



Family reunion from Europe post-Brexit: No light at the end of the tunnel

APRIL 2022

Contents

Executive summary	3
Introduction: the importance of family reunion.....	5
Key Findings	8
Methodology.....	9
Language	10
Chapter 1: An insubstantial legal framework	12
Chapter 2: Lack of support from within country of application	20
Chapter 3: Delay	25
Chapter 4: Bureaucracy of the system and case breakdown	28
Chapter 5: Fees and fee waivers	33
Chapter 6: Legal aid and finding representation.....	36
Conclusion	38
Bibliography	41

Executive summary

This report documents the attempts of displaced family members in Europe to reunite in the UK. Since 1 January 2021, the UK is no longer part of the EU or a signatory to the Dublin III Regulation, and the landscape of family reunion from within the EU has shifted drastically.

This report will use data gathered over a year of processing casework referrals for family reunion applications to document the inadequacy of the procedures available to displaced people. The report highlights testimony from individuals who have or are trying to reunite with family members and will draw on accumulated practical experience from working with separated families.

Introduction provides context for the report by setting out the state of family reunion to the UK, an explanation of the remit of the RLS Family Reunion from Europe project, and our key findings.

Methodology sets out the methodology behind this research report.

Chapters 1 - 6 focus on the barriers to family reunion in the UK.

Chapter 1 addresses the inadequate legal framework, comparing the provisions with the previous Dublin III infrastructure and examining the shortcomings specific to displaced people in Europe.

Chapter 2 seeks to understand the impact of severing the connection between asylum and reunion for those in Europe, particularly when considering the implications of making a family reunion application while displaced and seeking asylum in an unfamiliar country.

Chapter 3 focuses on delay, the ramifications of prolonged separation on the ability to engage and trust in legal proceedings and the extent to which people are pushed towards irregular routes through the frustration and despair of indefinite limbo.

Chapter 4 examines the evidential requirements of family reunion, and the links between the difficult, bureaucratic processes inherent in making an Entry Clearance application and the high level of cases which break down prior to submission.

Chapter 5 sets out the impact of the dysfunctional fee waiver application system in the UK, and the implications of fee-paying applications for applicants and sponsors alike.

Chapter 6 addresses the availability of representation through state-funded legal aid and the difficulty of self-representation for those applying outside the Immigration Rules.

Conclusion outlines the key takeaways from the first year of the project, addresses the Ukraine Family Scheme guidance, and argues for the urgent need to protect and broaden access to family reunion.

Introduction: the importance of family reunion

The ability to be with our loved ones; to spend time with them, to live with them, to eat with them and to go to sleep at night without worrying about them, is integral to all of our lives. The importance of family cannot be understated, and the vital nature of communal and social ties for humans is something that all can recognise, in their lives and in the lives of others.

When families are suddenly or violently uprooted, the structures which provide individuals with comfort and community are ruptured. The separation of family members during forced displacement and flight can have devastating, long-lasting consequences on peoples' well-being and ability to rebuild their lives.¹

The importance of family reunion is therefore amplified for those who have fled their country of former residence and who, in addition to having lost their family, have lost their country, network and life as they know it, particularly where those family members are left still facing persecution or difficulties in their place of residence. Research conducted with family members in the UK emphasises the difficulty that many face while trying to treat or address mental health difficulties and trauma with loved ones still lost, displaced or struggling.² Many refugees, and particularly child refugees, have experienced serious trauma, and continuing separation from their families can serve to exacerbate this, and to impede therapeutic intervention. The inevitable outcome of restricting or delaying access to family reunion is unnecessary human suffering.³

Accessible and prompt family reunification procedures help to promote safe and legal avenues to safety for family members, thereby helping reduce their exposure to the dangers of irregular movement and reducing demand for smugglers and the risk of trafficking.⁴ Limited opportunities for family reunion also exacerbates humanitarian crises in countries such as Greece or Italy where displaced people arrive in an attempt to join their families and end up trapped in squalid conditions, unable to exercise their rights.⁵

Given the UK's geographical position and the rising numbers of people faced with making a dangerous and potentially life-threatening crossing, family reunion also presents a means of

¹ UN High Commissioner for Refugees (UNHCR), *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, available online at <https://www.unhcr.org/4f54e3fb13.pdf>.

² See for example Oxfam International, *Safe but not Settled: The impact of family separation on refugees in the UK*, January 2018, available online at

<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620409/rr-safe-but-not-settled-refugees-uk-310118-en.pdf;jsessionid=E70A30D49E2DD26EDAB0BB83B6E75A9F?sequence=1>

³ Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available online at <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>.

⁴ Frances Nicholson/ UN High Commissioner for Refugees (UNHCR), *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, available online at <https://www.refworld.org/docid/5a902a9b4.html>.

⁵ British Refugee Council and Oxfam Joint Agency Briefing Note, *Together Again – reuniting refugee families in safety – what the UK can do*, February 2017, available online at <https://www.refugeecouncil.org.uk/wp-content/uploads/2019/07/ja-together-again-refugee-family-reunion-uk-280217-en.pdf>.

ensuring safe passage into the UK for those fleeing danger and seeking both protection and family reunion. The tragedy of 27 people drowning in the Channel in November 2021 illuminates the real and present threats to life inherent in being forced to enter the UK in this violent and perilous manner.⁶ Indeed, the Institute of Race Relations report *Deadly Crossings and the Militarisation of Britain's Borders* estimates that 294 people have died at the British borders with France between 1999 and October 2020. The devastating report, which seeks where possible to give an identity and a history to these “nameless bodies” and “names without history” contains many references to those who died crossing the channel in an attempt to reach siblings or other family members already present and waiting for them in the UK.⁷

When the UK left the European Union, one of two main routes for refugee and asylum-seeking families to reunite in the UK was lost. The EU Dublin System, although flawed, had up until December 2020 become an increasingly important route for families across Europe to reunite in the UK.⁸

The ubiquity and similarity of Dublin procedures from state to state had meant that it was straightforward for community knowledge to be accumulated, and for people seeking to reunify with family to engage with the underlying mechanisms of Dublin, guided by friends, acquaintances and family members with experience of the system. In their briefing on Family Reunion after Brexit, the British Red Cross warned that leaving the EU without a recognisably similar system in place would potentially leave separated families without a safe, legal route to reunion, and would increase the risk that people would resort to more dangerous alternatives.⁹ Overall, however, the UK government has shown little interest in maintaining the Dublin route, and has instead emphasised an approach focused on criminalising entry and 'taking back control of our borders'.¹⁰

This means that, following the withdrawal of the UK from the EU in December 2020, the landscape of family reunion for those seeking asylum within Europe underwent a seismic shift. Many families were left caught between two mechanisms of legal reunion, without access to legal advice or representation, and without assistance to understand the requirements of so-called embassy proceedings—applications for entry clearance or leave to enter the UK via domestic legal provisions—and in particular the narrow and prescriptive requirements of the Immigration Rules, which result in many applications having to be made *outside the rules*,

⁶ Jamie Grierson, 'Channel drownings: what happened and who is to blame?' *The Guardian*, 25 November 2021, available online at <https://www.theguardian.com/world/2021/nov/25/channel-drownings-what-happened-and-who-is-to-blame>.

⁷ Maël Galisson and the Institute of Race Relations, *Deadly Crossings and the Militarisation of Britain's Borders*, 2020, available online at <https://irr.org.uk/wp-content/uploads/2020/11/Deadly-Crossings-Final.pdf>.

⁸ The British Red Cross, *Refugee Family Reunion after Brexit: British Red Cross policy briefing on what Brexit will mean for separated families seeking to reunite in the UK*, available online at <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/british-red-cross-briefing-on-refugee-family-reunion-and-brexit.pdf>.

⁹ Ibid.

¹⁰ See policy paper entitled *EU Exit: Taking back control of our borders, money and laws while protecting our economy, security and Union*, published November 2018 and available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759792/28_November_EU_Exit_Taking_back_control_of_our_borders_money_and_laws_while_protecting_our_economy_security_and_Union_1_.pdf; tweet from Prime Minister Boris Johnson stating 'Let's get Brexit done, take back control of our borders and implement an Australian style, points-based immigration system' dated December 2nd 2019 and available online at <https://twitter.com/borisjohnson/status/1201427034188201984?lang=en>.

placing reliance on exceptionality and the underpinning obligations of the Article 8 family life provisions of the ECHR.

Refugee Legal Support's Family Reunion from Europe (FRFE) project was set up out of a desire to provide legal advice and support in the aftermath of Brexit in the context of family reunion. The project had two main limbs; providing or finding legal assistance for 'transitional' Dublin cases, where a Take Charge Request (TCR) had been sent to the UK by another EU member state but no response had yet been issued, and assisting clients who were trying to join family members in the UK from Europe post-Brexit.

When the UK was part of the EU, the majority of transfers via Dublin were from Greece. In 2019, the UK received 1531 Take Charge Requests (TCRs) and 705 Take Back requests (TBRs). Of these, 1146 were from Greece, approximately 74%. For this reason, and due to RLS' joint presence in Greece and the UK, the initial focus of the FRFE project was on Greece, and the majority of FRFE referrals (75%) were from Greece. However, we kept our criteria for referral as wide as possible, with our only requirement being that the family member seeking reunification to the UK was in Europe.

During the first year of the project, RLS was approached by 103 people seeking to reunite with a family member. Of those 103, 89 cases were Entry Clearance applications, and 13 were post-Dublin 'transition' cases, while one referral did not fit either category.

The project was set up in conjunction with five commercial law firms; Allen & Overy, Ashurst, Orrick, Herrington & Sutcliffe, Reed Smith and White & Case, with a sixth firm, Simmons & Simmons, joining in July 2021. The structure of the project consisted of small teams of lawyers from the commercial firms assisting with the completion of Exceptional Case Funding ('ECF') legal aid applications on behalf of the family member in Europe. Once ECF was in place, the volunteer teams assisted with the preparation of a referral bundle, while the FRFE project coordinator tried to refer the case to a legal aid practitioner. Once referred, the legal aid practitioner would inform the Legal Aid Agency they had conduct of the matter and would begin working on the case.

Following the first year of the project, RLS and the contributing firms changed the remit and structure of the FRFE scheme. First, the geographical remit was expanded to include Turkey and Libya, in order to recognise the militarised borders of the EU, the rising ubiquity of pushbacks and the difficulties that many people face trying to access reunion or asylum within Europe. Second, the structure of the project was amended to include funding for a legal aid caseworker, based at Coram Children's Legal Centre, whose role is to accept case referrals once ECF is in place. This step aimed to remove delay and uncertainty from our referral process, and to ensure that a family's case could be dealt with from start to finish. Two more firms also joined the project for the second year: Kirkland & Ellis and Norton Rose Fulbright.

This report aims to provide an analysis of access to reunion in the UK for families separated between the UK and Europe, at the culmination of the first year of the FRFE project.

Key Findings by RLS

The following clear barriers to family reunion have been identified:

1. An **inadequate legal framework**, which fails to recognise the importance of certain familial bonds;
2. A lack of **legal, social and familial support** for displaced people within the country of application, which undermines the strength of cases and the efficacy of legal representation in the UK;
3. An unbearably lengthy **delay at many stages of the process**, from sourcing representation to awaiting fee waiver responses, which strains relationships and which can precipitate consideration of unsafe and irregular routes;
4. An **evidentially-heavy process** for outside the rules applications, the demands of which daunt and discourage both sponsors and applicants alike;
5. A requirement to pay application fees which, coupled with a **fee waiver system that is unfit for purpose**, targets the poorest and most precarious applicants; and
6. A **struggle to find legal aid representation** in an overburdened sector where ECF is the only option for many families.

Methodology

Our findings in this report are drawn from four key sources.

First, we drew from 7 semi-structured interviews with former clients of Refugee Legal Support, conducted between December 2021 and February 2022. We only approached clients with whom we no longer worked, thereby allowing clients to speak freely without any concerns around their case or around future work. As well as keeping our clients anonymous, we have taken out references to nationality unless necessary for context regarding their testimony. Every client who responded to our request was interviewed.

Interviewees selected their preferred method of response, ranging from written responses via email, interviews conducted via Zoom, or interviews conducted in person. All interviews were conducted in the preferred language of the interviewee, with a qualified interpreter attending remotely. Each of the interviewees was asked the same set of survey questions, addressing their understanding of the family reunion process, the ease or difficulty with which they felt that they could engage with the family reunion process, the feelings that accompany making a family reunion application, the impact of the process on family members and family relationships, and their thoughts on improving the process.

Secondly, we draw on 6 interviews with practitioners who have worked on family reunion cases with RLS or who have received FRFE project referrals. The pool of practitioners interviewed includes legal aid caseworkers, solicitors and barristers. Information provided by practitioners has also been anonymised, to encourage frank engagement with the issues at hand. Practitioners were asked a set of survey questions, addressing their thoughts on the biggest barriers to family reunion, their observations concerning the case management and workload for family reunion cases, their experiences working with displaced people trying to reunite in the UK, and their comments on the legal and procedural elements of family reunion.

Thirdly, we rely on our own observations drawn from twelve months spent working with family members, assessing cases, processing over 100 referrals, signposting to other organisations and referring onwards to legal practitioners.

Finally, we rely on the overall data gathered through the FRFE project over the last year, concerning all cases referred to the project.

Language

The importance of family reunion is often discussed solely in relation to those recognised as refugees. In this report, as informed by our work over the last year, we wish to reflect the vital nature of family reunion for asylum seekers, for undocumented people, and for all those displaced and/or separated from loved ones. Where specifically necessary to understand the legal framework of family reunion, we use the words asylum-seeker and refugee to denote legal status. Otherwise, wherever possible, we use the term ‘family member’.

We also wish to note that reliance on a framework of integration means that displaced people and their ability to ‘integrate’ becomes the focus of any problem, obscuring the impact of violent and hostile societal structures. While this report will include reference to the immediate and long-term effects of family reunion on family members, we do not believe that integration is an effective or appropriate unit of measurement through which to assess the state's responsibility to unite loved ones and family members.

"As people who fled our country, who have faced discrimination, who have faced all of this difficult stuff and all this trouble on our journey, we expected some rest after all of this discrimination and difficulty and trouble.

*But here still, after all this time, I am in one country and my mum is in another country and I do not see any light at the end of the tunnel."*¹¹

¹¹ Interview with Z, a recognised refugee in the UK, whose mother is stranded in Greece.

Chapter 1: An insubstantial legal framework

Within the Immigration Rules, refugee family reunion under Part 11 is limited to pre-flight partners or spouses, and children under 18. Additional provisions under Part 8 allow for minor children to join adult family members in the UK, albeit curtailed by additional maintenance and accommodation requirements and by the requirement of payment of an application fee.

The vast majority of cases referred to us during the first year of the FRFE project fell outside the highly restrictive Immigration Rules. Of the cases referred to RLS, **fewer than 5%** were able to meet the Immigration Rule requirements for refugee family reunion.¹² Even where cases met the relationship requirements under Part 8, the sponsoring family member in the UK fell short of the accommodation and maintenance requirements in **almost every case**.

The constricting nature of the rules enforces an obligatory reliance on Article 8 and 'outside the rules' applications in order to reunite family members. Applications outside the rules are extremely complex, more time consuming, more difficult to advise on (thus requiring expert specialist legal representation), and require greater amounts of evidence and engagement from both the applicant outside the UK and the sponsor in the UK. As one practitioner interviewed for this report summarised when asked about the barriers to successful family reunion, *"[t]he law itself is the biggest barrier; the definition of family life, the narrow scope of Article 8 and the categories of family member accepted"*.¹³

This chapter provides **an overview of the areas in which the legal framework for family reunion is most limited**, and the impact that this has on practitioners and families alike.

Restrictive rules: the limited definition of family

One of the clearest barriers to family reunion in the UK is the inflexible and prohibitive understanding of qualifying 'family members' within the Immigration Rules. For non-fee-paying applications, the limited considerations of family unity stretch only to the pre-flight partners and minor children of recognised refugees.

There are no provisions allowing children who have been recognised as refugees in the UK to bring their parents to join them, and no real recognition within the Immigration Rules of the bonds that exist between siblings, grandchildren and grandparents, or any other form of 'extended' family member. This approach of prioritising the nuclear family above all else fails

¹² 5 out of 103 cases concerned refugees in the UK wishing to reunite with pre-flight spouses or minor children.

¹³ Practitioner interview B6.

to acknowledge the deep and persisting relationships between adults, the severing of which can cause lifelong grief and trauma.

The UNHCR encourages States to adopt a more inclusive definition of family, which goes beyond the traditional construct of the nuclear family, applying *“liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family.”*¹⁴

However, for many of those hoping for reunion with loved ones in the UK:

*“the fundamental problem is that the UK Government **does not consider their loved ones to be their family**, regardless of their bonds of love and belonging. For this group, unless they are able to demonstrate compassionate and exceptional circumstances (which would undoubtedly require legal support), they have almost no possibility of having their loved ones rejoin them.”*¹⁵

As summarised in the Red Cross report *Disrupted Flight; the Realities of Separated Families in the EU*, beyond the fact that the nuclear family concept does not reflect how the family unit is constituted and evolving globally, including in European societies, such an understanding disregards the profound changes to the family structure which come about as a result of forced displacement.¹⁶

By limiting the possibilities of family reunion, sponsors are forced to make complex and arguably impossible decisions. One practitioner commented that, in their experience, *“you see clients struggling with decisions about which family member to focus on, and which family member to bring.”*¹⁷

Parents of adult children - Z's case

One former client of RLS, Z, had lived with his mother for all of his life. When Z married, his young wife moved in with him and his mother, and the three of them raised their children together. His mother was responsible for a large portion of the childcare, and his children viewed her as a second mother. When Z fled persecution and was granted refugee status in the UK, his wife, children and mother remained, but were subsequently forced to flee a year later.

¹⁴ UNHCR Executive Committee Conclusion No. 88, *Protection of the Refugee's Family*, 1999, available online at <https://www.unhcr.org/uk/excom/exconc/3ae68c4340/protection-refugees-family.html>.

¹⁵ Oxfam International, *Safe but not Settled: The impact of family separation on refugees in the UK*, January 2018, available online at <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620409/rr-safe-but-not-settled-refugees-uk-310118-en.pdf;jsessionid=E70A30D49E2DD26EDAB0BB83B6E75A9F?sequence=1>, p31 (emphasis added).

¹⁶ Red Cross EU and European Council on Refugees and Exiles, *Disrupted Flight; the Realities of Separated Families in the EU*, November 2014, available online at <https://redcross.eu/positions-publications/disrupted-flight-the-realities-of-separated-refugee-families-in-the-eu>, p14.

¹⁷ Practitioner interview B5.

They managed to reach Greece, where they claimed asylum. From Greece, Z's wife, three children and then 65-year-old mother tried to join him through Dublin III. While the UK accepted the TCRs on behalf of his wife and children, who were transferred from Greece to the UK, his mother's request was rejected.

Z's mother remains in Greece. RLS has found her pro bono representation for an application for Entry Clearance but, as Z explained to us, the different treatment of his family members has been difficult for him to process:

*"It was easy to bring my wife and children. [The UK authorities] did not ask much, they had information about myself and my family on file already, they matched it up, made sure it was correct, and it was very straightforward. So, from my perspective, I don't understand. It's the same family, my mother. Why is there this delay? It is not fair. If I, as a father, have the right to see my children, why doesn't my mother have the right to see her children? **I am her child.** You give me the chance to see my children. It is not fair, you should give her the same right. **She has the right to see me.**"¹⁸*

Z clearly articulates the paradoxical nature of allowing parents to reunite with children, but preventing children from reuniting with parents. In his case, Z's mother is struggling mentally and physically in Greece. Z has been able to visit his mother, and has spent long periods of time there with her, but he is unable to continue with his life in the UK while she remains stuck in an unknown country, with no family members to support her. As he says:

*"I am very stressed by leaving my mum there [...] when I came to the UK 3 years ago, my hair was not grey. And because of this stress, at least fifty percent of my hair is grey, because all the time I know she is not here, I know she cannot be here. At the age she is I know she needs me, and it makes me unwell. It has affected my social relations with my friends. I am not the same person as before, it has affected my work badly, and I can't concentrate. **I work and wake and sleep but every moment I think about my mum.**"¹⁹*

To Z and his children, who had lived with Z's mother all of their lives, a close and beloved family member is stranded and alone. They ate together; lived together; fled their country together, and now, due to a narrow interpretation of what close family means, they are all suffering from a prolonged separation.

¹⁸ Interview with Z.

¹⁹ Interview with Z.

Children in the UK - P's case

This same contradictory lack of understanding regarding the reciprocal familial ties between parents and children is reflected in the impossibility of children sponsoring their parents within the Immigration Rules.

P is a nineteen-year-old, who arrived in the UK from Greece as a minor with his three younger siblings. They were all successful in a Dublin application to be reunited with their father and his second wife in the UK, and are likely to be granted refugee status in the UK on the basis of their nationality and circumstances. However, their mother remains stuck in Greece. Despite fleeing together, she was separated from her children in Turkey when she was forcibly prevented from joining them on a boat to Greece. She was held captive in Turkey for months, before finally travelling to Greece. By the time she found her children, their Dublin TCR had been accepted by the UK, and they were awaiting their flights to London.

P's mother tried to begin proceedings in order to join them, but she was unable to register as an asylum seeker in Greece due to the well-documented and lengthy delays in accessing the registration process,²⁰ and thus unable to request to join her children under Dublin III. By the time she managed to register as an asylum seeker, the UK had left the EU, and her options were far more limited.

She is now alone in Greece, and her children must make an application outside the rules in order to try and bring her to them. RLS found legal representation for P and his siblings, but their case will be complex, and will require a greater volume and quality of evidence than if they were applying within the rules.

Adult relatives - K's case

K is 26-year-old man. His mother fled their country when he was a teenager and travelled to the UK, where she claimed asylum. She brought her two minor daughters to join her through refugee family reunion, but could not bring her adult son, then 19. He is now in Greece, hoping to reunite with her outside the rules.

For K, and for other parents with children over the age of 18 or who are living 'independent' lives, their relationship falls outside the Immigration Rules. However, K's case demonstrates why it is not always easy for sponsors in the UK to apply for family reunion before their children turn 18, whether or not their application would fall within the rules.

²⁰ See for example the Asylum Information Database (AIDA), *Country Report: Greece 2020 Update*, available online at https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf, which provides an overview of the difficulties accessing the asylum procedure in Greece and state that, for example, there has been no access to asylum for the majority of people on mainland Greece since 24 November 2021 (p18); and Lucy Alper, *Undocumented for years whilst trying to claim asylum*, (Medium) 20 December 2020, available online at <https://the-crisis-isnt-over.medium.com/undocumented-for-years-whilst-trying-to-claim-asylum-782d69755707>, which documents in detail the struggle to claim asylum for people seeking protection in Greece.

It took K's mother many years and varying appeals to regularise her status in the UK. When her status was regularised, she struggled to find her children, who were unable to be located even with assistance from the International Red Cross. When she finally managed to find her children, she found it challenging to engage in another lengthy legal procedure after spending so many years trapped fighting against a hostile and violent immigration system. Her ability to participate in the family reunion proceedings was impacted by other practical and financial difficulties, heightened by her precarious circumstances in the UK, and all of this was compounded by the historic trauma that had precipitated her flight in the first instance.

By the time she had found competent legal representation, and could properly engage with the case, her son had turned 18, and only her daughters were eligible within the Immigration Rules. K undertook his own journey to try and reach his mother, but became stuck in Greece, where he remains, while his closest family members live together in the UK, desperate for him to join them.

Inflexibility around recognising the importance of adult family relationships causes rupture, stress and trauma for family members who are already vulnerable to, and who have often recent or historic experiences of, multiple forms of trauma both prior to and following their arrival in the UK. Families are splintered and separated as they attempt to enter Europe and seek refuge, and are then further punished by being forced to endure prolonged separation and suffering as they attempt to reunite with their loved ones.

Restrictive rules: asylum-seeker sponsors

Post-Brexit, one of the most immediate and abrupt changes to the facilitation of family reunion has been the loss of a legal route to reunite asylum-seeking families in the UK. The removal of Dublin, which provided a mechanism for a wide range of people in the UK to sponsor family members to join them from Europe, occurred overnight. Throughout the FRFE project we have observed multiple families for whom information about this change was either not available or, when provided, was incorrect.

A large number of those who requested assistance through the FRFE project had initially fled alongside their family members, but had been forced into separation at some point during their travels. Many of the families referred to us had been denied asylum in multiple EU states, and at some point, one family member had been desperate enough to make the journey to the UK in the hope of achieving some form of stable home and recognition of their protection needs.

All of the families in these circumstances had multiple young children, typically left with one parent while the other parent undertook the dangerous journey. Many of the families believed that they would be able to reunite swiftly with their loved ones, familiar as they were with the Dublin procedure, and assumed that arriving in the UK would be the end of a long and difficult process. Instead, their arrival in the UK constituted the start of another lengthy period of precarity and separation.

Separated for years – R and X

R and X are a married couple with five children. They fled together in 2015, and following the rejection of their asylum claim in Sweden, they travelled to France. In France, after waiting months with no response and being housed in unfit accommodation, the family separated, with the mother and four youngest children remaining in France while the oldest child and father undertook the journey to the UK. When the mother approached the French authorities to request reunification in early December 2020, they wrongly informed her that, due to Brexit, she was unable to reunite with her husband in the UK, and refused to initiate Dublin proceedings. She has now been separated from her husband and child for almost two years, and is struggling to cope with raising four children in a country where she has no support networks or family assistance.

For R and X, if a TCR had been sent by France in early December 2020, they would likely have been reunited before the end of 2021. As it currently stands, X and the child in the UK are still awaiting an invitation to X's asylum interview. Throughout the many months of separation, there has been no possibility of the family visiting one another, and the advice available to the family has been limited. Prior to this period of time, **the family had never spent any time apart**. The mother in France does not speak French, nor have any support networks there.

For couples like R and X, who were divided without knowing that the post-Brexit rules would mean prolonged and indefinite separation, there is little comfort that can be given. The family members in Europe must wait for the sponsoring family member in the UK to have their asylum claim determined and refugee status granted, a process currently taking routinely 2-3 years, unable to begin a life where they are situated, and unable to do anything to speed up or improve their situation.

Responding to questions around the impact of having to wait for her husband's asylum application to be considered, a mother of three children in Greece explained that she:

"experienced this strange emotion of not being able to belong to any country. Me and my children do not belong in Greece, and I cannot make any future plans for our kids and settle here. I can't make a decision about work. I can't make a decision about schools. I can't make a decision to go to the UK. It is all up in the air."²¹

With the loss of Dublin III, families have been deprived of a route to reunion that was free of obligation on the sponsor's state of residence to make any consideration on the sponsor's substantive asylum case before the family was reunited.

Over the last year, we have observed that families reliant on asylum seeker sponsors are particularly vulnerable. Many did not anticipate such a long delay, and find it hard to understand why this delay is now occurring. The suffering for parents and children alike is

²¹ Interview with S.

devastating; overwhelmingly, the adults feel that the separation is their fault, and find it very difficult to know that there is nothing which can be done to speed up the process.

Asylum seeker sponsors in the UK exhibit the same symptoms of separation as refugee sponsors who are unable to reunite with their relatives; the family members we worked with were unable to concentrate in school, unable to sleep, were experiencing weight loss or weight gain, were unable to concentrate on learning a new language, experiencing mental and physical health problems due to stress or insomnia, and felt let down by the state. The family members in the EU are subject to an extended, precarious and cruel limbo, are left vulnerable to a range of exploitations and criminal activity without their spouses or elder children, and have received little recognition of the drastic change to their circumstances following Brexit.

Restrictive rules: reliance on Article 8 ECHR

In the UK, where family reunion for recognised refugees is restricted within the Immigration Rules to pre-flight spouses and minor children, there is a necessary reliance on the ECHR Article 8 right to family life (and related international instruments) to argue cases 'outside' the Immigration Rules. When the UK was part of the EU, the Dublin III regulation functioned as a means of stopping the gaps inherent in the wide discretion allowed in the operation of EU and international human rights law, in relation to the approach taken by a state to family reunification and the maintenance and protection of family relationships. However, from January 2021, this safety net is no longer available in the, UK bringing to the fore and amplifying the shortcomings in domestic legal provisions.

One practitioner interviewed described a case where a man in Greece was seeking permission to join his maternal cousin, who had been supporting him for many years, and with whom there was a very strong family link. For a case like this post-Brexit, without the supporting framework of Dublin, there was no legal route or rule from which to build an argument for his case; it would be wholly reliant on Article 8 as opposed to being structured on the scaffold of reciprocal Dublin processes. As the practitioner commented, '*Article 8 undermines the integrity of people's family structures. And these are things that then cause severe intergenerational trauma*'.²²

The dependency on Article 8 ECHR throws up certain issues for casework, case planning and client interaction. One such issue repeated throughout the interviews undertaken for this report was that, for practitioners working primarily with Article 8 applications, there were concerns that the minimal guidance available regarding the interpretation and application of Article 8 precipitated poor decision-making practises by those assessing Entry Clearance applications.

²² Practitioner interview B1

As one interviewee explained:

*"In terms of legal barriers to family reunion, what is very difficult is that the usual response to an Article 8 application outside the rules is that your case is not 'exceptional' enough. And there is a widespread misunderstanding of what the relevant threshold is. So you put a lot of time and effort into gathering all the evidence that you hope will show how the separation is impacting on the mental and physical health of the sponsor, and on their integration in the UK [...] and then you get a refusal letter that doesn't even engage with the content of the evidence. So that is really frustrating."*²³

The lack of a framework for extended family members or for any cases falling outside the rules also means that it is difficult to properly and clearly advise clients, or to plan for likely case outcomes. Another practitioner noted that, as there isn't always a direct route available for family members, it can be difficult to manage your client's expectations, due to the fact that it is so hard to predict how a case will progress either pre- or post-refusal.

One interviewee emphasised that **"[I]f more guidance was given around discretion for extended family members, this would be highly beneficial for clients."**²⁴

Another commented that **"[I]t is hard to advise people in a context where there is a complete lack of clarity around what has replaced Dublin, and where the cases are really fact-specific, and this is always the case with Article 8 applications."**²⁵

The fact that Article 8 applications are often decided at the discretion of an Immigration Judge on appeal following a negative initial decision is also a complicating feature of family reunion for clients and practitioners alike. For family members, it can be confusing to try and understand why there is no clear route for a loved one to come to the UK but why an application can still be made, and why a refusal of the initial application, albeit an expected one, can still mean success at a later date. For practitioners, it impacts on their ability to advise clients clearly, and particularly to manage expectations at the initial application stage and throughout the case. The routine need to appeal an initial negative decision also adds many months of additional delay which, as detailed throughout this report, can have deeply damaging negative impacts on sponsors and applicants alike.

Overall, the legal framework in the UK as it stands in relation to family reunion is sorely lacking. The Home Office's failure to give clear policy guidance on paths for extended family members to reunite with their loved ones serves to present an evermore hostile experience for those who have been displaced from their homes, and the loss of Dublin III left asylum-seeking families ineligible for any form of meaningful reunion prior to the consideration and determination of their protection claim.

²³ Practitioner interview B2.

²⁴ Practitioner interview B1.

²⁵ Practitioner interview B2.

Chapter 2: Lack of support from within country of application

Post-Dublin: Juggling multiple procedures

The ubiquity and similarity of Dublin procedures from state to state meant that it was straightforward for family members to engage with the underlying mechanisms of Dublin, guided by friends, acquaintances and loved ones with experience of the system. For example, the majority of individuals that our project has assisted over this past year were acutely aware of the need to declare the family link and state of residence of family members in the EU during the initial registration of their protection claim in order for their reunion process to be set into action.

However, now that the reciprocal relationship between the UK and EU States has ended, the connection between the asylum claim in one state and the application to enter another state has been severed. As one practitioner summarised:

"[b]efore Brexit we had a state-to-state, light-touch system which, while flawed, meant that hundreds of people were being transferred to the UK to have their asylum claims considered here while benefiting from the support of their family members".²⁶

Now, in comparison to this light-touch system, family members outside the UK must grapple with the requirements of the Immigration Rules, with little support in the country of application, and with lack of access to clear legal advice around the UK entry clearance procedures.

As a result, applicants can become confused between procedures, or abandon one in favour of the other. As explained by one of the practitioners interviewed:

*"The distinction between the two procedures that [applicants] are going through, asylum and family reunion, is not clear for the applicant. As a result, they tend to **neglect their asylum claim in the country that they are in**, in the hope that their family reunion case will be resolved soon [...] this results in missing deadlines, confusing procedures, not being able to draw a line between each procedure, not being able to understand that what they said in one is not automatically replicated to another, and not understanding the need to repeat themselves or to re-submit papers, which can be particularly frustrating."²⁷*

This sentiment was echoed by former clients, when speaking about their experiences of asylum and entry clearance. While all of those interviewed understood the legal requirements of family reunion, the interaction between the two legal processes was difficult to grapple with.

²⁶ Practitioner interview B5.

²⁷ Practitioner interview B4.

One family member, an unaccompanied minor, explained that he "*found the process easy to understand, but [he] was confused by how reunification was through a different department to the asylum claim.*"²⁸ Isolating the family reunion claim from the family reunion proceedings has been difficult for many displaced people to understand, particularly given the relative familiarity of Dublin proceedings for those in countries which send a large amount of TCRs, such as Greece.

Over the last year, we have also worked with people who had gone through the Dublin procedure, had not been successful and were then left in an interim, transitional stage, seeking remedy via judicial review. This adds another set of legal proceedings, with separate requirements and new jargon, to an already complex legal landscape that family members can struggle to map.

One of RLS's former clients, attempting to join his elderly father in the UK, was faced with challenging a refused Dublin application, making an entry clearance application and was also questioning the resettlement procedure in Greece, proposed to him by the asylum authorities there. He eventually dropped out of both the entry clearance and judicial review processes and made his own way to the UK, rising a dangerous and exhausting journey even though safe, legal routes existed for him.

For sponsors in the UK, particularly those who are asylum seekers or who were recently granted refugee status, their asylum solicitor is not always willing to take on their family reunion case. This means identifying and instructing a new legal representative (in a market where demand vastly outstrips supply), and also necessitates communication between the two practitioners, given the potentially damaging impact of providing contradictory evidence on behalf of the client to the Home Office.

All of these factors complicate the relationship between family reunion and asylum. As one practitioner commented:

*"What we need is a change of culture. The expectation needs to be that when people have family members they want to reunite with, we should facilitate access to reunification. Whereas, in fact, it is just one more hurdle that they have to get over."*²⁹

Lack of social or familial support within the country of application

Multiple practitioners commented on the specific issues which arise for displaced people making an application for family reunion from outside their country of former habitual residence. The unique nature of these applications mean that people are without family support, social support, medical support and often without an understanding of the country

²⁸ Interview with F.

²⁹ Practitioner interview B5.

which they are in. As above, this is exacerbated by the need to manage two or more legal proceedings, in different jurisdictions, languages and with different requirements.

One practitioner noted that their clients, due to the fact they have no family networks where they:

*"lack any form of support that helps them to remain engaged in their case [...] this means that sometimes you have to make a decision like, I'm not going to get this evidence because this person is not going to wait for it, so I feel the pressure to compromise the merits of the case in order to submit before this person goes missing, or becomes disengaged. I've had children returning to their home countries in situations where it wasn't safe to do so."*³⁰

It can also be difficult for practitioners to support their clients, in environments where they desperately need social or medical support but where the practitioners and clients alike are unfamiliar with the infrastructure of a foreign country. One interviewee explained that:

*"You don't have the right contact with your client, as you don't have any face-to-face contact. When you are [in the UK] and you have a client who is having a crisis, you know what to do, where to refer, and how to support them [...] you can assess the severity of the situation."*³¹

One practitioner explained in our interview that, following a particularly distressing case, she found herself checking when her clients were online on WhatsApp, and worrying every time she lost contact with them, because:

*"They are so vulnerable. If they were with their family, like with normal family reunion, they would have people on the ground, looking after them, some form of connection there. But due to the transient nature of the work... it is really difficult to deal with."*³²

Multiple family members that RLS worked with asked us if we could provide funding to travel to the third country where their family members are, to help them take a DNA test or to find and copy their documents or simply to see and hold them. Whether they do not yet have travel documents, or cannot travel due to their financial or immigration status in the UK, the extended separation means additional strain on the family relationships and does not provide any safety nets for minors or vulnerable applicants. The isolation of the displaced family member complicates and adds additional stress for all the people involved in the family reunion application process, in a manner very different to that of refugee family reunion from the country of former habitual residence.

³⁰ Practitioner interview B2.

³¹ Practitioner interview B6.

³² Practitioner interview B2.

Lack of legal support from within the country of application

Unlike the Dublin procedure, online entry clearance applications require in person attendance at a Visa Application Centre (“VAC”), outsourced to contractors by the UK Home Office, and have no connection to the asylum procedure. This means that there is no involvement or assistance from the third country state in which the entry clearance application is made, unless legal advice is paid for or sought. Even when legal advice is sought, it is often incorrect, or inefficient, as demonstrated by the case study of Z and K at pages 11-12 above.

As one former client commented:

*"In Greece they don't know what to do now that the UK has left the EU. They kept telling me we know you will leave [...] we don't know what the UK needs, they haven't given us any answers. Greece follows their rules because they are in the EU, and then the UK cannot properly explain exactly what sort of process we are in. I just want a map of where we are heading, and the next steps."*³³

Furthermore, the perception of the UK's position has shifted, and people are beginning to doubt whether it is possible to safely, swiftly and legally transfer to the UK. As one former client explained, *"[a] lot of people in Greece who wanted to come to the UK have stopped wanting it. It is no longer easy to do, and people in Greece do not understand it."*³⁴

Another former client, an unaccompanied asylum-seeking child in Greece, told us that, *'because of Brexit and the UK leaving the EU, I knew that there was not a good relationship between the two countries (Greece and the UK).'*³⁵ He believed that, as the UK had left the EU, Greece would be less willing to assist him in his case.

Formerly, the Dublin Regulation required member states to closely cooperate when assessing the best interests of the child in transfer cases, taking into account the child's well-being and social development, safety and security considerations, and the views of the child. As this cooperative duty no longer exists between the UK and EU member states, children trying to come to the UK are frequently falling through the cracks.

One such example of this involves children who approach us for family reunion close to their 18th birthday. Sometimes, these unaccompanied minors have been in state care facilities or in contact with legal professionals in an EU state for months, without anyone having the capacity or understanding to advise them to begin proceedings for family reunion to the UK. These children are understandably frustrated by the fact that their application must now be rushed to be completed before their 18th birthday when, in some cases, they had been in contact with legal representatives in Greece for over a year without any indication being provided of how to reunite with a family member in the UK.

³³ Interview with S.

³⁴ Interview with F.

³⁵ Interview with N.

Finally, there has also been a drastic and immediate loss of knowledge for those seeking to reunite with family members in the UK. Organisations assisting displaced people in Europe may have only a limited understanding of the UK entry clearance proceedings, particularly where key changes are concerned (i.e. that applications can be made by those who are undocumented, or who have received a second refusal). RLS has set up training and information sessions in Northern Greece, Italy and Calais to try and reach people who are moving through and across Europe, but in comparison to the reciprocal and international nature of the Dublin III regulation, there is only so much time, training and resources that can realistically be devoted to unfamiliar and complex UK procedures within EU states.

Chapter 3: Delay

Family reunion proceedings in the UK are plagued with delay at many stages. From delays in Home Office decision-making rendering asylum-seekers unable to begin family reunion applications, to difficulties finding legal representation for family reunion applications particularly within tight timeframes, to the frequency of initial refusals of outside the rules cases, to the now-withdrawn and pending guidance around fee waiver applications, the speed of the entire process is hampered by infrastructural failings and flaws.

The negative effects of postponing family reunification on sponsors and families are generally well documented. Family separation is a significant cause of anxiety, with often debilitating psychological impact. Moreover, it is suggested that the longer the period of separation, the poorer the outcomes when the family reunites and the harder it is to regain its balance.³⁶

As per a joint report by the Refugee Council and Oxfam entitled *Safe but not Settled: The Impact of Family Separation on Refugees in the UK*, refugees in the UK find it hard to imagine a long-term future for themselves whilst they remain separated from family members. They spend months or even years in a state of limbo, torn between settling in the UK and worrying about family members overseas.³⁷

In particular, the impact of delay with relation to children is a cause of major concern. As acknowledged in the guidance issued under section 55 of the Borders, Citizenship and Immigration Act 2009:

*"[t]here should also be recognition that children cannot put on hold their growth or personal development until a potentially lengthy application process is resolved. Every effort must therefore be made to achieve timely decisions for them."*³⁸

The spirit of these same principles applies to family reunion, where we have witnessed children unable to thrive or reach their full potential while their applications to join family members are tangled in various forms of delay.

For many interviewees, delay was their primary concern. These delays are particularly exacerbated where the sponsor in the UK is an asylum-seeker. The families remain in a state of suspended limbo, unable to plan ahead, and unable to do anything other than wait for a decision on the asylum claim in the UK. For some families, they have already spent upwards of five years in Europe, and have had their protection claims rejected in multiple countries.

³⁶ Ruth Marsden and Catherine Harris, *"We started life again": integration experiences of refugee families reuniting in Glasgow* (British Red Cross/Scottish Refugee Council), 2015, p40.

³⁷ Oxfam International, *Safe but not Settled: The impact of family separation on refugees in the UK*, January 2018, available online at <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620409/rr-safe-but-not-settled-refugees-uk-310118-en.pdf;jsessionid=E70A30D49E2DD26EDAB0BB83B6E75A9F?sequence=1> p16.

³⁸ *Every Change Matters: Change for Children*, Statutory Guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children, November 2009, available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change_for-children.pdf p17.

They are exhausted, and engagement with the family reunion process becomes even more fraught with tension and pain. As one practitioner commented:

"Because it is such a painful situation, where they are having to deal with the expectations and the demands of their family members as well as the pain of the separation and the fact that they cannot just get on with their lives. It has a really damaging impact on the individual if it doesn't go smoothly or takes too long, and on their ability to begin to make a life for themselves."³⁹

Interviewees repeatedly told us that they had not expected the process to take this long; commenting that it felt like there was delay at every stage, that they did not understand how it could be so long, and how hard that was to accept. One mother in Greece described her thoughts on delay as follows:

*"I am wasting my time here [...] I could be useful, I could be doing something. This time is draining for all of us, and then if and when we get to the UK, we will be drained. I don't know how long it will take us to settle, and get used to our lifestyle, and for me to work. The big disappointment has always been **how long this will take compared to when the UK was in the EU**. I know it would have been faster before. **The timing is the most stressful thing, the length of time.**"⁴⁰*

One interviewee told us that he assumed things would happen as quickly as possible, given how important the cases are to the people involved. Another interviewee, a minor who had dropped out of the entry clearance application process following a failed Dublin TCR, explained that the delay also made him doubt his case, saying that he *"was scared of the length of time, and the fact that even if I did everything and waited and waited they might still reject me again."*⁴¹

Another interviewee commented that his one wish was that the family reunion process *"was easier and shorter and that families could be reunited before the asylum process is finalised, so that families will suffer less"*.⁴²

For other family members referred through the FRFE project, the impact of delay on the relationship itself was a primary concern. One married mother, whose husband was recently granted refugee status in the UK, told us that:

*"I have this fear that, because we haven't seen each other for a year and a half, and because **in this time there have been so many emotions that we have not been able to discuss**, I am scared that we have strained our relationship. I*

³⁹ Practitioner interview B5.

⁴⁰ Interview with S.

⁴¹ Practitioner interview B6.

⁴² Interview with C.

don't know how we will express our feelings for each other, as this long process of time is making our relationship more strained."⁴³

The pressures of delay are also observed by practitioners. One practitioner commented that lengthy waiting periods *"strain relationships, often when kids are young [...] at a really important time in their lives, when time matters, and feels quite long"* while another stated that *"when you see families where kids have been separated from parents for years and the caring parent has been struggling, **there is real damage done to family relationships.**"*⁴⁴

⁴³ Interview with S.

⁴⁴ Practitioner interview B5.

Chapter 4: Bureaucracy of the system and case breakdown

There are well-documented failings with regards to the accessibility of the refugee family reunion process in the UK. The House of Commons Home Affairs Committee reported in 2016 on the obstacles faced by refugees seeking to bring family members to join them as follows:

“The bureaucratic hurdles that are being put in front of refugees after a decision has been made allowing them to enter the UK to be reunited with family members are totally unacceptable, particularly as many of those affected are fleeing conflict and will have already undergone severe hardship.”⁴⁵

In response to the complexities of the application process, the British Red Cross has called for a simplified application form, improvements to guidance and efforts to make the process safer, given that some people are required to cross borders in conflict zones in order to submit their applications.⁴⁶

Throughout the past year, our referrals and statistics have highlighted that a sense of frustration with the bureaucracy and the lengthy application process can cause cases to disintegrate with worrying regularity. Family relationships become strained, particularly where large amounts of financial or other evidence is demanded from the family member in the UK, and in certain situations, both children and adults alike feel forced into a high-risk and precarious journey in order to reach their family member.

Online application form

One example of the bureaucratic difficulties with the process is that the online application form is difficult for family members to navigate, and when they cannot find legal representation, they are often tasked with completing the forms alone. S, who completed her online application directly after her husband obtained refugee status in the UK, is a computer engineer. She had no problem with the form, but spoke to us about the assistance she had provided to other people, and the research she had carried out prior to completing the form:

“I understood how to make this application because I carried out research, and I went through all of the details myself [...] I am a computer engineer, so I found the online application simple. However, I had friends that really needed help with it. They could not understand how to complete the form, so I have helped many

⁴⁵ House of Commons Home Affairs Committee (UK), *The Work of the Immigration Directorates (Q1 2016)*, Sixth Report of Session 2016–17, HC 151, 19 July 2016, available online at <http://www.refworld.org/docid/58ac4fd14.html> para. 39.

⁴⁶ Jacob Beswick, *Not so Straightforward: the need for qualified legal support in refugee family reunion* (British Red Cross) 2015, available online at <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/not-so-straightforward-refugee-family-reunion-report-2015.pdf>.

people do it. I understand how to use the applications and how to use the right tools, so it was easy for me. Most of my friends had issues uploading the documents online. You need to know how to do folders, and how to do attachments. They did not know how to make the attachments in the right format, or how to put the attachments where they are supposed to go. I helped to reformat everything so that they were able to apply."

Nature of evidence and evidential requirements

When discussing the hardest parts of the application process, multiple family members interviewed referenced the type and amount of evidence required to support the family reunion application.

One minor child applicant told us that people in Greece had told him that family reunion was a more complicated process now, in comparison to the previous evidential requirements of a Dublin TCR, explaining that *"to apply to the UK now is so much more difficult. You need so much paperwork and many more documents."*⁴⁷

The repetition of personal information is particularly difficult for some people. One former client with three children noted that she found having to provide the information multiple times, for each child, very hard. She could not understand why the process could not be made more streamlined, commenting:

*"The fact is that at each stage, they ask the same questions, about every child. So you are filling out the same application over and over again, consistently. So then these details are the ones that begin to make you sad, and make you annoyed, like why are they doing this? **Why are they asking the same questions over and over again?** Why do I have to prove that these are mine and my husband's children?"*⁴⁸

One interviewee, who had tried to assist his elderly parents with providing the necessary evidence to sponsor their nephew, explained that:

*"My parents felt that they had to **answer the same questions over and over again**. This was hard for them, as they are elderly people. They did not want to keep going over the same information, especially when they knew [the applicant] was going to turn 18 soon."*⁴⁹

An unaccompanied child trying to join his father told us that:

*"My father was required to provide **so much evidence to prove that I was related to him**. He is old, and there were things he did not remember. He was*

⁴⁷ Interview with F.

⁴⁸ Interview with S.

⁴⁹ Interview with G.

*being given deadlines to provide evidence, and it became very hard for him to do this on time.*⁵⁰

Indeed, it is not only the amount of evidence that families find difficult, but also the very fact of having to evidence a family relationship. One former client told us that the process gave her:

*"... a very strange feeling, as I found it disturbing to try and prove that I have a husband, and that I am in a relationship with him, and I love him. I found this upsetting because for me, this is something very clear. The thing that upset me was having to prove that we were a family."*⁵¹

For older sponsors, the level of engagement required, particularly where the family relationship is outside the rules, can feel demanding. One former client commented:

*"I think that you need to try and minimise the amount of time on Zooms and things like this - my parents are elderly and they have a short attention span. They don't want to be sitting in front of a computer. I also recommend a flowchart and a video for people, to show how the process works and make sure they know what to expect."*⁵²

Strain on family relationships

During the first year of the project, we witnessed a high rate of case collapse, both pre- and post-referral to legal aid representatives. Almost one third of the clients taken into the FRFE project dropped out at or before the ECF stage, due to breakdown in communication between family members, difficulty providing relevant documents or evidence, and the prospect of lengthy, emotionally-taxing proceedings, among other things.

Pressure on the sponsor can feel extreme, particularly where the route anticipated requires evidence of financial maintenance and accommodation, or where the sponsor is forced to contemplate finding money to pay the application fee.

One of the practitioners interviewed told us that:

*"I once worked with a mother who was trying to join her son in the UK. He had come to the UK as a minor, and he had had to bear so much on his shoulders; his father had passed away and his younger sister was still in the country he had fled. He worked two or three jobs to save up enough money, and when his mother and sister could finally join him through outside the rules applications, he said 'maybe now I can be a kid, maybe now I can study and enjoy my time with my family.' Being a sponsor, it forces people to bear so much responsibility"*⁵³

⁵⁰ Interview with N.

⁵¹ Interview with S.

⁵² Interview with G.

⁵³ Practitioner interview B3.

Another practitioner gave their view on the difficulty of managing the relationship between the Sponsor and the applicant, particularly where the applicant is a child:

*"I've had relationships breaking down with sponsors, that is a very common thing [...] I'm used to partner applications or different categories of entry clearance applications, but [for family reunion], the pressure of gathering the evidence and the time taken to do that comes on top of years of people being separated, and then it means that the relationship is not that strong because of that distance and that time [...] on one case, over several months, taking statements and instructing experts and translating evidence and at the last minute we had a breakdown of the relationship because of a misunderstanding with the sponsor where the applicant had lost his temper. A teenager. **And that threw everything away in one moment**"⁵⁴*

Even when people arrive in the UK their situation is precarious. One interviewee, discussing family breakdown on arrival in the UK, said that the reunion itself "[...] can be really heavy. People haven't seen their family for years, there are complicated family dynamics, and it can be stressful and really sad."⁵⁵

During the first year of the project, we also witnessed families who could not bear the delay, or could not trust that the procedure would work in their favour. In the first year of the project alone we observed two cases where family members travelled to the UK while work was still being carried out on their applications, and witnessed many more leaving or being displaced from the country where they had previously been residing. Sometimes these family members would contact us again from a different country, but sometimes they would simply lose touch with us, and sometimes even with their family member.

This was particularly prominent for children aged 16-17, who are predominantly concerned that their family reunion proceedings will not resolve before they turn 18, and believe that their only option is to try and make it to the UK before their 18th birthday. This involves undertaking a dangerous, difficult and traumatic journey.

For one unaccompanied child, who was forced to resort to an unsafe route in order to be reunited with his father in the UK, the impact of his journey has stuck with him:

*"Now, I am living with my Dad. But I struggled a lot to get here, and trying to enter the country illegally made many problems for me. I felt bad that I had to come here illegally. **On the journey I suffered a lot. I walked, I was homeless, I didn't have food or water, and there were times when I was sick.**"⁵⁶*

Many of the families we worked with also struggled with being unable to visit family members in the period while their applications were being progressed or considered. Being able to see each other would allow these strained relationships to be maintained,

⁵⁴ Practitioner interview B2.

⁵⁵ Practitioner interview B3.

⁵⁶ Interview with N.

and to try and avoid the fraying or disintegration of the family unit under the intense pressure of the asylum or family reunion proceedings.

Chapter 5: Fees and fee waivers

One overwhelmingly clear barrier to family reunion is the requirement of fees to be paid, per applicant, where applications are made under Part 8 of the Immigration Rules. These fees are often beyond what can be raised through extended family members and supportive communities, particularly where there are multiple family members attempting to join one sponsor.

For approximately a year at the time of writing, the Home Office's guidance on out-of-country fee waiver applications for entry clearance has been under revision, and not operational. All fee waiver applications which have been submitted during this lengthy interim period have been placed on hold, unless they have been found to be sufficiently urgent. The bar for urgency is seemingly incredibly high; applications on behalf of unaccompanied minors living in unsafe and difficult circumstances did not meet the threshold for urgent consideration.

F's case

F was an unaccompanied minor in Greece, approaching his 18th birthday. He had registered for asylum prior to 31 December 2020, and had requested that he be transferred to the UK through Dublin III to be with his aunt and uncle. However, due to an administrative error, this request was not sent by the Dublin Unit in Greece before the relevant deadline, and he was left with the sole option of an entry clearance application.

F's uncle and aunt are retired British citizens, and their son (F's cousin, G) assisted his parents with translation and compiling the relevant evidence. RLS referred F's aunt and uncle to a solicitor, who assessed F as being ineligible for legal aid on the basis that he was supported by his family members in the UK who themselves did not meet the means threshold. The solicitor requested payment for the family reunion work, and additionally payment for the application fee or, in the alternative, financial evidence to support a fee waiver application. F's uncle was concerned about the length of time that a fee waiver would take, and worried about the number of documents he had to provide in order to prove that he and F could not pay the fee. F's uncle's health deteriorated, and as a result of the stress of the procedure, he decided that he could not continue to sponsor F. F remains in Greece.

The uncertainty of the policy around out of country applications for fee waivers and its pending release results in further complications when trying to fully advise clients regarding fee-paying applications. One interviewee commented that:

"there is a discussion which comes down to, will you spend all your savings on this application, or will you wait for a fee waiver policy that will seemingly never be published."⁵⁷

⁵⁷ Practitioner interview B2.

In the alternative, a decision can be made to submit an application under Part 11 without incurring a fee, yet this risks further delay if the application is not examined due to the usage of an incorrect form. These options are unnecessarily complicated, and only serve to demonstrate to family members that the system exists on two separated tiers, running at two different speeds; one for those who can afford fees, and one for those who cannot.

All of the fee-paying cases that we worked on involved children joining British-citizen adults, either parent or non-parent relatives. These cases were imbued with an additional layer of difficulty and confusion, as not only were the children trying to understand the difference between the asylum claim and family reunion application, but they also had to consider a fee waiver, all in the context of being young adults who were approaching their 18th birthday.

As reflected in the case of F above, we encountered numerous situations where the relationship between the sponsor and the minor applicant broke apart around the issue of providing financial documents to evidence an inability to pay the fee. As one interviewee told us:

"[w]hen we thought we had to pay fees [...] we went to our family members and we tried to raise this money. But it was really hard. And this is on top of what will already be an expensive thing, to feed and clothe and house someone in the UK".⁵⁸

As identified in this comment, the family members sponsoring unaccompanied children through Part 8 applications are already burdened by maintenance and accommodation requirements; the addition of a fee is an additional hurdle. Furthermore, the amount and nature of the evidence required is often concerning for sponsors. As G stated in our interview:

"My Dad was worried that handing over all of his financial records would mean a problem for his pension, even though this isn't true. They were frightened off by the amount of financial information to be sent to the Home Office for a fee waiver. They don't like intrusions into their personal life or their financial life. They became suspicious of me asking them about their bank statements, and I was uncomfortable having to ask them this kind of thing."⁵⁹

Sponsors who cannot afford the fee are forced to hand over private bank statements, and to provide evidence of their precarity and income in order to simply wait for a fee waiver that will seemingly never arrive. This primarily impacts those who have precarious income, who do not use online banking, who are not paid regularly, who struggle to provide the requisite documents and who may already have had distressing or stressful interactions with the Home Office.

Even without the complicating factor of a fee waiver to consider, several family members explained that they were frustrated by having to provide financial information in support of an ECF application, despite the questions being relatively basic. This was closely linked to a

⁵⁸ Interview with G.

⁵⁹ Interview with G.

sense of shame and anger around their lack of resources in the country of application (primarily in Greece, where the cash assistance programme for asylum seekers has now effectively ended) but also because often the systems of support were not easily identifiable as income, relied on trust and informal transactions, and were thus harder to document.

Chapter 6: Legal aid and finding representation

One of the largest barriers encountered while supporting family members throughout the entry clearance applications was when trying to find legal-aid immigration practitioners to provide advice and representation.

While it is possible for family members to submit applications without legal representation, particularly where they are applicants meeting the requirements of Part 11 for spouses with or without children (RLS is in contact with two families who submitted their own applications for refugee family reunion on the day that the sponsor obtained refugee status, without waiting for legal advice or representation), this is very unusual and involves levels of English and IT skills that many applicants do not have.

Additionally, as has been made clear, the vast majority of referrals received by RLS throughout the duration of this project were for applications outside the rules. These applications require a high level of engagement with relevant legal case law, are evidentially heavy, and often demand the payment of disbursements which family members may struggle to fund themselves. Representation is needed in order to prepare and present the application, and to avoid a lengthy delay following a rejection at first instance.

Following the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012, family reunion is no longer within scope for legal aid, even where the sponsor is a recognised refugee. This means that, on the face of it, family members are forced to choose between paying for private representation and doing the application without legal assistance. However, in reality, Exceptional Case Funding (ECF) was granted for every case in the FRFE project, even where there was very little evidence to document the financial position of the applicant.

The larger issue was that, **even with ECF funding in place, the cases were still difficult to refer**. Despite the evidence gathering and detailed referral bundles prepared by the FRFE casework team, specifically aimed at maximising the attractiveness of the referrals to potential legal aid practitioners, complex outside the rules cases took many months to successfully refer.

While capacity within the legal aid and immigration sector is notoriously stretched, some practitioners interviewed also warned that the type of work required for these outside the rules applications can make them a less-than-enticing prospect for practitioners. One example of this is the nature of the non-legal work necessitated by family reunion applications. As one interviewee explained:

"[entry clearance applications] are often complicated to prepare. They require a lot of administrative work, and a lot of practical, non-legal work is needed, i.e. how do you get to the VAC, what documents are needed, is the appointment

*arranged. This intensive, non-legal, practical administration often does not fit well within a legal aid firm where we do not have administrative paralegal support.*⁶⁰

Many family members spent between two to four months waiting for a referral to a legal aid practitioner. RLS adopted a variety of methods to try and secure representation for the cases, including raising money via CrowdJustice to fund disbursements while referring cases to private firms on a pro bono basis, and taking on the cases within RLS when no other option was available. However, as evidenced by the new structure in the second year of the FRFE project, **one solution is to fund capacity within the legal aid sector; capacity which is currently sorely lacking.**

For unaccompanied minors, who are eligible for legal aid for family reunion following The Legal Aid for Separated Children Order 2019, another issue preventing successful referral was that where the minor was supported by their sponsoring family member in the UK, the sponsor's income and capital were required to be included in the means assessment for legal help.⁶¹

As in the case of F, set out above, where the sponsor was over the eligibility threshold for disposable income and/or capital the firm accepting the referral would be unable to do so on the grounds that the minor was not for legal aid. On some occasions, the very actions which would strengthen the underlying family reunion application, i.e. sending money to the unaccompanied child in order to support and maintain them, saving money in order to care for the child upon arrival and to meet the financial and accommodation requirements, are those which render the sponsor, and thus the child, ineligible for legal aid.

Representations around the inequity of this should be made to the Legal Aid Agency (LAA), arguing that the sponsor's means should not be aggregated when considering the situation of the child, namely unaccompanied and not in the care of the sponsor. However, all of the above only serves to make these cases more complicated, more time consuming, harder to advise on and ultimately even more difficult to successfully refer.

⁶⁰ Interview with practitioner B5.

⁶¹ *Lord Chancellor's guidance on determining financial eligibility for Controlled Work and Family Mediation, April 2021*, available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/983065/Lord_Chancellor_s_guidance_on_determining_controlled_work_and_family_mediation.pdf p32, 9.1.

Conclusion

The multiple, overlapping barriers to families reuniting in the UK are a clear and deliberate example of the targeted hostility with which the UK government seeks to discourage displaced people from seeking a home in the UK. Broadly speaking, these barriers function as follows:

1. A restrictive approach to the definition of family and a refusal to acknowledge the bonds between adult relatives results in many entry clearance applications falling outside the rules.
2. Due to their complexity, these outside the rules applications require specialist legal representation, which is likely not in-scope for legal aid. Even if ECF is granted, representation can still be difficult to find in many parts of the UK, particularly for a lengthy, challenging case.
3. In order to best argue these outside the rules applications, the family relationship must be comprehensively evidenced, which can be intrusive and upsetting for sponsors and applicants alike. The provision of extensive evidence to support a family relationship is also particularly hard for people displaced from their former homes and stranded in third countries.
4. Where the applications are within the rules but require a fee, an unfit fee waiver system has fostered a discriminatory two-tier system, and families bear the burden of struggling to raise the fees.
5. All of the above, coupled with the overriding issue of delay, strains the relationships between family members who may have already experienced varying forms of trauma and violence at the hands of immigration and state authorities.
6. Displaced family members outside the UK are often alone or unsupported in the third country where they reside, and, if family reunion no longer seems viable, they feel compelled to consider irregular and unsafe routes.

Still, the above is only a fraction of what displaced people seeking to join family members in the UK must face.

The Ukraine Family Scheme

In March 2022, the UK government's response to the overwhelming need to support those fleeing Ukraine was to introduce the Ukraine family scheme. The Ukraine family scheme presented a version of family reunion where, in an unexpected turn and in the face of public and political pressure, efforts had been made to *remove* many of the barriers set out above. Examples of this included broadening the definition of family to encompass extended family members (siblings, grandparents, grandchildren, aunts and uncles, nephews and nieces,

cousins) *and* the immediate family of an extended family member; removing all application fees and waiving the need for sponsors to meet any maintenance or accommodation requirements; acknowledging the need for flexibility around VAC attendance and VAC location; and allowing those successful under the scheme to work, study and claim benefits in the UK upon arrival.⁶²

Even with the policy changes borne out by the guidance, the implementation of the Ukraine family scheme policy, and of the Homes for Ukraine scheme, remains deeply flawed. Processing delays and 'bureaucratic issues' have resulted in serious delays in visas being approved,⁶³ with the Guardian reporting that "*the most common obstacle appears to be families who do not receive visas for all of its members.*"⁶⁴

However, it is evident from the concessions made in its own guidance that the UK government clearly recognises the hurdles it places before those fleeing their country and seeking to join their family members in safety. As per the Refugee Legal Support statement on support for refugees from Ukraine,

*"Standing in solidarity with people fleeing Ukraine does not mean that we should remain silent on the glaring disparity in the reaction to the survivors of conflicts in the global south. Governments and civil society must show the same fervour for all displaced people."*⁶⁵

Updates and the need to protect family reunion

In the months since this report was originally drafted, the Nationality and Borders Bill has received royal assent, and the UK government has announced an agreement to begin sending those seeking refuge to Rwanda for offshore processing. At the same time, the second year of the FRFE+ project has seen a rise in referrals from unaccompanied minors trying to join refugee siblings in the UK; children from Afghanistan or Sudan or Somalia, who sometimes have no other living family members, trapped and undocumented in Turkey or forced into slavery and detention in Libya.

The increasingly punitive criminalisation of those travelling via irregular routes emphasises the integral importance of family reunion. Whilst the offerings in terms of family reunion are greatly depleted, family reunion routes remain one of the only alternatives for those facing unsafe and traumatic journeys; journeys which will end in more violence at the hands of the state upon

⁶² Home Office, *Ukraine Scheme Guidance version 4.0*, 11 March 2022, available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060447/ukraine-scheme-guidance.pdf

⁶³ Amelia Gentleman, 'UK government admits to processing delays for Ukraine visas', *The Guardian*, 28 April 2022, available online at <https://www.theguardian.com/politics/2022/apr/28/government-admits-bureaucratic-issues-causing-homes-for-ukraine-visa-delays>.

⁶⁴ Mark Townsend, 'Hundreds of Ukrainian families halt bids to reach UK after visa delays', *The Guardian*, 1 May 2022, available online at <https://www.theguardian.com/uk-news/2022/may/01/hundreds-of-ukrainian-families-halt-bids-to-reach-uk-after-visa-delays>.

⁶⁵ Refugee Legal Support, RLS newsletter #19, 03.04.2022.

arrival. Family reunion routes must be protected, while the rules dictating family reunion must be pushed wider at every opportunity, in order to allow some hope and dignity for family members trying to live their lives together in the UK.

Bibliography

Alper, Lucy, *Undocumented for years whilst trying to claim asylum*, (Medium) 20 December 2020, available online at <https://the-crisis-isnt-over.medium.com/undocumented-for-years-whilst-trying-to-claim-asylum-782d69755707>.

Asylum Information Database (AIDA), *Country Report: Greece 2020 Update*, available online at https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf.

Amnesty International UK, the Refugee Council and Save the Children, *Without my family: the impact of family separation on child refugees in the UK*, 2019, available online at https://www.amnesty.org.uk/files/2020-02/Without_my_family_report.pdf?VersionId=bmYG2.9kNYxBEpy2qPZ.VJTU4pWZT7Ay.

Beswick, Jacob, *Not so Straightforward: the need for qualified legal support in refugee family reunion* (British Red Cross) 2015, available online at <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/not-so-straightforward-refugee-family-reunion-report-2015.pdf>.

The British Red Cross, *Refugee Family Reunion after Brexit: British Red Cross policy briefing on what Brexit will mean for separated families seeking to reunite in the UK*, available online at <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/british-red-cross-briefing-on-refugee-family-reunion-and-brexit.pdf>

Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available online at <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>.

Galisson, Maël and the Institute of Race Relations, *Deadly Crossings and the Militarisation of Britain's Borders*, 2020, available online at <https://irr.org.uk/wp-content/uploads/2020/11/Deadly-Crossings-Final.pdf>.

House of Commons Home Affairs Committee (UK), *The Work of the Immigration Directorates (Q1 2016)*, *Sixth Report of Session 2016–17, HC 151*, 19 July 2016, available online at <http://www.refworld.org/docid/58ac4fd14.html> para. 39.

House of Commons, Briefing Paper Number 9031, *Brexit: the end of the Dublin III regulation in the UK*, 21 December 2020, available online at <https://researchbriefings.files.parliament.uk/documents/CBP-9031/CBP-9031.pdf>

Marsden, Ruth and Harris, Catherine, *"We started life again": integration experiences of refugee families reuniting in Glasgow* (British Red Cross/Scottish Refugee Council), 2015.

Nicholson, Frances / UN High Commissioner for Refugees (UNHCR), *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, available online at <https://www.refworld.org/docid/5a902a9b4.html>.

Oxfam International, *Safe but not Settled: The impact of family separation on refugees in the UK*, January 2018, available online at <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620409/rr-safe-but-not-settled-refugees-uk-310118-en.pdf;jsessionid=E70A30D49E2DD26EDAB0BB83B6E75A9F?sequence=1>

Red Cross EU and European Council on Refugees and Exiles, *Disrupted Flight; the Realities of Separated Families in the EU*, November 2014, available online at <https://redcross.eu/positions-publications/disrupted-flight-the-realities-of-separated-refugee-families-in-the-eu>.

The Refugee Council, *Living in Limbo: A decade of delays in the UK asylum system*, July 2021, available online at <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/07/01191305/Living-in-Limbo-A-decade-of-delays-in-the-UK-Asylum-system-July-2021.pdf>

The Refugee Council and Oxfam Joint Agency Briefing Note, *Together Again – reuniting refugee families in safety – what the UK can do*, February 2017, available online at <https://www.refugeecouncil.org.uk/wp-content/uploads/2019/07/ja-together-again-refugee-family-reunion-uk-280217-en.pdf>

Scottish Refugee Council, *'One Day We Will Be Reunited': Experiences of refugee family reunion in the UK*, April 2010, available online at <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/%E2%80%9COne-day-we-will-be-reunited%E2%80%9D-Experiences-of-Refugee-Family-Reunion-in-the-UK.pdf>

UK Home Office, *Every Change Matters: Change for Children*, Statutory Guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children, November 2009, available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf

UN High Commissioner for Refugees (UNHCR), *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, available online at <https://www.unhcr.org/4f54e3fb13.pdf>.

UN High Commissioner for Refugees (UNHCR), UNHCR Executive Committee Conclusion No. 88, *Protection of the Refugee's Family*, 1999, available online at <https://www.unhcr.org/uk/excom/exconc/3ae68c4340/protection-refugees-family.html>

REFUGEE LEGAL SUPPORT

Refugee Legal Support is a team of frontline asylum lawyers who assist displaced people with vital legal advice and support.

We were established in 2017 in response to the shocking absence of legal support for people in Greece who were fleeing persecution and violence at home. Since then, RLS has expanded to support people in the UK and Northern France and we have grown our team in Greece. For further information concerning our work, please visit www.refugeelegalsupport.org.



This report was written by Refugee Legal Support. For further information on the issues raised in this paper please contact casework.uk@refugeelegalsupport.org.