, there is the practical reality of the here and now; that a large number of asylum claimants have the right to work in the UK *right now*. This stems from the fact that asylum claimants are eligible to apply for permission to work in the UK if they have been waiting for a decision on their claim for at least twelve months. Currently in the UK, a large number of asylum claimants have been waiting a long time.

This chart shows the recent evolution of the number of asylum cases in the UK where the initial asylum decision has been outstanding for 12+ months. Six years ago that figure was just 4,782. As at end of Q1 2023 it had risen to 66,009. So, prima facie, over 66,000 asylum claimants have the right – and are eligible to apply for permission – to work in the UK right now.

Figure 1: Number of initial asylum decisions waiting 12 months+



Source: UK Visas and Immigration[3]

Even asylum seekers who are given permission to work in the UK are restricted though, to only working in jobs on the UK's Shortage Occupation List (SOL). But, at the same time as the eligible numbers of asylum seekers with a right to work in the UK has dramatically increased, so have the jobs that they are eligible to do. This is due to a recent change to the SOL.

From mid-February 2022, the ordinary care worker role was added to the SOL, notwithstanding that the role was categorised below the minimum skills threshold set for overseas workers by the UK's post-Brexit 'points-based' labour immigration system.[4] To include positions on the SOL at below the minimum skill threshold set for the entire labour immigration system was an exceptional development. As a result of this, the numbers of ordinary care worker visas issued to overseas workers to come to the UK in the past year has exploded: from only 113 (year ending March 2022) to 40,416 (year ending March 2023). There is clearly a big demand from care sector employers to fill these roles from overseas workers.

Table 1: Visas granted in heath and care occupations under the 'Skilled Worker - Health and Care' visa

Occupation	Year ending March 2022	Year ending March 2023	Change	Percentage change
Medical practioners	6,192	9,090	+2,898	+47%
Nurses	21,021	25,942	+4,921	+23%
Other healthcare professionals	1,887	4,426	+2,539	+135%
Care workers and home workers	113	40,416	n/a	n/a
Senior care workers	6,763	17,250	+10,487	+155%

Source: Home Office Immigration Statistics year ending March 2023[5]

Based on evidence from the 'Lift the Ban' coalition[6] there should be a substantial number of asylum seekers in the UK experienced enough to available to fill these roles. In Lift the Ban's May 2020 audit of asylum seekers in the UK, one in seven reported as having worked in health or social care.[7]

Regardless of the rhetoric of both the more restrictionist and the more permissive sides of the asylum seeker right to work debate therefore:

- not only do a much larger number of asylum seekers have the right to work in the UK *now* than at any time over the past 20 years – recently disclosed numbers support this;
- but also there is also now a much greater practical opportunity than at any time, since the SOL restriction was introduced in 2010 for them to actually find jobs.

The debate around asylum seeker right to work is a question of the appropriate compromise and balance between different legitimate interests and perspectives. This report offers practical proposals in five areas on what the appropriate answer might be, and why. It starts from the premise that:

- this specific policy debate has been too narrowly framed and debated by both sides.
- the result has been that:
  - the issue has become mired in an overly-politicised, unproductive debate,
  - key issues of practical importance for ensuring that rights are not just theoretical, but have both practical effect and provide practical protection, have not only not been addressed, they have not even been acknowledged.

A question of balance: a recent history

As the Commission on Integration of Refugees' excellent recent analysis of the last twenty-five years of asylum policy in the UK pointed out, while anyone at the coalface of policy in this area might have understandably viewed the position as one of constant flux; successive slight policy tilts and rule changes over the period, stepping back from the coalface this period has been one of significant policy continuity – in terms of both government rhetoric and action.[8]

'Firm but fair' asylum policy has been the mantra of pretty much every government – of all different colours – throughout that period. Asylum seeker right to work sits right in the middle of that. It is 'fair' to let asylum seekers work after a certain wait-period. But it is being 'firm' to not let those asylum seekers who are not refugees exploit the asylum system in order to work.

What can be lost in the rhetoric of both the more restrictive and the more permissive sides of the asylum seeker right to work debate is that neither side is proposing an extreme position. Indeed, at its heart this policy issue embodies a core element of implicit agreement between both sides:

- on the more restrictive side, even as successive UK governments incrementally tightened the parameters constraining asylum seekers' right to work, there is broad acceptance that an asylum seeker should not be kept waiting indefinitely for determination of their claim without having the right to work;
- on the more permissive side, the 'Lift the Ban' coalition, focused on liberalising the position of asylum seekers who want to work in the UK, have, publicly at least, accepted that asylum claimants right to work should be delayed for six months after making their asylum claim.[9]

No one is proposing a 'ban'. The question is not a simple 'yes or no?' to asylum seekers right to work. Rather, it is, as one senior politician has put it, a question of balance:

> *"The current policy aims to strike a balance between being equitable towards asylum seekers, while considering the rights and needs of our society as a whole, prioritising jobs for British citizens and those with leave to remain here, including refugees."*[10]

The question at the heart of the asylum seeker right to work policy debate is what is the appropriate point of balance at which that right to work should be allowed?

Since the summer of 2002, the policy tilt has been to shift the balance towards the more restrictive. The 'Lift the Ban' coalition wants to shift the point of balance back to where it was back then, when asylum seekers could apply for permission to work if they had been waiting six months for an initial decision on their asylum claim, and with no restriction on what job they could do.

But in the opening years of the millennium the then Labour government, feeling under increasing pressure over asylum policy, reassessed and adjusted what it saw as the appropriate balancing point on asylum seeker right to work. Both the number of asylum applications and the refusal rate of those applications had risen to record levels.[11] This fuelled a growing sense in the government that the asylum system was being utilised not just by refugees but by large numbers coming to the UK to work. It determined that a revised, brighter line needed to be drawn between asylum on the one hand, and economic migration on the other.

In July 2002, the government took away the right for asylum seekers to apply for permission to work, replacing it instead with a discretion to grant such permission, but only in 'exceptional cases'. Though this position was relatively swiftly readjusted with the UK's implementation in 2005 of the EU's Reception Conditions Directive[12], which set a one-year time-period as the appropriate balancing point after which an asylum seeker should have the right to apply for permission to work.[13]

In 2010, the coalition government further restricted the availability of that permission to only allow asylum seekers to work on those roles on the Shortage Occupation List. The rationale for this was presented as two-fold; first, to target filling roles in which there was a shortfall of domestic workers, second, to emphasise even more firmly, by the further restricted nature of the right to work, a clear dividing line between asylum and economic migration.[14]

In 2013, the recast version of the EU's Reception Conditions Directive shortened the one-year waiting period for asylum seekers to nine months.[15] But, unlike the Labour government in the case of the original Directive, the coalition government opted out of the application of the recast Directive, so this change at the EU level did not effect the position in the UK.

As set out in the latest (end of 2022) Home Office guidance on, and summary of the UK Immigration Rules applicable to, asylum seeker right to work policy, this is where the policy still sits today:

- a 12-month delay, but even this does not trigger the right to work if the delay is due to the asylum claimant's own (in)action or if the delay is due to evidence of criminality which is being investigated.
- relevant court cases have clarified though that the right to apply to work also applies to failed asylum seekers who have made further submissions that have in turn been outstanding for more than 12 months, as well as emphasising an in principle discretion to allow other types of work (outside of the Shortage Occupation List jobs) in exceptional circumstances.
- the right to work does not apply to any dependants of an asylum seeker; they must separately apply for permission to work.[16]

CHAPTER TWO – WHAT QUESTIONS DO WE HEAR DEBATED ABOUT ASYLUM SEEKERS' RIGHT TO WORK IN THE UK?

No agreement

While there may be more common ground than is generally assumed, in terms of what are the core elements of fairness to be taken into account in determining the appropriate balance of the asylum seeker right to work policy, the two sides of the debate come from very different perspectives.

On the more restrictive side of the debate:

- Successive UK governments have approached the concept of fairness primarily from the perspective of the integrity of a fair asylum system requiring "a clear distinction between economic migration and asylum that discourages those who do not need protection from claiming asylum to benefit from economic opportunities they would not otherwise be eligible for"[17].
- This is connected with the argument that allowing an overly permissive right to work for asylum seekers creates a 'pull factor' which risks incentivising illegal migration and undermining the asylum system, adversely impacting the public perception of, and support, for that system.
- As well as attracting asylum claims from those who are not refugees, but want to work in the UK and cannot lawfully enter the country to do so through other permitted routes, there is also the suggestion that the 'pull factor' may also attract more refugees, who might otherwise have sought refuge in other countries, and that this too risks overloading the asylum system.[18]
- There is a concern that in more likely being employed in lower-paid jobs asylum seekers may undercut the wages of the resident labour force.[19]

On the more permissive side of the debate:

- The response to the 'pull factor' argument has been to highlight the lack of evidence that the details of the right to work policy, absolutely, or relatively between different countries, are even known by the vast majority of asylum claimants before they arrive in the UK, let alone have any material impact on their decision to claim asylum here.[20] Indeed, the Home Office's own analysis – released in response to a freedom of information request – itself seems to discount any pull factor based on right to work policy.[21]
- Even if asylum seekers did take the UK's right to work policy into account though, and even if the UK moved to a shorter, six-month threshold, this would not seem to be a permissive outlier compared with most other peer asylum seeker receiving countries of the Global North. Indeed, many other countries allow asylum seekers to work sooner than that, albeit often with other conditions attached.[22] Even in the EU, where the maximum period allowed by EU regulation is nine months, in practice many countries seem to apply a shorter or no waiting period, albeit again often subject to other restrictions in practice.[23]

- The focus on fairness for this side of the debate is primarily from the perspective of the asylum seeker and their dependants. To have the best chance to integrate into their new community, to be able to live with dignity and without undue stress, and to avoid the exploitation risks attendant on unlawful working. Also, not to let their skills grow rusty; indeed, to be able to contribute to the UK through the use of them, to counter the idea that refugees are a burden rather than a benefit[24].
- Asylum seekers should therefore be allowed to lawfully work as soon as reasonably practicable. There is strong evidence that preventing new arrivals in a country from working, even for a relatively short period, is detrimental not only in the present, but sets their future; their longer-term employment, financial and social outcomes suffer, and cannot simply be 'caught up' later.[25]
- In terms of the UK's broader labour market challenges, a more permissive right for asylum seekers to work could also have a positive potential to fill some holes in sectors of the UK economy where there are shortages of workers. As such, it is not at all surprising that organisations such as the Adam Smith Institute and the CBI are supportive.
- There is also the national finances angle; the financial advantage foregone by the government as a result of, on one side of the equation, what it could save in not having to provide as much financial support for asylum seekers if they are allowed to earn through working, and, on the other side of the equation, the tax receipts generated by all that working.[26]

But a model debate?

Despite these different perspectives, in some respects the debate about asylum seeker right to work might be regarded as a model one. On the face of it, both sides have at least acknowledged, and engaged with, key points made by the other side, relatively calmly, without the usual distraction of screaming media headlines.

Those supporting a more permissive approach to asylum seeker right to work have sought to engage with the 'pull factor' argument, and to make arguments that, while founded on the interests of asylum seekers, have also been aimed to appeal to and engage with the broader interests of employers, of the government and of the public.

On the other side, in response to the arguments for a more permissive approach led by the Lift the Ban coalition's October 2018 report, a review of the asylum seeker right to work policy was announced by then home secretary, Sajid Javid. One might question quite how genuine and thorough was the Home Office's "comprehensive review of the Lift the Ban report"[27]; at the end of 2021 it announced the policy was to remain unchanged. But the Government at least responded to the argument most directly aimed at it; that by restricting asylum seekers from working it was foregoing a substantial amount of money.

The Government did not take issue with the core concept, but instead with the assumptions on which the figures were based, and therefore the assumed quantum of those financial benefits. It counter-argued that family and caring responsibilities would mean less asylum seekers would work less than the figures assumed, and that those that did work would be more likely to find only part-time and insecure employment and earn nearer the minimum wage than the national average wage, and as a result government financial support would still likely be required for many even if they were in work. On top of this, the administrative costs associated with asylum seekers continuously transitioning into/out of need for financial support could also be significant.[28]

A key argument of the more permissive side of the debate is that the benefits of working are crucial for integration of asylum seekers, helping them to learn the language and to support themselves in the UK, which benefits not only themselves, but also broader society.[29] The then government had also acknowledged this in its wide-ranging 2018 White Paper on the proposed post-Brexit immigration system:

> *"we recognise the importance of work when it comes to physical and mental wellbeing, building a sense of wider contribution to our society, and for community integration."*[30]

It went on to say:

> *"That is why the Government has committed to listening carefully to the complex arguments around permitting asylum seekers to work. We are considering all the evidence to ensure that our policy of right to work safeguards the integrity of both our asylum and immigration systems."*[31]

While the Government has not changed its asylum seeker right to work policy, it still acknowledges the importance of integration opportunities. Albeit currently primarily focused on volunteering rather than working. The Home Office's asylum seeker permission to work policy guidance stresses that volunteering by asylum seekers is not only allowed, but encouraged, for precisely this reason.[32]

On the face of it, therefore, no agreement between the two sides but they have at least been speaking in the same terms and engaging with each other's arguments on the main issues. In the context of most of the 'debates' about UK immigration and asylum policy, the debate over asylum seeker right to work might therefore be regarded as an example to be celebrated.

But not so fast

That both sides in this debate have been talking about the same things though is a large part of the problem. For it has left a lot unsaid. And, at least publicly, neither side of the debate has been talking *at all* about some of the most important practical questions around asylum seekers' right to work. Hence the title of this report.

As a result of this silence, core considerations and concerns about the appropriate balance between individual rights, communal trust, public consent and practical outcomes – from the perspective of the UK's society and economy, but also of working asylum seekers and their employers – have not been properly aired and addressed.

Might this be a key contributor to the impasse of the past 20+ years in this policy area? A key reason why efforts to improve the work opportunities of asylum seekers over that time have in fact resulted in the opposite? To break the interminable impasse means breaking the silence surrounding these core considerations and concerns.

CHAPTER THREE – FIVE FUNDAMENTAL PRACTICAL QUESTIONS THAT MATTER: THE SOUND OF SILENCE

To reiterate:

- the complexity of the policy question around asylum seeker right to work stems from its 'in the meantime' nature;
- it is recognised that it is detrimental to the success and best interests of those ultimately granted refugee status to restrict them from working for too long;
- so those still waiting for the determination of their claim in the UK at a certain point should be given the right to work:
    - before their asylum claim has been determined, i.e. when it is not yet known whether they will be granted refugee status or not, and
    - therefore it is not yet known what their ultimate right will, or will not be, to lawfully remain and work in the UK.

If every asylum seeker were simply a refugee in waiting, because every asylum seeker was granted refugee status, there would be no need for an asylum seeker right to work policy at least in its current form. But this is not, and never will be, the case. The recognition rate – that is the percentage of asylum claims that are successful in being granted refugee status – of 76% in 2022 in the UK was a record high. Historically, it has tended to be much lower.[33]

Across a number of previous SMF migration reports we have argued that the core question of what to do about asylum seekers in the UK who have not been granted refugee status is the key unresolved practical question at the heart of so much of asylum policy. On the one side are those supporting failed asylum seekers ability to stay, who see them unfairly consigned to a life of unlawful working, poverty and misery, with no recourse to public funds. On the other side are those who cannot understand why those whose claim for refugee status has not been accepted cannot simply be removed from the country if they have no lawful right to stay. The different perspectives on this issue, and the often large disconnect between the theoretical and the practical reality, tend to mean this question is simply not addressed, let alone resolved.

This is certainly the case in terms of asylum seeker right to work policy. In terms of public trust in, and support for, the asylum system, as well as for outcomes for employers, and, of course, for asylum seekers themselves – the question of failed asylum seekers is central to this policy. There are five practical questions that arise from it in terms of asylum seeker right to work. They are thorny, but fundamental. They must be addressed in order to achieve fair, clear, practical outcomes from asylum seeker right to work policy – for asylum seekers, for employers, and for public trust.

1. From the employer's perspective: why would a law-abiding UK employer take the risk of hiring, and investing time and money in training, an asylum seeker as part of their workforce when the employee's asylum claim may be negatively finally determined, and if so they will then lose the right to lawfully remain and work in the UK?

2. From the perspective of the asylum seeker: might this mean that even if they have the right to work, and are granted the permission to work, in practice it will be hard for them to get jobs, because employers are unwilling to take this risk?
3. Might there be particular concerns about the sort of employer who is not concerned about, and *is* willing to take, the risk of employing an asylum seeker? In some cases, at least, might it be the most exploitative of employers that are most likely to be attracted to and take advantage of this situation?
4. What should the position be of an asylum seeker who has been allowed to work, and found employment in the UK, if their asylum claim fails? Should they and their employer be given some clarity and certainty around this, with at least some temporary, conditional right for them to lawfully remain and work in the UK?
5. If there are circumstances in which failed asylum claimants are allowed to lawfully remain and work in the UK even after their asylum claim is denied though, what is the effect of that on the British public's trust in the fairness of, and support for, the asylum system and the protection obligations owed to refugees?

Far from this having been a model debate, the sound of silence surrounding these fundamental questions is all encompassing. They have been ignored. Both sides of the debate have done such a great job in defining and framing the asylum seeker right to work debate that their framing has gone unchallenged. Unlike in other policy areas, in this policy area even the most authoritative, objective voices in UK immigration and asylum policy; the Migration Advisory Committee (MAC), the Migration Observatory, the House of Commons Library, have stuck to the script written by the two sides of the debate, reinforcing this framing.

Indeed, the arc of the debate has not only failed to address, or even acknowledge, these questions, it has created a smokescreen blurring their very existence. Why, and in what ways, has this happened?

CHAPTER FOUR – SIX REASONS FOR THE SOUND OF SILENCE

There are six key reasons why we hear nothing about these important questions:

(1) The invisible failed asylum seeker – part 1: the options

There are three options for what to do about failed asylum seekers who are in work:

1. **No preference**

The fact that they have found work does not matter. If their asylum claim is determined against them then they are required to leave/be removed from the country, no different to any other migrant who no longer has the right to lawfully reside here.

2. **Turn a blind eye**

Failed asylum seekers are in practice tolerated to remain and work unlawfully in the informal economy.

3. **Preference**

The fact that they have found work does matter. Asylum seekers who are lawfully in work when their asylum claim is negatively determined are given rights to continue to remain and work, at least for a period and under certain conditions.

Home Office guidance is clear: the officially chosen option is option 1.

> *"Any permission to work granted will come to an end if their claim is refused and any appeals rights are exhausted because at that point they are expected to leave the UK."*[34]

Given the low rates of failed asylum seeker returns from the UK though, and the estimated large numbers of failed asylum seekers who continue to remain in the UK, option 2 might be said to represent the dominant practical reality.

The unsatisfactory practical 'solution' of option 2, and an acknowledgement of the difficult position that a failed asylum claim may result in not only for the asylum seeker worker but also for their employer, has led a few countries to at least try to grapple with the opportunities and challenges of option 3. That is to try to provide lawfully working asylum seekers with some protection even if their asylum claim is negatively determined, and employers with more transparency and confidence so as to be more willing to actually hire asylum seekers.

In Germany, in light of the length of the formidable formal training requirements for employees in many German trades, this issue came to the fore at the height of the Syrian influx. Then, in response to demand from employers, the '3+2 rule' was introduced. Employers had wanted greater certainty, and were reluctant to invest in long and expensive training of asylum seekers when they had no visibility how long they would be allowed to stay and work in the country. The 3+2 rule was designed to protect asylum seekers who had been accepted by employers on to a formal three-year vocational training programme from deportation for two years after completing their training, thus removing a material disincentive for employers to recruit and invest in them. Asylum seekers would obtain proven skills and a work history which, even if their asylum claim failed, meant that they then might be protected from removal.[35]

Sweden is another example of a country that has sought to build in some additional certainty for asylum seekers in work and their employers. If an asylum seeker in Sweden has a valid passport and has been in work for at least four months by the time their claim is rejected, their employer has the option to convert their position into one of 'labour market migrant' by offering them a contract of at least one year in length. This gives rise to a temporary right to stay in Sweden. After four years, and if the asylum seeker is still in work, this can then be converted to a permanent residence permit, provided the migrant worker has the resources to support their family.[36]

These sorts of approaches – we will refer to them as the 'planned approach' – make sense in aiming to ensure that a theoretical right of asylum seeker right to work is more than just that, giving greater confidence to employers to take them on and invest in them. But, of course, the planned approach blurs the lines between an asylum seeker and an economic migrant. Not merely by preferring the legal position of an asylum seeker who can find work over one who cannot, but by ultimately tying the asylum seeker's right to remain in the country not to their acceptance as a refugee but as a useful worker for the economy. Might this then give rise to the dreaded 'pull factor'?

The planned approach thus crosses over into controversial territory. Territory that both sides of the UK debate on asylum seeker right to work have steered clear of. You cannot address the challenges and opportunities of the planned approach without making the figure of the failed asylum seeker visible. Both sides of debate in the UK have kept the failed asylum seeker invisible. There is no debate around the three options.

But, in the absence of the planned approach, the alternative would appear to be a right to work for asylum seekers that in practice risks meaning either:

- a much-reduced chance of actually finding an employer willing to employ them, because of the risk that their asylum claim will be negatively determined and their employment will cease to be lawful, or
- employment by an employer who is willing to run that risk. But what sort of employer would be most likely to be willing to run that risk?

(2) The exploitation blind spot

The more permissive side of the debate is understandably focused on the exploitation risk attendant on asylum seekers *not* having the lawful right to work; that is the risk that they will take unlawful employment and be at risk of exploitation in so doing. But neither side of the debate has anything to say about the multiple significant unfair treatment and exploitation risks attendant on the fact that:

1. unlike under the regular employer sponsorship system of hiring overseas workers into the UK:
    - employers hiring asylum seekers do not need a licence and are subject to no specific oversight in relation to their employment of asylum seekers,
    - there are not only no Home Office checks on employers of asylum seekers, but not even any record of who those employers are,

- those employers do not need to meet any of the requirements such as to minimum salary which are part of the employer sponsorship system;

2. lawfully working asylum seekers in the UK do not even have the oversight protections afforded to seasonal horticultural workers here;
3. if an asylum seeker's asylum claim fails, their lawful right to stay and work ends, and their continued employment would then see them working unlawfully. What position does that then leave them in with their employer? What power and control might an employer exercise in that situation? This risk might be mitigated by the planned approach, but it is just replaced by a different variant of the same risk if the failed asylum seeking worker is reliant on their continued employment to be allowed to remain in the country, for once again the employer then clearly has significant extra power over the employee.

This blind spot is all the more surprising from the permissive side of the debate which is generally very concerned about the risk of unfair treatment and exploitation of migrant workers in the UK economy.

It is indicative of a very black and white approach to the reality of the situation. Yes, restricting asylum seekers from lawfully working has potentially bad effects and serious consequences, including the risk of exploitation in unlawful working, and also of physical and mental health issues, isolation and trauma, being exacerbated. But, it then seems to be assumed that the simple fact of the opposite – the lawful opportunity to work – automatically means that all of these concerns fall completely away.[37]

Even absent the significant challenges of actually finding employment, as set out in this report, under the UK's current system of allowing asylum seekers who can lawfully work to do so without any specific checks or oversight whatsoever over those employing them or the employment arrangements, this would seem to be an incredibly optimistic and naïve conclusion.

On top of this, the final aspect of these risks once again though speaks to the invisible figure of the failed asylum seeker. If they are never mentioned their position is not considered. It is as if they do not exist.

(3) The invisible failed asylum seeker – part 2: the disconnect

The aim of asylum seeker right to work policy is founded on the need for a balance that accounts for the fact that a right to work is being provided both to those who will be allowed to stay in the UK – because they are admitted as refugees – and those who are not going to be permitted to stay in the UK – because their asylum claim fails. Yet, publicly at least, the arguments for a more permissive approach to asylum seeker right to work have not addressed the second part of this equation.

Lift the Ban's reports have raised not just the profile of asylum seeker right to work policy, but important issues related to it. Yet, at the same time its assertion that it is making a common sense "evidence-based case for change"[38] is hard to square with it, at least publicly, not acknowledging the key factor that makes asylum seeker right to work policy so challenging in the first place, i.e. the fact that not all asylum seekers will be granted refugee status.

Instead, the more permissive side of the debate seems to ignore the messy, practical reality that there will be asylum seekers whose claims fail, preferring instead to airbrush this out. The following excerpt, the first from the Lift the Ban report itself, are typical of this approach which presents asylum seekers as nothing more than simply refugees-in-waiting, just waiting to be granted refugee status, rather than being subject to a decision procedure that might see them adjudged not to be a refugee, and not having the right to stay and work in the UK:

> *"These restrictions on the right to work are in place despite how damaging they are – both for the UK economy and also for those people who are forced to wait for long periods of time for a decision on their asylum application, without the opportunity to develop their skills or increase their chances of being able to integrate once they are granted refugee status."*[39]

> *"The individual is expected to wait for significant periods of time, with no job or purpose in society, before being granted asylum... Whether an asylum seeker is waiting in solitude for their asylum claim to be processed, or they take up illegal employment, it is no surprise that many feel ostracized and struggle to integrate into society (both before and after their refugee status is granted)."*[40]

It is not just the staunchest refugee advocates who use language intimating that asylum seekers and refugees are the same thing, but just at different stages of the journey. In a section from its 2021 annual report headed 'Asylum and integration' the MAC wrote:

> *"The MAC is primarily interested in how well asylum seekers are integrated into the UK, both in the labour market and in terms of social integration and the policies that can help to support their integration."*[41]

If each and every asylum seeker were nothing more than a refugee-in-waiting, it would indeed make sense to give every asylum seeker the right to work and to help them integrate as soon as possible. But they are not all refugees-in-waiting. And, importantly, the public – ironically supposedly the least sophisticated in policy matters – know that.

Of course, even with an asylum claim positive recognition rate below 100%, the percentage of asylum seekers having the right to stay in the UK might be increased if the planned approach is adopted, and working asylum seekers are given additional rights to stay and work in the UK even if their asylum claim fails. But, publicly at least, the more permissive side of the debate has not made that argument.

If an asylum seeker's claim has failed, and they are not allowed to remain in the country as a worker as under the planned approach, it is hard to see what then is left in practice other than the 'blind eye' approach; i.e. a tacit acceptance that failed asylum seekers can stay on in the UK and work unlawfully. But are the more permissive side of the debate really advocating that, having already pointed out that unlawful employment places the asylum seeker at significant risk of exploitation?

It is therefore unclear what the position of the more permissive side of the debate is on what should the approach be to failed asylum seekers. They do not say. This has constituted a glaring hole at the centre of the debate, which has caused a disconnect between the two sides. For, from the perspective of the more restrictive side of the debate, it may not be talking about failed asylum seekers either – they may be no more visible – but it is most certainly thinking about them, in terms of the following important practical questions:

1. Does giving an asylum claimant the chance to work and become integrated *prior* to the determination of their asylum claim make it practically harder to remove them from the UK, and means they are less likely to leave of their own accord, if their asylum claim fails?
2. If, regardless of the outcome of their asylum claim, in practice an asylum claimant is allowed to work, integrate and stay in the UK anyway, is not the asylum regime then in effect just a sham, which can be utilised by anyone wishing to enter the country regardless of whether they are a refugee?

This disconnect has served to entrench divides over this policy. These have in turn tended to be exacerbated by the way that advocacy tends to collide, rather than necessarily align, with the complexities of policy formation.

(4) The tensions of advocacy and policy

The 'Lift the Ban' coalition only more recently became formalised. But the campaign, for asylum seekers in the UK to have the right to work after six months awaiting a decision on their asylum claim, started once that right was lost in 2002. It has at the same time been both one of the most, and one of the least, successful of campaigns.

Most successful in terms of the breadth of the coalition it has been able to build – not only of charities and churches, but also of unions and of business. We discussed in our recent 'Routes to resolution' report the large relative positive shift in the British press over the last two decades, in terms of the framing of stories about refugees and asylum seekers.[42] This is particularly striking in respect of asylum seeker right to work. The Daily Telegraph now publishes columns arguing that banning asylum seekers from working is "morally and economically unjustifiable".[43]

It has also been successful in terms of political support; MPs of all parties have proposed parliamentary motions and bills in support of reform to asylum seeker right to work.[44] All this has meant that the Government has at least felt the need to respond to the campaign's arguments,[45] and that the campaign has won national campaigner awards from those in the campaigning industry.[46]

But it has been least successful in terms of the outcome. Over the last 20 years, under, first, the successive Labour governments, then the coalition government, then successive Conservative governments, the restrictions on asylum seeker working have been tightened, not relaxed.

The Lift the Ban campaign's report has nothing to say about the five thorny, fundamental practical questions regarding asylum seeker right to work set out in this report. The title of its report: 'Why Giving People Seeking Asylum the Right to Work is Common Sense' gives a clue why. The campaign seeks to create the impression that the issue of asylum seeker right to work does not pose any thorny, hard to answer, practical questions at all, only simple, straightforward ones which allow for an easy, common sense answer.

This is understandable from a campaigning perspective. It explains why the campaign has been successful in building a broad coalition. But it also explains why, as yet, it has not been successful in achieving change in policy. Building an impressive coalition has been the reward for adopting a broad, clear, simple message with key evidence marshalled behind it. 'Lift the Ban' is a slogan behind which a wide range of people and sectors can rally. However, it has understandably been less effective in swaying successive governments, which have not seen this as a clear, simple issue at all, but rather, as the 2018 Immigration White Paper put it, a "complex" one.[47]

So one side of this debate says this is a simple matter; the other side says it is complex one. In light of what we set out in this report, it will comes as no surprise that we think the latter a fairer reflection of the position. This does not mean that we support the Government's current policy approach on asylum seekers right to work. Far from it. As set out in Chapter Five, it does not. We argue that there are opportunities for a much improved approach that can achieve better outcomes for UK society, economy *and* asylum seekers while addressing the concerns of government.

It is quite understandable that a campaign will feel the need to present a simple, digestible message that is easy to rally behind. It is disappointing though that the 'Lift the Ban' coalition cannot bring itself to acknowledge the different fundamental considerations and interests to be balanced by the policy that it is campaigning about.

The 'Lift the Ban' moniker is a great rallying cry but itself risks mis-framing the debate. Giving the impression that this is as an all or nothing question, a question of something that is to be banned or allowed. When, in reality, it is a question of the appropriate balance as to when, under what circumstances, and subject to what conditions and protections, something should be allowed.

Most fundamentally though, in the UK today it *is* allowed; there is no 'ban' on asylum seekers working:

- Currently over 66,000 asylum seekers are eligible to apply for permission to work having been awaiting a decision on their claim for 12 months +.[48]
- In 2022 we have been told that almost 20,000 asylum seekers in the UK did in fact apply to the Home Office for permission to work.
- And that over 15,000 of them were in fact granted permission to work.[49]

If both sides were interested in the important practical questions around asylum seekers being able to work, and actually working, in the UK, there would surely be some focus on these numbers, and the potential they provide to learn much more about the reality of asylum seekers right to work in this country. Instead, these numbers seem to be ignored, and the debate focuses, instead, on the wrong numbers.

(5) The wrong numbers

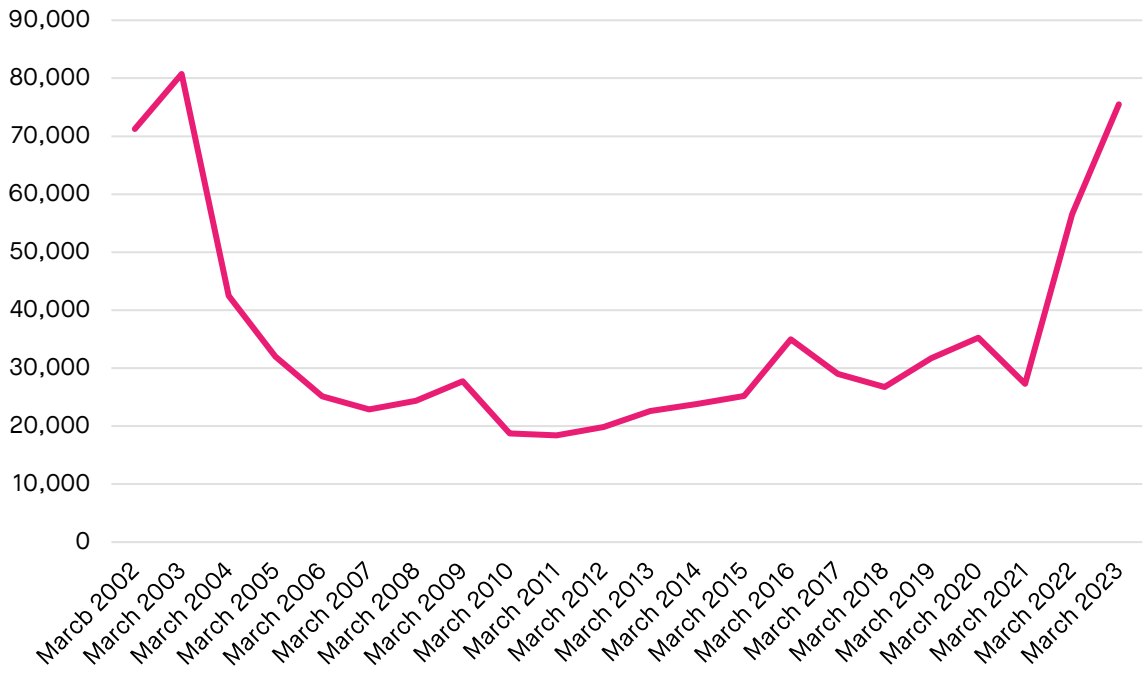
The UK is awash with many different immigration numbers; they fuel the UK's immigration and asylum debates. Sometimes those numbers help make sense of things and formulate sensible policy. Sometimes they seem to do the opposite. Some would argue that there is too much focus on numbers in these debates. Or that the focus is just on the wrong numbers – for instance, too much focus on a single reported net migration figure which represents a huge array of different, uncorrelated events, decisions and types of migration.

In the case of asylum seeker right to work, some 'wrong numbers' at the heart of this debate unhelpfully skew it, and hide more than they reveal. What are these numbers, and what is wrong with them?

Asylum applications lodged in the UK

In mid-2002 asylum seekers' right to work in the UK was taken away. A short while later, the number of asylum applications to the UK fell off a cliff. The below graph is indeed quite spectacular. It is the spectre which looms over the asylum seeker right to work debate. The left-hand cliff of the graph stands so stark that, whether openly admitted or not, it is the rock on which the 'pull factor' argument is founded, and underpins the more restrictive approach on asylum seeker right to work.

Figure 2: Asylum applications lodged in the UK, year ending March 2002 and March 2023



Source: Home Office Immigration Statistics[50]

But, of course, the figures do not prove causation of this single policy change. There were many different reasons – a complicated interplay of factors at home and abroad – for the reduction in asylum applications in the UK after asylum seekers lost the right to work. No compelling case has been made for the change in approach to asylum seeker right to work being material among these reasons.

If there is a policy-related pull factor to the UK for those who want to come to work here who are not refugees, surely it is nothing at all to do with the technicalities of the asylum right to work rules, indeed nothing to do with the UK's immigration and asylum regime at all. But, instead, is all to do with (1) the relative liberality of the UK's labour market and (2) the relative laxity of the UK's approach to the enforcement of labour market rules.[51]

As a representative for a French migrant welfare NGO put it, when asked why even those with no obvious connection to the UK were risking the Channel crossing:

> *"They know that there are no identity papers in England and that they can easily find undeclared work, more so than here (in France). The legislation is not the same, the controls are not the same, it's much easier in England to work illegally in the long term."*[52]

Public opinion

Representation of public opinion in nuanced matters of immigration and asylum policy is often prone to over-simplification and misrepresentation. The Lift the Ban campaign claims that 71% of the British public agree that people seeking asylum should be allowed to work.[53]

As referenced in previous SMF migration reports, global polling data[54] shows that:

- Britain stands near the top of the charts of those countries whose public support the right for those escaping from war or persecution to take refuge in their country.
- The British public are more inclined to believe asylum claimants than the public in most other countries; suspicion about their motives for claiming asylum is lower than in most other countries.
- But even though more sympathetic to refugees, and less sceptical towards those claiming to be so, a majority of the British public are still concerned about the degree to which the asylum system is exploited by those who are not refugees.

These more nuanced views were reiterated again in a recent IPPR report's analysis of Ipsos immigration tracker data for the UK[55]:

- A majority of the public think that asylum seekers being able to work would:
  - reduce their dependence on state support,
  - allow them to use the skills/experience that they have,
  - help them to learn English and integrate.

- A majority of the public also:
  - have concerns that perceived generous policies will be exploited, and
  - think that giving asylum seekers right to work could attract people without a genuine claim to come to the UK.

Thus, the public opinion polling on the asylum seeker right to work issue seems to perfectly frame the difficult policy question here. Not to provide the policy answer.

Employer attitudes

Lift the Ban's assessment of employer opinion is as follows: that two-thirds of employers are supportive of asylum seekers being given permission to work after six months of awaiting a decision on their asylum claim, and would consider hiring from this pool.

It is wholly unsurprising that UK employers would say this. Why would they not? They want the largest possible pool of potential workers available. All the more so in the light of increased labour shortages in the UK, a situation which our recent SMF report on labour shortages and immigration policy in the UK argued may well now be endemic rather than cyclical.[56]

But it is a long way from theoretical support for asylum seekers being given the right to work, to making a practical decision to actually hire one. As that same report also pointed out, while asylum seekers could in theory help to ease labour shortages in the UK, in terms of overseas workers, so could:

1. overseas workers sponsored by employers into the UK under the expanded post-Brexit employer sponsorship system which no longer operates any cap on numbers;
2. the large number of dependants of those on other visas, or those through other family-related routes, that have been allowed to come to the UK;
3. the millions with permission to stay and work in the UK forever under the EU Settlement Scheme;
4. those who can come to the UK for up to two years under the Youth Mobility Scheme;
5. the record numbers of overseas students who have come to the UK, who have now been given greater rights to work in the UK again post-Brexit, both while they are studying and also after their studies end;
6. the hundreds of thousands who have entered the UK through the humanitarian routes offered to those coming from Ukraine and Hong Kong;
7. recognised refugees, including those resettled into the UK.[57]

That report also documented that while employers are open to utilising all and any sources of overseas labour, they are also sensitive to, and keen to minimise, risk, complication and disruption.

The key practical question then is: if all these other pools/routes provide UK employers with access to large numbers of workers each year – whose lawful right to continue to stay in the UK and work for the employer is *not* subject to the successful determination of their asylum claim – why would an employer take the potential risk, complication and disruption of hiring someone who is subject to that?

Net gains to the Treasury?

Lift the Ban has put forward a range of consistently updated, and larger, estimated numbers of the net benefit to the UK economy that would result from liberalising asylum seeker right to work – in 2018: £42 million per year, in 2020: £98 million per year (this was a mid-range estimate which also included a low-end estimate of £23 million and a high-end estimate of £357 million), in 2021: £180 million per year[58]. The net benefit calculation comprises:

- extra tax and national insurance contributions received by the Treasury as a result of asylum seekers working; and
- the savings on subsistence and potentially also accommodation support provided to asylum seekers awaiting their decision.

The calculation is in turn based on different assumptions of:

- numbers of asylum seekers who would actually be working in full-time work;
- the wage level at which they would be employed;
- whether that would remove the need just for their receipt of subsistence support or accommodation support also.

On the one hand, the potential public finance impacts of asylum seeker right to work reform has arguably represented the most innovative, and seemingly practical – and effective –angle of the whole debate. It at least elicited a response from the Government, which challenged the key assumptions that gave the argument most weight.

On the other hand, this angle has now been stretched to lengths that seem so unrealistic – a recent report, utilising "a state-of-the-art macroeconomic model which allow us to estimate the outcome on a more holistic manner", suggested that allowing asylum seekers the right to work without any waiting period would increase the UK's tax revenue by £1.3 billion, save the government £7.6 billion and add £1.6 billion to GDP[59] – that it risks undermining the cause it purports to support. It certainly conflicts with other recent economic analysis – from the Netherlands – that suggests that, from the perspective of a lifetime costs/benefits analysis, those exercising the right to asylum are most likely among immigrants to be large *negative* net contributors to the public finances.[60]

Most dangerously, in framing the argument on the explicit, incredible assumption that asylum seekers are as well-placed as any other workers in the UK economy, and have all they need to be able to find secure jobs in the economy and will do so:

(1) immediately;
(2) at the average employment rate for a worker in the economy;

(3) at the average skill level for a worker in the economy[61]

this argument risks wholly misrepresenting, and entirely eradicating from the debate, the particular risks that most asylum seekers face in entering work, and the important need for support and oversight of asylum seekers working, which we elaborate on in our Proposal Three.

The key high-level point though is that the 'public finance impact' part of the debate is based on *theoretical* assumptions. Yet right in our midst there is a practical reality that can be interrogated; a real, natural experiment right now. A combination of:

- the recent larger numbers of asylum claimants;
- the slothful asylum determination process; and
- a fundamental change to the scope of the Shortage Occupation List,

means that, for the first time in a very long time, large numbers of asylum seekers are not only getting permission to work, but should also have a meaningful chance to actually get work. Yet, unlike other figures, both sides of the debate are strangely silent about these figures.

(6) Concern with rights is trumping concern with practical outcomes

The large backlog of dealing with asylum claims in the UK, and the ongoing failure to tackle this problem, are well-reported. The latest data shows that the number of asylum seekers who are prima facie eligible to apply for permission to work – having been awaiting a decision on their claim for over twelve months – has risen sharply in recent years; from 4,782 in Q4 2016 to 66,009 at Q1 2023.[62]

Of course though, this does not tell us how many of those who are prima facie eligible have actually applied for, and been given, permission by the Home Office to work. Some have tried to find out. In January 2020, Catherine West MP asked how many asylum applicants were granted permission to work in the UK in 2019. In February 2022 Neil Coyle MP asked how many people seeking asylum were actually in employment in 2021. Both questions received the same pushback from UK Visas & Immigration; that the information was "only held in paper case files or within the notes sections of the Home Office's databases... not held in a reportable format".[63] Freedom of Information requests seemed to meet the same response. Until 14 February of this year.

Then, in response to a Freedom of Information request, the Home Office disclosed the number of applications for, and grants of, permission for asylum seekers to work in 2022. This data was accompanied by a caveat as to the reliability, since the numbers disclosed were not automatically generated but rather manually collated from internal database records, but those numbers show that in 2022 the Home Office:

- received 19,231 applications from asylum seekers for permission to work.
- granted permission to work to 15,706 asylum seekers.[64]

The Lift the Ban campaign presented its case for there being an effective ban on asylum seekers working in the UK on the basis that the sorts of jobs on the SOL – "'classical ballet dancer', 'medical radiographer', and 'hydrogeologist'" as its report puts it – are not practically within reach for most asylum seekers. Prior to February 2022 this argument made sense.

But at the same time as pointing out that few if any asylum seekers could be expected to have experience in one of those more esoteric roles, a snapshot survey by the campaign suggested that one in seven asylum seekers in the UK did have experience in health or social care.[65] In February 2022, on the advice of the Migration Advisory Committee, care workers, care assistants, home care workers, home care assistants, and nursing home support workers, were all added by the Government to the SOL[66]. These roles therefore became eligible jobs for asylum seekers with permission to work.

These additions to the SOL were stated to initially apply only for a period of twelve months, but eighteen months later the position is unchanged. Unsurprising, in light of the ongoing resourcing problems in the care sector and the seeming unwillingness of the government to fund it sufficiently.[67] There is no reason to think this position will be reversed any time soon.

Adding care roles to the SOL has been a significant development for UK employers ability to utilise overseas workers in care roles. As set out in Chapter One, the number of ordinary care worker visas issued to come to the UK has exploded in the past year, from little more than zero to over 40,000.[68] There is clearly a large demand to fill care roles in the UK from overseas workers. And on the evidence of Lift the Ban's prior analysis, there are likely large numbers of asylum seekers already in the UK who could do those roles. There would therefore appear to be a much greater practical opportunity than at any time since the SOL restriction was introduced in 2010 for significant numbers of asylum seekers to lawfully get jobs in the UK right now. You would not know that though from the silence with which this development has been greeted.

There were a few though who pointed out the practical potential of this change. In January 2022, after the change had been announced but before it had gone live, the Migration Justice Project at the Law Centre Northern Ireland put out a short briefing note, headed:

Are you an asylum seeker?

Do you want to start work?

spelling out what the expansion of the SOL actually meant for asylum seekers: "This opens the possibility of employment for asylum seekers".[69]

At the same time, Sonia Lenegan, writing in Free Movement, authored an article entitled 'How asylum seekers can get jobs in social care', pointing out that this change "provides some hope for people stuck in the asylum system for more than a year".

Perhaps most strikingly though, this article is a rare example of the more permissive side of the debate acknowledging the practical aspects of asylum seeker right to work from an employer perspective; that an employer might think harder about employing an asylum seeker as the employer would not know how long the employee is going to have permission to work for if their asylum claim is rejected.

At the same time though, the article points out that there are also potential practical *advantages* for employers in taking on asylum seekers to work, which might explain why an employer might in practice be willing to take the risk of doing so. There is no need to sponsor an asylum seeker worker – with all the attendant bureaucracy, time delay and costs that many UK employers are not set up for – as there would be if the employer was actually bringing in the worker from overseas to do the job. Nor is there the immigration skills charge to pay. Also, no minimum salary threshold applies.[70]

This article comes from the more permissive side of the debate, but it does so from an angle that goes beyond asylum seekers merely being given the right to work. It at least touches on some different perspectives which might impact the practical outcomes of the exercise of that right. It is on those practical outcomes that our proposals focus.

CHAPTER FIVE – THE UNIQUE EVIDENCE OPPORTUNITY AND OUR POLICY PROPOSALS

Overview

For all the back and forth over the last twenty plus years, not much has changed. One side has stood its ground; indeed dug in deeper. The other has pushed to turn the clock back to the summer of 2002, when the right to work for asylum seekers was a six-month delayed but otherwise unrestricted work right.

To be fair, the Lift the Ban six-month delay proposal can of course be viewed as a compromise position. But it inevitably suffers from the fact that it has been done before. Going back to the summer of 2002 might be attractive in a song lyric. But it is not such an easy sell for policy reform, because rather than a compromise it can look like just turning the clock back to an approach that was already tried and discarded.

Of course, answers can sometimes be found in the past. However, this reportthinks we can do better than just turn back the clock. We make the case instead for a different approach to both:

- considering the evidence, and
- the core policy proposal

We believe a 'fair market' approach to this policy conundrum could not only break the impasse, but most importantly have the best chance of delivering meaningful practical opportunities that asylum seekers can actually benefit from, not just a theoretical right from which they might not. Such an approach does not simply focus on giving asylum seekers the right to work, but rather how to do so in a way that:

- does not undermine public trust and faith in the fairness and importance of the international refugee regime, the protection of refugees, but also controls applied to failed asylum seekers
- addresses the practical challenges many asylum seekers face in working, not just their theoretical right to do so;
- protects lawfully working asylum seekers from unfair labour practices and exploitation.

Delivering better practical opportunities and protections for asylum seekers working means not only taking into account the perspectives of asylum seekers, but also of:

- employers: providing necessary confidence and transparency to potential employers of asylum seekers so that they will be more willing to employ them, but also making sure employers are properly overseen in their use of asylum seeker workers;
- the public: not losing sight of the fact that the asylum system will lose public support if it comes to be seen as a closet economic migration pathway rather than a protection regime for refugees;

- the optics: being sensitive to the timing and circumstances in which any changes to the right to work are made, particularly at a time when the asylum system in the UK is widely regarded as not properly under control.

To achieve better outcomes for our society, economy *and* asylum seekers, while addressing government concerns, is not easy. But it is possible. This is what our policy proposals and options set out below are designed to achieve.

Our first and foremost proposal though is that we must not ignore the unique opportunity in our midst right now, which provides the chance to build up a much fuller, rounded knowledge and understanding of the application of asylum seekers' right to work in practice.

In our midst right now

No one is celebrating the fact that asylum seekers are only getting the right to work now in numbers not seen for a long time because asylum processing times in the UK have got so out of control. Nevertheless, that is the reality of the situation. At the same time, the expansion of the SOL to include ordinary care jobs has potentially opened up many more jobs that are now realistically within the reach of those asylum seekers who have the right to work.

The UK's immigration and asylum numbers of themselves may not bring deeper understanding and appreciation of challenges and opportunities, problems and solutions, but they can tell you where to look. Interrogating beneath the numbers is key. The key question for anyone interested in asylum seeker right to work should surely be:

'if we know that 66,000 asylum seekers are eligible to apply to work in the UK right now, and we have been told that almost 20,000 applied for permission to work last year, and we know that over 15,000 asylum seekers were granted permission to work last year, what has been the experience of these people, and why?'

This is surely what a proper review of asylum seeker right to work would really look like. Of course this is far from a perfect experiment. Real experiments never are. Yes, the right to work is restricted to certain occupations. Yes, the right is only exercisable by those who have had to wait over a year. Nevertheless, surely actual evidence should not be ignored?

This opportunity might only just have opened up, but all the more reason to seize it, to meaningfully enquire into, and track, what is actually happening, rather than debating what could happen. To focus on actual outcomes of asylum seeker right to work policy now, not just trading thoughts on hypothetical outcomes in the future.

These questions go to the heart of the practical outcomes of asylum seeker right to work policy and the interests and perspectives that drive those outcomes:

From an asylum seeker perspective:

1. What is the reason that the large number of asylum seekers who are currently eligible for permission to work in the UK are not all seeking that permission?
2. What was the reason for denying permission to work to those 3,500 asylum seekers who in 2022 applied for the right to work but were denied it?
3. What is the skills and educational qualification level of those asylum seekers who have been given the right to work?
4. How many of those asylum seekers who have been given the right to work have actually found work?
5. Have those who have found work received the basic rights and protections that an employee is entitled to from a UK employer?
6. In what jobs/sectors have they found work?
7. What is the skills and educational qualification level of those who have found work and how does that compare to the jobs/sectors where they have found work?
8. For those who have found work, how does the role they have found on the SOL compare to their preferred job if they were not restricted to a role on the SOL?
9. How many have found employment in in the care sector?
10. Of those who found employment in the care sector how many previously had experience of working in the care sector?
11. What resources have asylum seekers with permission to work used to try to navigate the restriction on them of only being allowed to work in SOL roles?
12. What resources have those asylum seekers used to try to find work?

From an employer perspective:

1. What are the main types of employers who are currently employing asylum seekers with the right to work?
2. Who are the main employers who have employed asylum seekers with the right to work?
3. What are the main motivations of employers who have employed asylum seekers with the right to work; why did they decide to do so?
4. Are employers who have employed an asylum seeker with the right to work aware of the risk, that if that worker's asylum claim fails then that worker can lose their right to work?
5. Why have employers who could have employed asylum seekers with the right to work – as they offer job roles that are on the SOL – but not done so, not done so?
6. Have employers in the care sector targeted the hiring of asylum seekers with the right to work since the expansion of the SOL to include care jobs, and if not why not?

In order to properly inform policy, it would not only seem the most sensible and ethical approach to increase our understanding of what is actually happening by seeking answers to these questions, it would also seem perfectly possible to do so. For the Home Office knows the identity of each asylum seeker given permission to work; it has individually granted and recorded that permission. It could perfectly well keep in contact with them, either itself, or through working with those civil society organisations in the UK supporting asylum seekers. If the two sides could find a way to work together, we would be able to begin to build up a real picture of asylum seekers working in the UK, rather than just argue about hypothetical ones.

Our policy proposals

Going back to the opening statement of this report, the policy question around asylum seeker right to work is what should happen during the period when it is not yet known whether the asylum claimant will be determined to be a refugee or not, and therefore whether or not they will have a right to remain and work in the UK.

Both sides of the debate argue for a policy which treats an asylum seeker from a country with a 99% success rate of asylum claims in the UK exactly the same as an asylum seeker from a country with a 5% success rate of asylum claims in the UK. Yet, in the former circumstance it is obviously highly likely that the asylum claim will succeed and the asylum seeker will be given refugee status and the right to lawfully remain and work in the UK. Whereas in the latter, it is highly unlikely that the asylum claim will succeed, that the asylum seeker will not be granted refugee status and won't be given the right to lawfully remain and work in the UK.

It is in trying to fit these two quite different circumstances within a one-size-fits-all policy that the policy must inevitably fall between two stools, badly serving its key constituents. Why not instead seek to address the objections of those concerned about giving a right to work to asylum seekers who may not be refugees by:

(1) targeting right to work at those asylum seekers most likely to be refugees;
(2) restricting or strictly controlling right to work for those asylum seekers most likely not to be refugees?

Proposal One: label and fast-track 'green' list asylum seekers

Fast-track

The aim should be to maximise the numbers of working asylum seekers who are subsequently determined to be refugees. There is therefore a strong case for positively distinguishing asylum seekers from countries with currently high claim recognition rates in the UK and who statistically therefore have a high likelihood of being granted refugee status here.

In terms of the asylum determination process itself, such a distinction was recently argued for by some in the refugee sector to most swiftly and efficiently help to address the asylum claim backlog. The suggestion was taken up the Government, with the result that a streamlined asylum processing model has now been applied to 'legacy' asylum claimants – defined as those who submitted their claims pre-28 June 2022 – from: Afghanistan, Eritrea, Libya, Syria and Yemen.[71] Subsequently this was extended further to include claims from Iranians and Iraqis.[72] While this does not seem to have resulted in as streamlined processing in practice as had been hoped, that does not alter the fact that this would seem to be a useful way to also think about parsing asylum seeker right to work.

We would propose utilising a 'green' list of countries from which asylum claimants statistically, based on current recognition rates in the UK, have a high likelihood of success in their asylum claim, and therefore of being granted refugee status and the right to remain and work in the UK. In light of the evidence base which points to longer-lasting adverse impacts to their economic and integration outcomes of any significant delay in accessing the labour market, for asylum claimants from green list countries we would see a strong case for them to be allowed to work, subject of course to confirmed identity and the usual security checks. i.e.:

- as swiftly as practicable;
- with no restriction on the type of jobs they can do.

As set out in Proposal Three though, we do not propose that asylum seekers simply be given the right to work and allowed to try to get on with it. We view the risks of poor treatment and exploitation of lawfully working asylum seekers to have been significantly underestimated and understated. We believe that asylum seekers lawfully able to work must have access to greater support and benefit from improved oversight.

What about the potential 'pull factor' of making this change though? Three points:

1. We have argued in this report that asylum seeker right to work policy, regardless of the form it takes, would not appear to be a material pull factor to the UK. But a change such as this could provide the acid test. Once again, it would provide a real evidence base, rather than an assumption based one.
2. If we are wrong about the pull factor, and following the change of policy a material, otherwise unexplained, positive shift is seen in the number of asylum claims from any green list country, any link to the change in policy could be swiftly investigated and assessed. Following that, if considered necessary the policy could then be relatively simply and swiftly adjusted again to make it more restrictive. If there is particular concern about this aspect of the change, it could be piloted with just one or a couple of nationalities first.
3. Importantly, as we discuss further in Proposal Four below, from a public perception perspective we view the primary concern over the potential of a pull factor as about those arriving who may be trying to benefit from the asylum system to get to work in the UK when they are not refugees, not about those arriving who are refugees.

Label

Asylum seekers in this category should be formally designated with the 'green' label. This would clearly demonstrate their status to would-be employers. The employer would then know that there is a high likelihood that the asylum seeker will be granted refugee status and will then have the ongoing right to lawfully remain and work in the UK. This would give the would-be employer the transparency and confidence to make them more likely in practice to consider hiring the asylum seeker.

There will of course need to be a policy decision where the cut-off for the green label should lie. The lower it is set, the harder it is to justify the immediate and unrestricted right to work being provided. The statistics show that the UK's current recognition rate of asylum claims from many of the main countries from which it is receiving asylum claims is very high. For Afghanistan, Syria and Eritrea it is 98-99%.[73] We would propose not setting the cut-off for green list status below a 75% recognition rate. Among the top countries from which the UK receives claims, this would currently therefore also include claims from Iran and Sudan.[74]

Of course, account will need to be taken of new countries potentially coming on to the green list, and significant intervening factors/fundamental changes in circumstances which make a country much less safe than it was before, and which render its current recognition rate not a fair guide of the chances of success of future claims. Most of the time when this happens though, events triggering this are likely to be sufficiently obvious and uncontroversial.

In the other direction, countries can also fall off the green list for the purposes of future asylum claims, if their recognition rate drops below the threshold. Just because a country had a high recognition rate once does not mean that it will always do so, if circumstances in that country are considered to have sufficiently changed for the better.

Proposal Two: three options to restrict/control 'orange' list asylum seekers

Most nationalities with the highest number of asylum claimants in the UK have high recognition rates. But not all. The current list of top counties of asylum claims in the UK also includes India with a 5% rate, Bangladesh with 33% and Albania with 34% – although, for the latter, the position is confused by the fact that, more recently, a significant number of Albanians have made asylum claims that they have then not pursued; if you take those instances into account then the recent grant rate for Albanians looks more like for Indians.[75]

It is important to stress that these percentages are based on grant rate at initial decision. Many initial decisions are appealed, and material numbers of those are successful. Our proposal would be that it would be fairer to base recognition rates for the purpose of the green/orange test on the percentage success rate after first appeal, which would require capturing this data.

Nevertheless, even on that basis there are clearly some countries generating material numbers of asylum claims in the UK that fall far below the threshold for admission to the green list. They would be on the orange list. Most countries tend to have either a high or a low recognition rate. Not many are towards the middle. But some can be; at the moment Pakistan is, and this is where the decision on where to place the cut-off, and therefore which list to put that country on, bites.

The status quo is that if, as is likely, an 'orange' list asylum seeker's claim fails, but they are not removed from the UK, they are then just left to continue to work unlawfully if they can, at risk of exploitation in the UK labour market, unless the hostile environment makes them leave. We argue, instead, for addressing this situation more honestly and transparently from a right to work perspective, in a way that supports the operation of a UK labour market that promotes lawful working practices, that gives clarity and confidence to employers to follow those practices, and that provides protection to asylum seekers from abuse and exploitation.

We propose considering three options for orange list asylum seekers:

Option 1 – orange list is not allowed to work at all

Under this option the message to asylum claimants from countries on the orange list would be:

'We take your asylum claim seriously and will review it carefully. We are sorry that we will not be allowing you to work in the UK in the meantime. You will only be allowed to work in the UK if your asylum claim is successful.'

A counter-argument to this would be propose that orange list claimants should be allowed to work, but only after a significant wait-period. The problem with that approach is that even under an efficiently run asylum processing system it can be particularly hard to make decisions on asylum claims from countries with low recognition rates.

As a result, it is exactly these sorts of claims which should take time to adjudicate properly. Some people coming from those countries *do* meet the status of refugee. But their situations and stories are generally much more complicated and complex to unravel than for those coming from high recognition rate countries, in terms of making a determination of whether or not an asylum seeker's story meets the legal threshold, and credibility standards, for them to be granted refugee status.

Taking time to make a fair and detailed assessment does not generally align with speed of processing. While it is important that this is done efficiently, it does not seem a fair and reasonable system that this process should be conducted 'up against the clock'; that, at some set point, if it has not been completed, the asylum seeker will in any event gain access to the UK labour market. That could undermine trust in a fair system.

Of course, the outcome of this Option 1 will be that there will be some asylum seekers who are subsequently determined to be refugees who will have been delayed from being allowed to work. But their numbers should be minimised by this approach. And there would be a number of important advantages to this Option 1.

The first is optically, presenting a balanced approach: green list asylum seekers can work ahead of the determination of their claim, because they are most likely to be refugees; orange list asylum seekers cannot, because they are least likely to be refugees. This approach to orange list asylum seekers therefore seeks to logically balance and support the liberalisation of the approach to green list asylum seekers. The second is the simplicity – to operate, to present, and to explain – of such an approach.

There are though two other options for how to approach orange list asylum seekers; these are more complex to operate, to present and to explain. But they would allow orange list asylum seekers to work and make an economic contribution under carefully controlled circumstances.

Option 2 – orange list: temporary stay, temporary work

There is an argument that even for asylum claimants from low recognition rate countries, if there are jobs which the UK really needs doing then they should be allowed to do those jobs while their claim is being assessed and before, if their claims fails, they are returned/removed. This would need though to be under properly controlled conditions, unlike under the current system.

In this situation the employer should be:

- clearly informed that the asylum seeker is from an orange list country, and that this means they are most likely only to be available for a temporary period;
- given a clear expectation of both the minimum time – based on the average time currently being taken for the asylum claim determination process, assuming no appeal – and also the likely time – assuming an appeal – that temporary period is likely to be;
- given the right to a reasonable fixed notice period – of at least a month – from the Home Office, if the worker's asylum claim does indeed fail, informing the employer of that fact, and during this notice period the failed claimant's employment with that employer would continue to be lawful.

What sort of jobs might be suitable under this option, and who should decide? One obvious answer would seem to be to use the list of jobs on the Shortage Occupation List. The SOL, after all, is meant to be a list of jobs that are currently in shortage in the UK and which the Migration Advisory Committee has advised are appropriate for use of migrant workers to fill vacancies. Another argument in support of this approach is that even giving a temporary work right to someone whose asylum claim is more likely than not to fail may be viewed as controversial, but may be viewed as less controversial if the right is restricted to jobs where the MAC have clearly identified a shortage that migrant workers are needed to help fill.

There are two main caveats to this though:

1. As set out in the SMF's recent migration report on labour shortages and the SOL, the MAC has diminishing faith that the process for compiling the SOL can ever really accurately determine shortages in an objective evidence-based way in the timeframe necessary to take action.[76]

2. Fundamental changes to the SOL are afoot, with the MAC proposing to no longer include many of the occupations that have previously been included, where that results in salaries allowed to be paid by employers – under the salary reduction formula for jobs included on the SOL – falling below the going rate threshold for the occupation.[77]

With regard to point 1, given the ongoing debate as to how best to actually assess the existence of labour shortages in the UK practice[78], there may even be a case for arguing that the evidence base should work the opposite way round. That is, rather than expert evidence of labour shortages driving what jobs orange list asylum seekers are allowed to do, employers willingness to employ asylum seekers, and certainly orange list ones, should be viewed as a real indicator of what jobs are in fact experiencing a shortage.

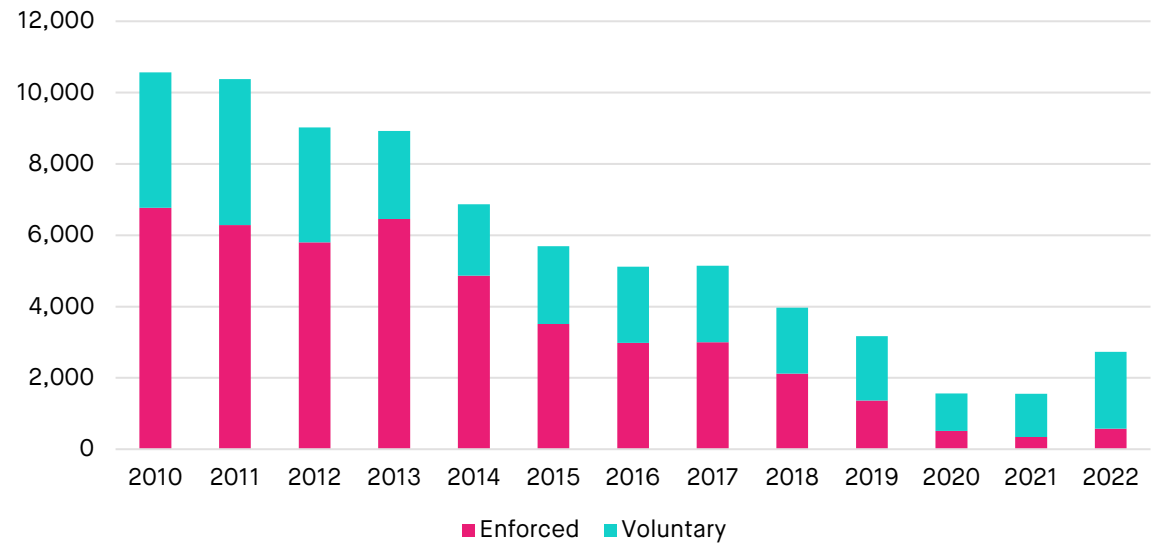
In light of these caveats, it may make more sense to use a different mechanism than the formal SOL – albeit one still very much focused on the input of employers and the considerations and expertise of the MAC – specifically focusing on determining what roles might most appropriately be filled by orange list asylum seekers on a temporary/fixed-term basis. The key question would be: what are the roles most in temporary shortage that could most efficiently be filled with little front-end training and investment required by the employer, and without the ultimate departure of the employee being too disruptive on the back-end?

In this context, it is also important though to be realistic about the chances of removing/returning failed asylum seekers. Returns are clearly envisaged in the 1951 Refugee Convention.[79] Indeed, as a leading human rights lawyer recently put it:

> *"If the government were serious about operating a meaningful asylum system, the few asylum seekers who are not formally recognised as refugees would be removed."*[80]

The UK's recent record on this though speaks for itself.

Figure 3: Number of returns of former asylum seekers



Source: Home Office immigration statistics year ending March 2023[81]

If Options 1 or 2 are to be used though, there needs to be both an intention and a realistic prospect of returning or removing the asylum seeker if their asylum claim fails. Otherwise, for all of its challenges, Option 3 needs to be considered.

Option 3 – orange list: extended stay, extended work

Option 3 – which is the option which also needs to be considered for the small number of green list asylum seekers whose claims may fail – is the option which considers in what circumstances, and subject to what conditions:

- a failed asylum seeker who has found work in the UK, and
- either is not to be returned or removed from the UK, or practically cannot be so,
- should be allowed to remain in the UK, and
- have their immigration and working status in the UK regularised, at least for a further period while they are still working,
- rather than being consigned to an immediate future of clandestine living and unlawful work in the UK, which would seem to be in no one's interests.

This should be honestly and transparently faced. Given the practical challenges of many returns and removals, if a significant number of failed asylum seekers are to remain in the UK, as they historically have, it would seem fairer to both employer and worker to provide a clear safe harbour in which the failed asylum seeker can, subject to ongoing conditions, continue to remain and lawfully work in the country, at least for a period, without fear of discovery, exploitation and abuse.

As pointed out in the earlier discussion of the 'planned approach', such an approach would not be unprecedented. But the considerations around this option are certainly not straightforward. In blurring the line between asylum claims and labour migration, there is a clear and present public perception danger that this option is seen as instituting a 'pull factor' for new arrivals who want to work and claim asylum in order to be able to gain at least a conditional status in the country.

The conclusion might therefore be that the circumstances under which this option is used should be restricted only to those nationalities who clearly cannot realistically be returned, and thus it is more acceptable to the public to apply this approach to them. Or perhaps also for those working in certain specified shortage or more skilled roles that the UK has an interest in keeping them employed in even if their asylum claim fails.

In addition, as discussed elsewhere in this report including the next Proposal, careful attention would also need to be paid to whether a conditional, extended right to stay and work that is given under this option might itself create the risk of unfair labour practices and exploitation of the worker, if the extended right to stay and work were tied to continued employment and/or continuing to work for a specified employer or in a specified sector.

Proposal Three: support for, and oversight of, asylum seekers working

Which picture seems most convincing?

At the most detailed policy implementation level, support of asylum seekers into work, and oversight of the treatment of asylum seekers in work, may need to be considered slightly differently for the three potential scenarios for asylum seekers working that we have set out in Proposals One and Two:

1. Green list asylum claimants working on an unrestricted basis;
2. Orange list asylum claimants working on a temporary basis;
3. Orange list asylum claimants working on an extended basis.

But they also need to be considered holistically in the round. Indeed, at an over-arching level there is an important re-framing needed, for from the more permissive side of the asylum seeker right to work debate there are now simultaneously painted two vivid pictures of the asylum seeker which are hard to reconcile.

One picture is of a person fleeing for their life from a desperate situation with meagre resources, generally with little chance or time to prepare and take any documentation which proves their credentials and qualifications, often travelling alone without their family or support network, with little option but to arrive in the UK through expensive, highly stressful, dangerous, irregular means, with little knowledge of British society or the English language, needing work to have any realistic chance of their being able to integrate into their new society.

One might assume that for such a person, at least immediately on arrival in the UK, securing any job at all, even a minimum wage one, would be a great success. But now we are also told that, even immediately on arrival "the assumption that all applicants will only receive a minimum wage job is implausibly inaccurate". Instead, the 'other picture' now presented is of a person who, if only allowed to work, will straight away be able to secure for themselves a position in the UK workforce commensurate with their skills, experience and qualifications, which should be expected to be equivalent to the average earner in the UK workforce.[82]

Across the whole, evidence and experience does not support the conclusion of the 'other picture' presented here. Two of the most highly favoured immigrant groups to the UK in recent times have been: (1) EU citizens under EU freedom of movement – prior to the UK's withdrawal from the EU – and (2) currently residents of Hong Kong with British Nationals (Overseas) (BN(O)) status who can come to the UK. Highly favoured in that these groups could prepare in good time for their orderly move, arrive in the UK without stress under regular means, bring with them any evidence as to their skills, experience and qualifications that they wanted, and bring their family and immediate support network with them. In short, they enjoyed every advantage an asylum seeker lacks.

Yet these two extremely relatively advantaged groups did not immediately secure employment in the UK workforce commensurate with their skills, experience and qualifications. Obviously, the inflow of Hong Kong BN(O)s is a very recent and ongoing phenomenon. But it already seems clear that, despite receiving dedicated investment by the government in their integration, arriving with their families to live and work where they choose, and a large number having above average level of qualifications, many do not feel ready to work immediately after arrival and, when they do, are not expecting to take on the same level of job in the UK as they had in Hong Kong, instead accepting that in the UK they will work in different, lower skilled roles.[83]

In the case of EU freedom of movement, one of the features of the free movement of workers into the UK from the EU was that ONS data consistently recorded around one-third of EU immigrant workers as over-qualified for the roles that they held, when gauged by educational attainment.[84] While this perceived 'underutilisation of skills' or 'brain waste' came in for criticism, it also had a positive aspect. In allowing a number of higher-skilled EU migrants to first access the UK jobs market through lower-skilled roles, this provided them with the time and also the opportunity to improve their English language and orientate themselves to the UK workplace and society before some were then able to feel more confident to move up the ladder and more fully deploy their skills at a higher level.[85]

This is not to deny the agency of asylum seekers, who are, of course, a diverse mix of different people from different circumstances and situations with different capacities and capabilities. We would not deny that some asylum seekers may in real life fit the 'other picture' of the asylum seeker presented. But, overall, we tend to the view that asylum seekers given the right to work in the UK are likely to need significant support, and require better oversight of their employment arrangements, if that right to work is to provide them with the reality of fair and productive employment here.

Support

For those with green status:

If one in seven asylum seekers in the UK really does have relevant experience that could be useful in the care sector, and the UK has a large number of vacant care roles, there of course may be cases where there is a natural fit between asylum seekers' skills and experience and the jobs they can usefully do in the UK. And the Government's previously stated "commitment to further constructive engagement to identify ways to level up access to safe and legal work pathways for talented displaced persons"[86] should be extended to consideration of how the skills of asylum seekers already in the UK with permission to work can be best matched to employers looking for workers with those skills.

But this is unlikely in most cases to be straightforward. Notwithstanding the large estimates of what asylum claimants could earn and contribute to the economy and tax take if only they were allowed to work, as set out in the Author's personal introduction at the outset of this report, the reality may well be different. Even if – as we are proposing for those from green list countries – asylum seekers are provided with an unrestricted right to work, the situations from and circumstances in which they have arrived will likely mean that in most cases there will be a large gap to be bridged if a right to work is to actually become gainful employment in the UK labour market. The right to work for asylum seekers may therefore end up being worth very little in practice, if the right is just given and not supported.

This would require, at the minimum, significant support of the type that the Refugee Council was providing back in the summer of 2002; not just help with CVs, job applications and interview preparation, but also labour market context and orientation for those unfamiliar with the UK jobs market and the best mechanisms for searching out employment opportunities in different roles.

The Home Office pushes volunteering for asylum seekers as an alternative option to working as an opportunity to help integration into British society[87], but it can also be an important precursor to work, and an important initial provider of job references for asylum seekers[88]. In this sense, volunteering opportunities targeted in particular at green list asylum seekers not yet working would seem to have potential benefits on multiple levels – both in assisting integration per se, but also in preparing them for work and assisting them in helping to secure it.

The policy around asylum seekers access to subsidised ESOL language tuition – currently only available after a six-month wait-period in England and Northern Ireland, whereas in Scotland and Wales it is available from arrival[89] – also needs to be aligned with the approach to the asylum seeker right to work and stay. If "good English language skills are a prerequisite, not a result of integration"[90] we would propose that asylum seekers on the green list should be provided with access to subsidised language tuition from the outset.

The interaction of working and acquisition of language capability for new arrivals though is one where there are cross-currents of evidence. Just because a new arrival has a right to work does not mean that it is necessarily in their best interest to immediately do so. While work and language skills acquisition can of course mutually support each other, there can be tensions between the two if they 'crowd out' each other. On the one hand, it might reasonably be assumed that finding work as swiftly as possible provides the maximum benefit to a new arrival in terms of their integration into and future outcomes in their new country. Yet, evidence from Denmark gives some pause for thought.

Denmark has combined an increasingly tough approach to restricting refugees from arriving with a relatively progressive series of policy experiments in respect of those refugees who do manage to arrive. These have been separately in the areas of language skills provision, work-first policies, and targeted labour market shortages training, to seek to speed up entry into the labour market. It is therefore arguably the country where the number and design of different policy interventions and shifts in this policy space provide the most potentially useful longitudinal data.

In Denmark, a large expansion in both the quantity and quality of publicly-provided language training was very positive for employment outcomes of newly arrived refugees.[91] Whereas, a work-first policy for refugees, while it did indeed speed up their entry into the labour force, also highlighted some points of concern; men, in particular, tending to take precarious jobs with few hours, which led to their reduced participation in language training (although it had a positive effect on the share of men enrolled in education overall).[92]

On the other hand, as we discussed in a previous SMF migration report on refugees and working, evidence suggests that higher language skills do not necessarily translate into better employment outcomes. Also, there can be a danger of overestimating the level of language capability needed for employment, which may even negatively impact overall outcomes for new arrivals, if this unnecessarily delays their entry into employment. For employment itself can of course aid not just language skills, but also social interactivity and the development of connections which can support both language capability and integration more broadly.[93]

While it is good to see the realism around the fact that very few asylum seekers will have the necessary skills and background for a classical ballet dancing role, there needs to be even greater realism about the sort of jobs that many asylum seekers are realistically likely, initially at least, to get in the UK. This is not to dismiss the importance of people's skills and experience and their ambition to work to their full potential over time. But when those who have migrated to the UK take jobs work at a lower-skill level than they were previously working at in their home country, or below what their experience and qualifications appear to merit, the default should not be to represent this as a failure of them, or of their employer, or of the system.

Success should not be defined too narrowly or rigidly. Particularly for those who have fled desperate situations with meagre social and economic resources, it is a success to get a first foothold – even if it is lower down the ladder than where they were in their home country – in the UK economy and society, from which they can begin to rebuild their life and their working career, to improve their language skills, orientate themselves and navigate an unfamiliar system, over time hopefully moving into roles where they can more fully utilise their skills and experience.

Another dose of realism needs to be around the fact that, even if asylum seekers are not to be formally restricted to only working in shortage occupations, it is in these occupations, particularly lower-paying ones, where employers will in practice likely be most keen to hire them, and where they will therefore most likely get the swiftest opportunity to find work. Of course, this does not mean that all asylum seekers should just 'settle' for such jobs. But equally, this is a reality that some other countries have not only faced up to, but sought to take advantage of.

Once again, Denmark's experiences here are instructive. Its 'Industry Packages' policy, rolled out in one third of its municipalities between 2013 and 2018, was in effect a labour shortage-based integration policy aimed at newly arrived refugees with no university degree and no job. As well as a well-designed policy it also turned out to be a superbly designed practical experiment, as, firstly, it was not implemented by all municipalities; secondly, in those municipalities where it was implemented it was done so on a staggered basis; and, thirdly, whereas work-first policies were enacted at the same time by all municipalities.

The goal of the 'Industry Packages' policy was to provide the fastest possible route to a job in one of the industries experiencing labour shortages in a particular local area of Denmark. The policy identified, firstly, what and where those shortages were, but also emphasised shortage occupations that needed less upfront training. It then provided newly arrived refugees with training targeted at as swiftly as possible acquiring a minimum of the specific skills and knowledge needed to competently fill these jobs – these different training modules were the so-called 'Industry Packages'. But it also helped connect them to employers that were offering those jobs.

This programme was effective in increasing the probability of being employed in the first year after arrival, its positive effect most noticeable for men with intermediate level of education – i.e. up to secondary school education level. This group were viewed as 'on the boundary' of employment, and therefore practically able to benefit the most from the extra help that the 'Industry Packages' programme provided.[94]

For those with orange status:

If Option 2 is being utilised, one of the prime considerations for the selection of types of roles to be targeted under this option is that – just as with the Danish 'Industry Packages' – a key attribute of the roles selected should be that they should not need much training and support at all. But to the extent it is needed, it should clearly be tailored for those specific roles.

If Option 3 is being utilised, then the considerations for support should broadly be similar as for those on the green list, as the decision has been made to give these asylum seekers a potential path to an extended right to stay and work in, and integrate into, the UK.

Oversight

The UK's relatively lightly policed labour market and woeful record on labour market enforcement is well documented.[95] In this context, it is surprising that there is not more focus on the risks of this to asylum seekers even if they are given the lawful right to work. As asylum seekers who have the right to work are able to be employed in the UK outside of the formal post-Brexit labour immigration system, employers can hire them without being subject to the UK's usual labour immigration rules, and the oversight, scrutiny and accountability of employers who are employing overseas workers that is built into that system.

This lack of oversight has not been a focus of either side of the debate. This silence is particularly surprising from the more permissive side of the debate. This side of the debate *is* concerned about the potential for unfair employer practices and worker exploitation in cases where the asylum seeker is not given a right to work and may therefore be incentivised to accept unlawful employment instead. This is one of the arguments 'Lift the Ban' make for asylum seekers being given the right to work lawfully.[96]

There has though been no mention of the risk of unfair practices and exploitation which could also arise from the fact of lawful employment. It seems to be assumed that all such risks will then simply fall away. But it should not be assumed that the interests of asylum seeker workers and of employers are so benignly aligned, when asylum seeker workers come with no requirement for extra administration or accountability for employers. Unlike under the regular employer sponsorship system, employers lawfully hiring asylum seekers do not need a sponsor licence, do not need to register with the Home Office or submit to its checks, and are unconstrained by the immigration rules on what salary they employ the asylum seeker at. It is therefore little surprise that many employers have been so supportive of the Lift the Ban campaign.

Nor has there been any mention of the clear exploitation risk inherent in the fact that, if a working asylum seeker's claim fails their working then becomes unlawful and they are at risk of removal from the country. What power might an employer have, and choose to exert, over their employee in that situation?

Option 3 for orange list asylum seekers could be thought to provide a mitigant for this scenario, as the failed asylum seeker is then given certain protections against immediate unlawfulness and removal if they are in work. But arguably this option itself would also need to be closely policed, because it just replaces one scenario of exploitation risk with another, if there is a requirement that in order to have an extended right to stay the failed asylum claimant needs to remain in employment, or, even more strictly, to be working for a particular employer or in a particular sector.

In terms of where to make a start on being interested in better oversight, as set out earlier in this chapter:

- have they received the basic rights and protections that an employee is entitled to from a UK employer?

a practical starting point would surely be to pay more attention to what is happening in respect of asylum seekers working in the UK right now. Particularly given that most of their current opportunity to work in practice would appear to be in the care sector, a sector not without concerns around some more extreme types of unfair and abusive hiring and employment practices, particularly in respect of live-in care.[97]

There would seem a clear and present danger of unfair and abusive hiring and employment practices being experienced right now in the UK by asylum seekers who are in work. Not only if they are working unlawfully, but even if they are working lawfully. Neither side of the debate should want this, and there would seem potential opportunities for both sides of the debate to collaborate in ways that could help mitigate this risk.

The Home Office has no involvement in the process of employers hiring asylum seekers. There is no connection at all between the Home Office and those employers; it does not even know who those employers are. But, in having to individually approve each asylum seeker's application for permission to work, the Home Office does at least have a record of which asylum seekers have applied and been permitted to work. At that point, the asylum seeker is also issued with a national insurance number. At the same time there are a large number of effective civil society organisations – many than of them of course involved in the Lift the Ban campaign – who have contact with, and provide assistance to, asylum seekers.

In the Netherlands, for example, the employer must apply for a specific employment licence in order to employ an asylum seeker.[98] At the very least, in the UK there should be a register of employers employing asylum seekers – which could be contributed to by placing an obligation on an asylum seeker to report where they are working, once they have found a job – and those employers should be subject to specific labour market enforcement attention. More fundamentally though, consideration should be given to structural changes which could better provide some oversight and protection of asylum seekers who are working.

Consider the seasonal worker visa system for overseas horticultural workers in the UK. Here the approach to oversight is that individual employers alone are not to be trusted. Even if they are approved sponsors under the core sponsorship system, employers cannot sponsor seasonal workers. Instead, at the heart of the operation of the scheme are six 'scheme operators', licensed by the Gangmasters and Labour Abuse Authority. These operators not only recruit the workers for the scheme, they also have a responsibility to oversee that employers using workers under the scheme treat them fairly and within the law which prescribes minimum wage and working hours requirements. As one immigration lawyer puts it: "This is an unusual requirement, but it's a good one, and in the interests of the Seasonal Worker".[99]

Asylum seekers are not seasonal workers. Their position and that of overseas seasonal horticultural workers is of course not the same. But they are similar in some important respects, and in the concerns their employment gives rise to. The point is this, that in the case of:

- horticultural seasonal workers, there is enhanced focus by the government[100] on the risks of exploitation of tens of thousands of these workers who can work in the UK annually and who – unlike workers brought into the UK under the employer sponsorship system – are considered particularly vulnerable because they are not required to have a certain standard of English. As a result, the system is constructed to seek to structurally mitigate these risks. This is by no means considered to be perfect; the MAC is currently enquiring into whether this does in fact counter exploitation and poor labour market practices.[101]
- asylum seekers working, there is no enhanced focus, by the government or indeed seemingly by anyone else, on the risks of exploitation of tens of thousands of these workers who may be able to work in the UK annually and who – unlike workers brought into the UK under the employer sponsorship system – may be considered particularly vulnerable because they are not required to have a certain standard of English. There is not only no system whatsoever to counter the risk in this case, there is no system for even knowing which asylum seekers are working, where they are working, or by whom they are employed. If the MAC wanted to enquire about exploitation and poor labour market practices by those employing asylum seekers, it is not clear how practically it would even begin to do so.

The net effect of all this is that asylum seekers working in the UK are not only not subject to the usual requirements and protections enjoyed by overseas workers employed under the employer sponsorship system, they are also subject to significantly less protections than those who are considered to be most at risk of labour abuse and exploitation; seasonal horticultural workers.

There is therefore a case for considering whether and how – potentially delivered though, or at least in tandem with, key civil society organisations representing asylum seekers – elements of the 'scheme operator' or 'umbrella sponsorship' process concept could be applied to asylum seekers working, in order that that these most vulnerable workers also have some form of responsible organisation(s) specifically looking over, and looking out for, their fair and reasonable treatment while they are working.

There is another important, but challenging, aspect which such a system could also help to address in terms of asylum seekers working. Under the seasonal workers scheme, a scheme operator can have its licence revoked by the Home Office if at least 97% of the workers it has sponsored do not comply with the temporary licence of their stay and leave the UK at the end of their permitted period in the UK.[102] That is: the sponsor has a requirement to both look out for the fair and reasonable treatment of the worker while they are in the UK, but also to make sure that the worker abides by the temporariness of their permission to work in the UK and leaves when that permission has come to an end.

As this report has made clear, if asylum seeker right to work is to function and be broadly accepted as a fair and workable system, it needs to do so within the system of immigration control, not ignore it. It therefore needs to have an answer for both asylum seekers who are ultimately determined to be refugees and those who are not. A system which builds in oversight and protections for asylum seekers working could also seek to address this issue; to help to face up to and address the reality of the difficult situation where the working asylum seeker's claim fails and their permission to work in the UK comes to an end.

As highlighted in our previous SMF migration report on assisted voluntary return of migrants from the UK[103], there was a period in the recent past when a key asylum rights charity, Refugee Action, operated the assisted voluntary return programme for the UK. This was not without significant challenges, but was regarded as having broad benefits, including most importantly for the migrants who decided to return. Refugee Action is also one of the key actors within the Lift the Ban campaign. It may therefore be well positioned on both sides of the equation; to secure better rights for asylum seekers to work in the UK but also to engage practically and honestly with those asylum seekers who no longer have permission to work because their asylum claim has failed.

The concluding point on oversight of asylum seekers working though is this: the exact details of how to achieve greater scrutiny of employers and protection for working asylum seekers can be developed. What is most important is that those details would be best developed by the Home Office, the labour market enforcement authorities, *and* those civil society organisations representing asylum seekers in the UK, combining their resources to work to the same end; that of mitigating the risk of lawfully working asylum seekers experiencing unfair, abusive and exploitative practices in the UK labour market.

Proposal Four: how to think about bringing the public along

We consider that the evidence clearly points to the fact that majority British public opinion towards asylum seekers is founded on three key concepts. Successful policy therefore needs to work with, rather than against, these:

- Openness: relatively open to refugees and accepting of an asylum system which serves to identify and offer protection to refugees.
- Consequences: more inclined to believe asylum claimants are refugees than the public in most other countries, but do not believe that all asylum seekers are refugees, and believe that there should be consequences if an asylum claim fails.
- Control: the system should both be, and appear to be, in control, and the consequences to be appropriately applied.

We therefore see public opinion as supportive of asylum seekers being given the right to work on a fair and controlled basis. In practice, we would see that as meaning that majority public opinion could be made sufficiently comfortable with an asylum seeker from a high recognition rate country being given an unrestricted right to work and commence their integration as soon as reasonably practicable, ahead of being granted refugee status. At the same time, we would seepublic opinion not being supportive of an asylum seeker from a country with a very low recognition rate being given the same right, other than under very controlled conditions, and for specific and clearly articulated practical reasons.

More particularly, we do not view public opinion as supportive of an asylum system whereby, once a claimant gets into the system, an asylum claim is viewed as in effect a one-way ticket to stay and work in the UK, lawfully or not, regardless of the outcome of the asylum claim. Such an approach risks fundamentally undermining public trust in the fairness of the asylum/refugee regime, making the public less willing to admit asylum seekers and refugees to the UK.

In his piece, 'Finding common ground – an opportunity for a more collaborative relationship between the state and civil society to reform the UK asylum system', civil society leader, Julian Prior, put it well:

> *"the integrity of and trust in the asylum system is undermined if there is no consequence or conclusion when it is found that someone has no grounds on which to remain in the UK."*[104]

A negative decision on their asylum claim is of course hugely consequential for an asylum seeker, who then no longer has the right to lawfully live and work in the UK (, even if they manage to remain, and work in the UK, unlawfully). But to most of the public, the 'turn a blind eye' approach which such an outcome represents is not the consequences they were thinking of, nor the degree of control they were expecting. Indeed, it confirms their worst suspicions about the system.

In terms of the pull factor debate, it is a debate that in one sense will likely never die. Notwithstanding the strong evidence on one side of the debate, the pull factor argument likely can never evidentially be totally disproved. We do not believe there is any need to do so though. Instead, we would focus on the fact that there is little evidence that British public opinion has any issue with the numbers of refugees the UK takes in. Hundreds of thousands of Syrians, Ukrainians and Hong Kong residents have been allowed to come over a very short space of time without a murmur.

The key to the pull factor concern is instead in allowing asylum seekers to gain access to the UK labour market outside of the ordinary immigration rules before they have been adjudicated to be refugees, and when they may not be. If asylum seeker right to work is clearly focused on those whose chances of being granted refugee status are high, we would see any alleged pull factor criticism of this policy as able to be neutralised to the satisfaction of majority public opinion.

Another relevant factor for public opinion is that – as we highlighted in our most recent SMF migration report, on labour shortages[105] – immigrant workers who are helping to fill clear labour shortages are generally amongst the most favourably viewed by the public. Certainly, this was viewed as a relevant factor in the Danish 'Industry Packages' approach which, by targeting selected industries experiencing shortages of workers was viewed as likely to minimise any "crowding-out on other workers" and therefore provide a basis not only for an economically successful but also a politically acceptable policy of integrating refugees into work.[106]

In this report we have also made the case for considering an approach whereby asylum seekers who are lawfully working do not become immediately unlawful and removable if their asylum claim fails, and indeed may be given a conditional, extended right to remain should they continue in work. We have done so because we view the potential benefits of this approach in contributing to a more certain, more transparent, and more orderly, system make it worth considering. But we need to be honest that this also entails a material public perception risk.

By tying an asylum seeker's right to remain in the country not to the successful determination of their refugee claim, but to the job they have found in the meantime, such an approach risks being seen to blur the asylum system with the system for economic migration. Any step in this direction must therefore be done very carefully, with clear, and clearly explained, parameters and controls. And the benefits must be weighed against the public perception risks that it could create, which could potentially have broader knock-on adverse impact on public consent for asylum policy.

We would also make the same point for asylum seeker right to work more generally in terms of numbers. As we set out in our recent SMF migration report, 'Routes to resolution', love them or loathe them, publicly reported immigration numbers often decide what gets reported about immigration and asylum in the media, and ongoing numbers often anchor recurring news stories on these particular aspects.[107] In that sense asylum seeker right to work, even if constructed in the most sensitive way to public perceptions, may be self-limiting in terms of the numbers that are viewed as acceptable before they start to undermine the public perception of the acceptability of the asylum regime as primarily providing protection.

By which we mean, the more that the pool of asylum seekers becomes seen as a substantial pool of potential workers that employers are actually making use of, the more the danger increases that confusion ensues, the public conflate this pool with economic migrants, and perceptions between economic migration and asylum get blurred in a way that starts to erode public faith in control and public support for asylum seekers and refugees.

This key issue – the importance of not only of the reality, but also the perception of control – leads on to our final proposal.

Proposal Five: the timing of the change

The state of the asylum determination system in the UK has rarely been such a topic of public attention. The numbers of asylum seekers whose claims have built up in the system, the time being taken by the Home Office to process and determine those claims, the backlog it has created, and the real-life consequences for asylum seekers stuck in barracks or hotels or maybe barges awaiting the outcome, and the communities housing them, have become a rolling news item.

In this context, it is tempting to view liberalising asylum seeker right to work as a potential safety valve, something that can be used to at least partially alleviate the pressures that have built up in the system. If asylum seekers can work and earn while stuck in the backlog, with a positive economic outcome for both the economy and themselves, then they may not need to be looked after from public resources, and the stresses and tensions around that can at least be reduced, while order is restored.

This is an understandable argument. But we would advise caution. This would risk jeopardising a more effective, longer-term reform for the sake of what would likely not be a very effective short-term fix. As set out in this report, asylum seeker right to work is a nuanced and sensitive issue. We believe that the system can be improved in a way that satisfies the concerns of all: the government, the public, employers and asylum seekers themselves. But, to have the best chance of public acceptance, to mitigate the risk of being misrepresented, any change to the right to work should be made from a calm and orderly position, a position in which the system is clearly back under control, the tension around it already defused.

Making a change to asylum seeker right to work when the asylum system is widely viewed as dysfunctional and out of control, in order to be seen to help bring the system under control, particularly at a time when, despite the high overall recognition rates, focus on the Channel crossings has more recently been on relatively high numbers of Albanian, and then, Indian arrivals, both with relatively low recognition rates, would be a dangerous approach. If there is any suggestion that changes to asylum seeker right to work policy are being made, not because they are the right, fair, sensible thing to do, but instead because they are being used:

- to try to compensate for the fact that the system is out of control, or
- to hide the fact that the system is out of control, or
- to massage the numbers by allowing people to work and disappear out of the queue and off the backlog and circumvent the system, without having their asylum claim properly determined,

this could prove damaging to the cause of a sensible and fair asylum right to work policy, indeed to broader asylum policy.

Asylum seeker right to work reform is too important to take such a risk. To have the best chance of acceptance, and therefore success, it needs to be seen as a sensible and fair adjustment made to a properly functioning asylum system, from a position of control having been re-established, not misrepresented and misconstrued as part of a package of seemingly increasingly desperate attempts to re-establish that control.

ENDNOTES

[1] Jonathan Thomas, Aveek Bhattacharya and Gideon Salutin. 'The Whole of the Moon: UK labour immigration policy in the round (Social Market Foundation, 26 June 2023) https://www.smf.co.uk/wp-content/uploads/2023/06/The-Whole-of-the-Moon-June-2023.pdf.

[2] Or indeed if they are instead granted humanitarian protection, leave under the family rules or discretionary leave to remain.

[3] UK Visas and Immigration, 'Immigration and protection data: Q1 2023' (25 May 2023) https://www.gov.uk/government/publications/immigration-and-protection-data-q1-2023.

[4] Department of Health and Social Care and Home Office, 'Biggest boost for social care as Health and Care Visa Scheme expanded ' (24 December 2021) https://www.gov.uk/government/news/biggest-visa-boost-for-social-care-as-health-and-care-visa-scheme-expanded.

[5] Home Office Immigration Statistics year ending March 2023 (25 May 2023) https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/why-do-people-come-to-the-uk-to-work.

[6] https://www.refugee-action.org.uk/lift-the-ban/.

[7] 'Lift the Ban: Why giving people seeking asylum the right to work is common sense' (Lift the Ban, July 2020) https://www.refugee-action.org.uk/lift-the-ban/.

[8] Commission on the Integration of Refugees, 'A Broken System? Asylum Reform Initiatives 1997-2022 (November 2022).

[9] Lift the Ban, July 2020 (n 7).

[10] https://www.liamfox.co.uk/lift-ban-asylum-seekers-and-employment-322.

[11] Georgina Sturge, 'Asylum Statistics' (House of Commons Library, 1 March 2023) https://researchbriefings.files.parliament.uk/documents/SN01403/SN01403.pdf.

[12] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003L0009.

[13] Melanie Gower, CJ McKinney and Lulu Reade, 'Asylum seekers: the permission to work policy (House of Commons Library, 9 December 2022) https://researchbriefings.files.parliament.uk/documents/SN01908/SN01908.pdf.

[14] ibid.

[15] Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033.

[16] UK Visas and Immigration, 'Permission to work and volunteering for asylum seekers: caseworker guidance' (last updated 30 December 2022) https://www.gov.uk/government/publications/handling-applications-for-permission-to-take-employment-instruction.

[17] ibid.

[18] House of Commons Library, Asylum seekers: the permission to work policy (n 13).

[19] Statement on Asylum Policy made by Tom Pursglove (UIN HCWS452) on 8 December 2021 https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/HCWS452.

[20] Lift the Ban, July 2020 (n 7).

The Migration Observatory, 'UK policies to deter people from claiming asylum' (4 April 2023) https://migrationobservatory.ox.ac.uk/resources/commentaries/uk-policies-to-deter-people-from-claiming-asylum/.

[21] Home Office, 'Sovereign Borders: International Asylum Comparisons Report, Section I: Drivers and impact on asylum migration journeys' (Migration and Border Analysis, September 2020) https://freemovement.org.uk/wp-content/uploads/2022/11/Annex-A-Sovereign-Borders-International-Asylum-Comparisons-Report-Section-1-Drivers-and-impact-on-asylum-migration-journeys.pdf.

[22] Migration Advisory Committee, Annual Report 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040877/2021_Annual_Report_combined_FINAL_v3.pdf.

[23] AIDA country database https://asylumineurope.org/.

See for example the approach in the Netherlands; it is only a six month wait period, but even then the asylum seeker is only allowed to work for half the year, and subject to administrative requirements: 'Access to the Labour Market; Netherlands' (Asylum Information Database, last updated 22 May 2023) https://asylumineurope.org/reports/country/netherlands/reception-conditions/employment-and-education/access-labour-market/.

[24] Michael Clemens, 'Doing Refugee Integration Better: Three Lessons from the Latest Research' (Center for Global Development, 19 October 2022) https://www.cgdev.org/blog/doing-refugee-integration-better-three-lessons-latest-research.

[25] Moritz Marbach, Jens Hainmueller and Dominik Hangartner, 'The long-term impact of employment bans on the economic integration of refugees' ' Science Advances 4(9) (2018) https://www.science.org/doi/10.1126/sciadv.aap9519.

Jens Hainmueller, Dominik Hangartner and Duncan Lawrence, 'When lives are put on hold: Lengthy asylum processes decrease employment among refugees' ' Science Advances 2(8) (2016) https://www.science.org/doi/10.1126/sciadv.1600432.

Isabel Ruiz and Carlos Vargas-Silva, 'What Works for Improving Refugee Outcomes in High-Income Countries? Polciy Insights for the UK (COMPAS, January 2021) https://www.compas.ox.ac.uk/wp-content/uploads/What-Works-for-Improving-Refugee-Outcomes-in-High-Income-Countries-Policy-Insights-for-the-UK.pdf.

[26] Lift the Ban, July 2020 (n 7).

[27] Statement on Asylum Policy made by Tom Pursglove (n 19).

[28] Ibid.

[29] Lift the Ban, July 2020 (n 7).

[30] HM Government, 'The UK's future skills-based immigration system' (December 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf.

[31] ibid.

[32] UK Visas and Immigration, Permission to work caseworker guidance (n 16).

[33] Home Office, 'Immigration system statistics, year ending December 2022' (23 February 2023) https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022.

UK Visas and Immigration, Permission to work caseworker guidance (n 16).

[35] 'Special Report on Migration', *The Economist* (28 May 2016).

[36] Sweden Country Report: Access to the Labour Market (Asylum Information Database, last updated 19 April 2023) https://asylumineurope.org/reports/country/sweden/reception-conditions/employment-and-education/access-labour-market/.

[37] Ekaterina Aleynikova & Max Mosley, 'The Economic and Social Impacts of Work Restrictions on Asylum Applicants' (National Institute of Economic and Social Research, Discussion Paper No. 549, 25 June 2023) https://www.niesr.ac.uk/wp-content/uploads/2023/06/DP549.pdf.

[38] Lift the Ban, July 2020 (n 7).

[39] ibid.

[40] Nicholas Reed Langen, 'Is it time for the UK to change its stance on asylum seekers working?' (Free Movement, 20 January 2023) https://freemovement.org.uk/is-it-time-for-the-uk-to-change-its-stance-on-asylum-seekers-working/.

[41] Migration Advisory Committee, Annual Report 2021 (n 22).

[42] Jonathan Thomas, 'Routes to resolution: Finding the centre ground in Britain's immigration debates' (Social Market Foundation, 19 December 2022) https://www.smf.co.uk/wp-content/uploads/2022/12/Routes-to-resolution-December-2022-2.pdf.

[43] Ananya Chowdhury, 'Banning asylum seekers from working is both morally and economically unjustifiable' The Daily Telegraph (25 March 2019) https://www.telegraph.co.uk/politics/2019/03/25/banning-asylum-seekers-working-morally-economically-unjustifiable/.

[44] House of Commons Library, Asylum seekers: the permission to work policy (n 13).

[45] Statement on Asylum Policy made by Tom Pursglove (n 19).

[46] Lift the Ban, July 2020 (n 7).

[47] HM Government, The UK's future skills-based immigration system (n 30).

[48] UK Visas and Immigration, Immigration and protection data: Q1 2023 (n 3).

[49] UK Visas & Immigration answer (FOI Reference 74079) dated 14 February 2023 to Freedom of Information request (FOI 73520) submitted by Edward Williams on 19 January 2023 https://www.whatdotheyknow.com/request/929647/response/2235028/attach/html/3/FOI%20Response%2074079.pdf.html.

[50] Home Office Immigration Statistics, year ending March 2023, 'How many people do we grant protection to?' (25 May 2023) https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/how-many-people-do-we-grant-protection-to.

[51] Lindsay Judge and Hannah Slaughter, 'Enforce for good' (Resolution Foundation, 25 April 2023) https://www.resolutionfoundation.org/publications/enforce-for-good/.

[52] Claire Millot from the Salam migrant welfare NGO quoted in Alice Tidey, 'Why are France-England migrant crossings on the rise?' Euronews (24 November 2021) https://www.euronews.com/my-europe/2021/11/24/why-have-france-england-migrant-crossings-doubled-in-a-year.

[53] Lift the Ban, July 2020 (n 7).

[54] Ipsos, 'World Refugee Day: Global attitudes towards refugees' (June 2020).

[55] Robert Ford and Marley Morris, 'A New Consensus? How Public Opinion Has Warmed to Immigration (IPPR, November 2022)

[56] The Whole of the Moon (Social Market Foundation) (n 1).

[57] Ibid.

[58] Lift the Ban, July 2020 (n 7).

Parliamentary Statement UIN HCWS 452 on asylum policy made on 8 December 2021 https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/HCWS452.

[59] NIESR, The Economic and Social Impacts of Lifting Work Restrictions on People Seeking Asylum (n 37).

[60] Jan van de Beek et al., 'Borderless Welfare State: The Consequences of Immigration for Public Finances' 2nd revised edition (University of Amsterdam, Amsterdam School of Economics, April 2023) https://demo-demo.nl/wp-content/uploads/2023/06/Borderless_Welfare_State-2.pdf

although of course it is possible that restrictions on asylum seekers' right to work may itself contribute to this outcome.

[61] NIESR, The Economic and Social Impacts of Lifting Work Restrictions on People Seeking Asylum (n 37).

[62] UK Visas and Immigration, Immigration and protection data: Q1 2023 (n 3).

[63] Parliamentary Question UIN 1776, to Home Office, tabled on 9 January 2020, answered on 14 January 2020 https://questions-statements.parliament.uk/written-questions/detail/2020-01-09/1776.

Parliamentary Question UIN 122683, to Home Office, tabled on 10 February 2022, answered on 22 February 2022 https://questions-statements.parliament.uk/written-questions/detail/2022-02-10/122683.

[64] UK Visas & Immigration answer (FOI Reference 74079) dated 14 February 2023 (n 49).

[65] Lift the Ban, July 2020 (n 7).

[66] HM Government, 'Biggest boost for social care as Health and Care Visa scheme expanded' (24 December 2021) https://www.gov.uk/government/news/biggest-visa-boost-for-social-care-as-health-and-care-visa-scheme-expanded.

[67] James Kirkup, 'The failure of our care system should shame us all' The Times (15 June 2023) https://www.thetimes.co.uk/article/42679ebc-0b91-11ee-997e-7710367054a0.

[68] Home Office Immigration Statistics year ending March 2023 (n 5)https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/why-do-people-come-to-the-uk-to-work.

[69] 'Are you an asylum seeker? Do you want to start work?' (Migration Justice Project at the Law Centre Northern Ireland, January 2022) https://lawcentreni.s3.amazonaws.com/Briefing-No-1-English.pdf.

[70] Sonia Lenegan, 'How asylum seekers can get jobs in social care' (Free Movement, 12 January 2022) https://freemovement.org.uk/asylum-seekers-social-care-jobs-shortage-occupation-list-2022/.

[71] Home Office, 'Streamlined asylum processing' (Guidance published 23 February 2023) https://www.gov.uk/government/publications/streamlined-asylum-processing/streamlined-asylum-processing-accessible.

[72] Rajeev Syal, 'Home Office to fast-track thousands of Iraqi and Iranian asylum claims' The Guardian (16 May 2023) https://www.theguardian.com/uk-news/2023/may/16/home-office-to-fast-track-thousands-of-iraqi-and-iranian-asylum-claims.

[73] Home Office Immigration Statistics, year ending March 2023, How many people do we grant protection to? (n 50).

[74] ibid.

[75] ibid.

[76] The Whole of the Moon (Social Market Foundation) (n 1).

[77] Migration Advisory Committee, 'A Guide to the Shortage Occupation List (SOL) and Companion to the SOL Call for Evidence 2023' (27 February 2023) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139466/CfE_Guidance.pdf.

[78] The Whole of the Moon (Social Market Foundation) (n 1).

[79] https://www.unhcr.org/media/28185.

[80] Colin Yeo, 'What state is the UK's asylum system really in?' (19 June 2023) https://wewantedworkers.substack.com/p/what-state-is-the-uks-asylum-system?.

[81] Home Office Immigration Statistics year ending March 2023, List of Tables (25 May 2023) https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/list-of-tables#detention-and-returnshttps://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/why-do-people-come-to-the-uk-to-work.

[82] NIESR, The Economic and Social Impacts of Lifting Work Restrictions on People Seeking Asylum (n 37).

[83] Heather Rolfe, presentation on 'Hong Kongers in the UK: surveys and data sources' at the UK Migration Users Forum (3 November 2022).

Elaine Chong and Patrick Clahane, 'Swapping Hong Kong for Crewe: 'We won't go back' BBC (25 September 2022) https://www.bbc.co.uk/news/uk-62658669.

[84] Marley Morris and Dean Hochlaf, 'Measuring the benefits of integration: The value of tackling skills underutilisation' (IPPR, 18 June 2019) https://www.ippr.org/research/publications/measuring-the-benefits-of-integration.

[85] Tommaso Frattini, 'Moving Up the Ladder? Labor Market Outcomes in the United Kingdom amid Rising Immigration' (Migration Policy Institute and International Labour Organisation, May 2014) https://www.migrationpolicy.org/research/moving-up-ladder-labor-market-outcomes-united-kingdom-immigration.

Nauro Campos, 'European migrants are mostly high-skilled, even if temporarily taking up low-skilled jobs'' (LSE Blog, 6 October 2018) http://blogs.lse.ac.uk/politicsandpolicy/high-skilled-migrants-in-theuk/.

[86] Baroness Williams of Trafford in the House of Lords Debate on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (21 October 2020) (Hansard, Volume 806) https://hansard.parliament.uk/Lords/2020-10-21/debates/84EE8238-F96E-4C8F-AF34-27312C2F4048/ImmigrationAndSocialSecurityCo-Ordination%20(EUWithdrawal)Bill.

[87] UK Visas and Immigration, Permission to work caseworker guidance (n 16).

[88] Sunder Katwala, Jull Rutter and Steve Ballinger, 'Control and compassion: A new plan for an effective and fair UK asylum system' (British Future, February 2023) https://www.britishfuture.org/wp-content/uploads/2023/02/Control-and-Compassion-report.pdf.

[89] Ibid.

[90] Michael Collyer et al, 'A long-term commitment: integration of resettled refugees in the UK' (University of Sussex, December 2018).

[91] Mette Foged, Linea Hasager & Giovanni Peri, 'Comparing the Effects of Policies for the Labor Market integration of Refugees' (National Bureau of Economic Research, Working Paper 30534, October 2022) https://www.nber.org/papers/w30534.

Jacob Nielsen Arendt et al, 'Language Training and Refugees' Integration' (National Bureau of Economic Research, Working Paper 26834, March 2020, revised February 2021) https://www.nber.org/system/files/working_papers/w26834/w26834.pdf.

[92] Jacob Nielsen Arendt, 'Labor market effects of a work-first policy for refugees' Journal of Population Economics 35 (2018) 169 https://link.springer.com/article/10.1007/s00148-020-00808-z.

[93] Russell Hargrave and Jonathan Thomas, 'Stuck in the middle with you' (Social Market Foundation, 25 March 2021) https://www.smf.co.uk/wp-content/uploads/2021/03/Stuck-in-the-middle-with-you-Mar-2021.pdf.

[94] Mette Foged, Janis Kreuder & Giovanni Peri, 'Integrating Refugees by Addressing Labor Shortages? A Policy Evaluation' (National Bureau of Economic Research, Working Paper 29781, February 2022) https://www.nber.org/system/files/working_papers/w29781/w29781.pdf.

[95] Resolution Foundation, Enforce for good (n 51).

[96] Lift the Ban, July 2020 (n 7).

[97] 'The vulnerability of paid migrant live-in carer workers in London to modern slavery (University of Nottingham Rights Lab, August 2022) https://www.nottingham.ac.uk/Research/Beacons-of-Excellence/Rights-Lab/resources/reports-and-briefings/2022/July/The-vulnerability-of-paid-migrant-live-in-care-workers-in-London-to-modern-slavery.pdf.

[98] Access to the Labour Market; Netherlands (Asylum Information Database) (n 23).

[99] Pip Hague, 'Briefing: the Seasonal Worker visa (Free Movement, 16 June 2023) https://freemovement.org.uk/seasonal-worker-visa/.

[100] Department for Environment Food & Rural Affairs and the Home Office, 'Seasonal workers pilot review 2019 (24 December 2021) https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019.

[101] Migration Advisory Committee. 'Letter to Immigration Minister regarding MAC inquiry into seasonal worker visa' (24 March 2023) https://www.gov.uk/government/publications/letter-to-immigration-minister-on-seasonal-worker-visa-inquiry/letter-to-immigration-minister-regarding-mac-inquiry-into-seasonal-worker-visa-accessible.

[102] Pip Hague, Briefing: the Seasonal Worker visa (n 99).

[103] Jonathan Thomas, 'Between a rock and a hard place: AVR 2.0: the case for rebooting Assisted Voluntary Return in the UK's immigration control regime' (Social Market Foundation, 2 December 2019) https://www.smf.co.uk/wp-content/uploads/2019/12/Between-a-rock-and-a-hard-place.pdf.

[104] Julian Prior, 'Finding common ground – an opportunity for a more collaborative relationship between the state and civil society to reform the UK asylum system' (December 2020).

[105] Social Market Foundation, The Whole of the Moon (n 1).

[106] Foged, Kreuder & Peri, Integrating Refugees by Addressing Labor Shortages? A Policy Evaluation (n 94).

[107] Social Market Foundation, Routes to resolution (n 42).