



## POLICY PROPOSAL

# New ways to access UK asylum

Resolving the refugee situation at the UK's doorstep





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# Overview

## What we are calling for

For too long, the UK's border control policies restricting access to the asylum system have contributed directly to a humanitarian crisis in northern France, and increased reliance on dangerous and irregular journeys for refugees to reach UK soil. This has come at great human and financial cost.

Through the juxtaposed border arrangements of the 1991 Sangatte Protocol, the 2003 Le Touquet Treaty, and later bilateral agreements, the UK Government has effectively extended its border onto French and Belgian soil, with extraterritorial power to deny leave to enter.<sup>1</sup> As a consequence of wielding sovereign legal powers on French territory, the UK by extension holds high levels of responsibility for resulting human rights infringements, and is well-placed to seek sustainable solutions in collaboration with France.

Within the context of the UK's negotiations regarding its future relationship with the European Union, a new approach to the situation in northern France is presented by civil society actors, which hold in-depth knowledge of the complexities of human mobility at the UK border.

This proposal reaches beyond tried, tested and failed approaches. In carefully reconsidering its ineffective and costly strategy at the border with France, by seeking constructive avenues for collaboration and for assuming its responsibilities, the UK Government can more effectively achieve its stated goal of dismantling trafficking and smuggling networks<sup>2</sup> and reducing reliance on irregular migration pathways,<sup>3</sup> whilst still upholding international<sup>4</sup> and European law<sup>5</sup> and its moral responsibility vis-à-vis prospective asylum seekers, who are some of the world's most marginalised individuals. It would also allow the UK to take a proactive approach to asylum claims and protection responsibilities, and fulfil its renewed commitment to asylum in the spirit of the new Immigration Bill.<sup>6</sup>



Photo credit: Andreas Beissel

### What we are calling for:

- The development of a mechanism for individuals to make an asylum claim from UK offshore sites of juxtaposed border control, where the UK places its border control facilities and wields legal powers, in line with rights enshrined in the 1951 Geneva Convention and the Universal Declaration of Human Rights (Art. 14).
- The introduction of measures to identify and accelerate transfers of particularly at-risk groups, in collaboration with French counterparts and partners. These at-risk groups would include victims of trafficking, unaccompanied minors, LGBTQ+ persons and people with disabilities, victims of physical, mental or sexual abuse, among others, for whom delays in accessing protection systems pose even greater dangers.

This policy proposal does not preclude France having to uphold its own responsibilities on these matters, and indeed envisages meaningful collaboration with French authorities on long-term solutions to the ongoing crisis in northern France.

<sup>1</sup> These agreements were given effect in Britain through The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 <https://www.legislation.gov.uk/uksi/2003/2818/part/3/made>

<sup>2</sup> Home Office, 'How the Government is tackling modern slavery' (2019) <https://homeofficemedia.blog.gov.uk/2019/05/22/how-the-government-is-tackling-modern-slavery/>

<sup>3</sup> The Sandhurst Treaty (2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674885/Treaty\\_Concerning\\_the\\_Reinforcement\\_Of\\_Cooperation\\_For\\_The\\_Coordinated\\_Management\\_Of\\_Their\\_Shared\\_Border.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674885/Treaty_Concerning_the_Reinforcement_Of_Cooperation_For_The_Coordinated_Management_Of_Their_Shared_Border.pdf)

<sup>4</sup> UNHCR, Convention Relating to the Status of Refugees (1951) <https://www.unhcr.org/3b66c2aa10>

<sup>5</sup> European Union, Charter of Fundamental Rights of the European Union (26 October 2012) Art. 18; Council of the European Union Regulation No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (29 June 2013).

<sup>6</sup> Home Office, 'The UK's future skills-based immigration system' (2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)



## Why are changes necessary?

The humanitarian crisis can wait no more

The situation in northern France is inhumane and degrading and following the global Covid-19 outbreak, the situation is worse than ever.<sup>7</sup> People are at breaking-point. The UK government has the power to resolve it, but the solution is not found in increased security measures and hostile treatment of vulnerable individuals.

The worsening situation for displaced people in northern France has been considered a source of political embarrassment for many years. As the UK works out its new relationship with the European Union and its member states, and in the context of its new Immigration Bill, it has an opportunity to resolve a situation that has degraded rapidly over recent years by providing access to asylum. Evidence shows that increased security measures and hostile treatment of vulnerable people do not work and only push people to take more dangerous routes.<sup>8</sup>

As of April 2020, there were around 1,500 people living in informal camps in the area.<sup>9</sup> Currently, these individuals for the most part live without access to shelter, clean water and sanitation, let alone legal information or protection from violence and exploitation. During winter in particular these harsh living conditions are deadly and have cost lives, most recently that of a 24-year old man who died from intoxication of smoke fumes after having to light a fire next to his tent for warmth.<sup>10</sup> This is inhumane, and yet could be resolved by a more coherent and proactive asylum system, given the relatively small number of people in comparison to the 65,000 claims for international protection made in Europe in January 2020 alone.<sup>11</sup>



7. The Guardian (2020) <https://www.theguardian.com/global-development/2020/apr/09/covid-19-spreading-quickly-though-refugee-camps-warn-calais-aid-groups>

8. House of Commons Foreign Affairs Committee, 'Responding to irregular migration: A diplomatic route' (2019) p. 8 <https://publications.parliament.uk/pa/cm201919/cmselect/cmfa/107/107.pdf>

9. Refugee Rights Europe, 'Urgent communication to seven UN Special Rapporteurs regarding France's COVID-19 response' (2020) <https://refugee-rights.eu/2020/04/09/urgent-communication-to-seven-un-special-rapporteurs-regarding-frances-covid-19-response/>

10. The Guardian (2019) <https://www.theguardian.com/world/2019/nov/03/outrage-in-calais-over-death-of-nigerian-man-in-tent>

11. EASO, Latest Asylum Trends: January 2020 <https://www.easo.europa.eu/latest-asylum-trends>





Photo credit: Adrian Abbott

A heavy-handed French police presence, with the tacit political support of the UK,<sup>12</sup> carries out daily living site evictions around Calais in an attempt to dissuade people from settling in the area. The UN Special Rapporteur on the right to housing has condemned this,<sup>13</sup> but evictions and confiscation of property have only increased at the exorbitant estimated cost of EUR 9,000 a day.<sup>14</sup>

These living conditions have been ruled to constitute inhuman and degrading treatment multiple times by French courts,<sup>15</sup> and yet the UK continues to spend extortionate sums of money on reinforcing the security infrastructure and preventing vulnerable people from reaching the UK.

Extremely vulnerable groups, including unaccompanied minors, single women, people with disabilities and victims of trafficking and abuse are among those forced to live rough without any protections. The number of victims of trafficking and modern slavery is only expected to rise following the introduction of the government's new 'Points-Based' Immigration System.<sup>16</sup>

Currently, even those picked up by UK or French border authorities are rarely afforded adequate protections.<sup>17</sup> However, the vast majority of those attempting to cross the Channel are fleeing persecution, generalised violence, conflict or other forms of protracted crises in their home countries and many are likely to be accepted as refugees in the UK, according to experts.<sup>18</sup> For example, of the 1,890 individuals who arrived by boat to UK shores in 2019, only 125 were returned to the European countries during that same period.<sup>19</sup>

The violent crackdown on displaced people in the UK-France border region has had much the same failures as the UK's domestic 'Hostile Environment', with routine violence, detention and deportations marking attempts to dissuade people from seeking entry to and asylum in the UK. These harsh measures, funded by the UK, are intended to make living as a displaced person in northern France near to impossible, but in fact serve to contradict the UK's own stated interests. They make France unappealing as a country in which to seek protection from, thus acting as a push factor away from a place many displaced people associate with police violence, lack of accommodation and anti-migrant sentiment.<sup>20</sup>

Time and again, the tried and failed approach of uprooting refugees through the closure of camps and eviction refugees from living settlements has therefore proven futile, and highlights the need to adequately address this situation in a constructive manner.

12. InfoMigrants (2019) <https://www.informigrants.net/fr/post/20205/traversees-de-la-manche-des-gendarmes-reservistes-francais-payes-par-londres-deployes-sur-le-littoral>

13. OHCHR (2019) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24475&LangID=E>

14. Slate (2020) <https://www.slate.fr/story/186017/migrants-calais-jungle-camps-jour-sans-fin-photoreportage>

15. Tribunal administratif de Lille 1508747 (2015) <https://www.asylumlawdatabase.eu/en/case-law/france-administrative-tribunal-lille-2-novembre-2015-association-medecins-du-monde-et-al-no-tribunal-administratif-de-lille-1702397>

16. The Joint Council for the Welfare of Immigrants, 'Immigration Bill 2020: Second Reading Briefing' <https://www.jcwi.org.uk/immigration-bill-2020-second-reading-briefing>

17. HMP Calais inspection 2016 <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/12/Coquelles-Calais-Web-2016-2.pdf>

18. BBC (2020) <https://www.bbc.co.uk/news/amp/uk-england-50813246>

19. Ibid

20. The Human Trafficking Foundation, 'Nobody deserves to live this way' (2017) <https://www.antislaverycommissioner.co.uk/media/1262/nobody-deserves-to-live-this-way.pdf>



# Why should the UK take action?

## It is in the country's best interests

In addressing the lack of access to the asylum system at its borders, the UK Government has a unique opportunity to regain control of its asylum system, in the spirit of the new Immigration Bill and its international law obligations, by taking a proactive approach to asylum claims and the UK's refugee protection responsibilities.

The Government faces a unique chance to ensure that its legal obligations are successfully met, that taxpayers' money is spent wisely, and that the UK's credibility on the international scene is upheld by honouring its commitment to fundamental human rights and justice.



Photo credit: Refugee Women's Centre

## Enabling the UK to meet its international legal obligations.

The juxtaposed controls agreements, whereby the UK has externalised its border controls onto French territory and thus prevents prospective asylum seekers from entering its territory and being able to present an asylum claim, constitute a *non-entrée* policy<sup>21</sup>. The juxtaposed controls are explicitly intended to 'detect and deter potential clandestine illegal immigrants before they are able to set foot on UK soil, fundamentally altering the way the UK operates at its border'.<sup>22</sup> Such a policy arguably breaches the UK's international legal obligations by circumventing the right to asylum and as a result also the protection against *non-refoulement*.<sup>23</sup>

In addition, the agreements create UK 'Control Zones' in northern France and as far as Paris and Brussels, where hundreds of UK Border Force guards operate,<sup>24</sup> UK detention facilities (Short Term Holding Facilities) are based<sup>25</sup> and UK criminal law powers apply. The extraterritorial control and law enforcement powers wielded by the UK engages its human rights responsibilities towards those in the Control Zones or in the UK detention sites, and indeed have led to the creation of facilities which would, and should, be able to process asylum claims. However, the border agreements remove UK legal accountability in these Control Zones and fail to uphold individuals' right to present an asylum claim or access legal advice.<sup>26</sup> This means that refugees at the border are finding themselves in a legal 'grey zone' where they are under UK control, but without the equivalent human rights protections.

In light of this, the UK Government could at present decide to reverse the trend of ambiguity around its ability to meet its legal obligations and commitments, by ensuring that asylum seekers are able to present an asylum claim at locations where the UK operates its border control facilities. This would also be the only effective way to uphold the UK's human rights responsibilities to those on its border, and to reduce reliance on irregular migration pathways for those wishing to seek protection in the UK.

Importantly, the proposed endeavours to be undertaken by the UK Government must go hand in hand with the provision of adequate and humane reception conditions, legal aid and guidance for prospective asylum seekers on French soil, along with genuine efforts by the French Government to ensure access to the asylum procedures and effective status determination in France itself.

21. J.C. Hathaway, T. Gammeltoft-Hansen, 'Non-Refoulement in a World of Cooperative Deterrence' (2014) [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1216&context=law\\_econ\\_current](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1216&context=law_econ_current)

22. UK Cabinet Office (2007) <https://www.statewatch.org/news/2007/nov/uk-border-review-report.pdf>

23. Amnesty International, 'The Human Rights Risks of External Migration Policies' (2017) <https://www.amnesty.org/download/Documents/POL3062002017ENGLISH.PDF>

24. Care4Calais (2019) p. 16 <http://www.stopwapenhandel.org/sites/stopwapenhandel.org/files/hunted-detained-deported.pdf>

25. An inspection from HM Inspectorate, accompanied by the Contrôleur Général des Lieux de Privation de Liberté, of these short-term holding facilities (STHFs) on 25-27 November 2019 found serious concerns about some aspects of the detainees' experience. While detention staff were generally caring and helpful, the inspection found serious concerns around safeguarding and legality of detention. See more: <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/03/France-web-2019.pdf>

26. HMIP Calais inspection (2016) <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/12/Coquelles-Calais-Web-2016-2.pdf>

## Ensuring efficient spending of UK tax money.

The UK Government endeavours to consistently ensure that taxpayers' money is spent wisely and efficiently. However, in the case of the UK-France border, its tactics have tragically led to a lamentable waste of resources. Between 2010 and 2016 alone, £315.9 million of tax payers' money was spent by UK Border Force ('UKBF') on 'detering irregular migration' in and around Calais. In 2018 a further £44.5 million was committed as part of the Sandhurst Agreement,<sup>27</sup> followed by another £3.2 million a year later.<sup>28</sup> The spending figure is rapidly increasing, as new walls and barbed wire fences are erected every month. New high-security detection equipment, CCTV, and drones have been installed in the area as well as a Joint Command and Control Centre.

Despite this considerable financial outlay and stated policies to the contrary, irregular crossings and loss of life have continued.<sup>29</sup> 2019 saw an increase in boat crossings,<sup>30</sup> suggesting that the hike in security spending only serves to increase the desperation felt by displaced people in the area, pushing them into ever more lethal routes.<sup>31</sup> This is evidenced by the fact that there were six reported deaths in 2019 around Calais alone, including that of a 17-year old child, directly resulting from dangerous crossing routes on rubber dinghies, refrigerated lorries and even by trying to swim to the UK.<sup>32</sup>

The human and financial cost of increased border security is therefore a lamentable waste. The 1,500 people currently living between Calais and Grande-Synthe remains an extremely low number compared to the overall 35,500 people who sought asylum in the UK in 2019.<sup>33</sup> The cost of housing and feeding these individuals as part of an asylum procedure would amount to £13.3 million a year,<sup>34</sup> which is just over ten percent of the sum spent in 2016 alone on preventing them from entering the UK.<sup>35</sup>

Denying people access to asylum at the border simply forces individuals to live in squalid conditions whilst waiting, incurs further costs to the UK taxpayer, and pours money into hands of smugglers and traffickers. The matter is not going away, irrespective of how much more of UK tax payers' money is spent on border security. Undoubtedly, opening access to the asylum system for prospective asylum seekers to have their cases processed and considered through due process, would free up statutory funds currently allocated to futile and harmful securitisation measures.



Photo credit: Andreas Beissel

27. UK Government, 'Joint UK-France centre opens in Calais to tackle criminality at border' (2018) <https://www.gov.uk/government/news/joint-uk-france-centre-opens-in-calais-to-tackle-criminality-at-border>

28. Home Office, 'Fact Sheet: Small Boats' (2019) <https://homeofficemedia.blog.gov.uk/2019/08/09/fact-sheet-small-boats/>

29. Home Office, Addendum to Small Boats Action Plan (2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839500/Small\\_Boats\\_Action\\_Plan\\_Addendum\\_-\\_26th\\_September\\_consolidated\\_text\\_2019.10.01\\_002.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839500/Small_Boats_Action_Plan_Addendum_-_26th_September_consolidated_text_2019.10.01_002.pdf)

30. The Independent (2019) <https://www.independent.co.uk/news/uk/home-news/migrant-boat-uk-france-refugee-channel-crossings-a9265841.html>

31. Foreign Affairs Committee, Responding to irregular migration: A diplomatic route (2019), p. 9 <https://publications.parliament.uk/pa/cm201919/cmselect/cmaff/107/107.pdf>

32. Calais Migrant Solidarity (2020) <https://calaismigrantsolidarity.wordpress.com/deaths-at-the-calais-border/>

33. Home Office (2020) 'How many people do we grant asylum or protection to?' <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/how-many-people-do-we-grant-asylum-or-protection-to>

34. Asylum seekers in the UK receive an allowance of £36.95 a week, or £1,921 a year, whilst City AM estimates that housing an asylum seeker costs £6,937 a year: <https://www.cityam.com/how-much-would-it-cost-uk-accept-all-asylum-seekers/>

35. Freedom of Information request ref. 41250 (2017) [https://fullfact.org/media/uploads/foi\\_response\\_41250\\_-\\_r.pdf](https://fullfact.org/media/uploads/foi_response_41250_-_r.pdf)



# What we are proposing

## The UK should process asylum claims at its border, where it wields extraterritorial control.

- Pre-existing UK operations around Calais, such as UKBF checkpoints, the Joint Command and Control Centre, and four UK detention facilities, show the extent of the UK's administrative powers in northern France. The UKBF and other UK personnel already present at these operations are therefore in a strong position to be able to process asylum claims and facilitate access to relevant legal advice.
- For people apprehended by French border authorities in the UK Control Zone, a 'Take charge' request could be issued to their UK counterparts.
- For asylum claims to be made possible, the 2000 Additional Sangatte Protocol, article 4 and 2003 Le Touquet Treaty, article 9 should be amended to allow asylum claims to be placed to UKBF officials in the UK Control Zones.
- The UK is already committing funds towards reception facilities for displaced people in northern France, in line with the 2018 Sandhurst Agreement,<sup>36</sup> which could cover housing and reception of those awaiting the outcome of their asylum claim.
- Access to asylum is already available at UKBF checkpoints in UK airports.<sup>37</sup> Allowing this at UKBF checkpoints in France would give the UK the chance to regain control of its asylum system by taking a more proactive approach to asylum claims.

## There should be an accelerated relocation of at-risk individuals.

- Many identifiable vulnerable groups on the UK border have the right to particular protections, such as victims of trafficking, unaccompanied minors, LGBTQ+ people or people with disabilities. In cooperation with its French partners, the UK Government, through the help of a humanitarian or UN body, could play an important role in preventing further exploitation by identifying those at risk and entering them into an accelerated protection and relocation procedure.
- This should include all at-risk groups entering the UK Control Zone, towards whom the UK holds human rights obligations. For suspected victims of trafficking and modern slavery, this should include a referral to the National Referral Mechanism.
- The UK could also choose to proactively assess the protection needs of prospective asylum claimants, by engaging in vulnerability identification procedures of those living in the border zone, and organising the accelerated transfer of the most at-risk, again with the help of a humanitarian or UN body.
- Similar models have already been successfully implemented which facilitate safe entry without substituting the full status determination process, for example through the Dubs Amendment for unaccompanied minors.<sup>38</sup>
- These responsibilities would by definition be shared between France and the UK, and could be under the remit of the Joint Command and Control Centre or the UK-France Liaison Officer. This would give the UK the chance to ensure its legal human rights responsibilities to all those at its border are met.

<sup>36</sup> Sandhurst Agreement (2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674885/Treaty\\_Concerning\\_the\\_Reinforcement\\_Of\\_Cooperation\\_For\\_The\\_Coordinated\\_Management\\_Of\\_Their\\_Shared\\_Border.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674885/Treaty_Concerning_the_Reinforcement_Of_Cooperation_For_The_Coordinated_Management_Of_Their_Shared_Border.pdf)

<sup>37</sup> UK Visas and Immigration, Information about your asylum application (2016) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/513585/Point\\_of\\_Claim\\_English\\_20160401.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/513585/Point_of_Claim_English_20160401.pdf)

<sup>38</sup> Home Office, Dubs Process Document (2018) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767397/DUBS\\_DETAILED\\_PROCESS\\_DOCUMENT\\_France\\_FINAL\\_Updated\\_December\\_2018\\_SG\\_003\\_002\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767397/DUBS_DETAILED_PROCESS_DOCUMENT_France_FINAL_Updated_December_2018_SG_003_002_.pdf)



## Spotlight on the humans at the border

### Mohammed\*

Mohammed, 16, left conflict-torn Darfur in Sudan to find a life in safety. However, trapped at the British border, he was faced with new forms of violence and a lack of recourse to security. "I was on the road in the evening. There were many police and they verbally abused us, hit us with batons and sprayed tear gas. It was just me and a single friend." Mohammed is still in Calais, sleeping rough and looking for a solution to his predicament.

### Abdallah\*

Abdallah quickly left Sudan after having been released from jail where he was tortured and ill-treated by government officials for his social justice work. He spent nine months in the Calais jungle before arriving irregularly in the UK, on the back of a refrigerated lorry. He was granted asylum six months after arriving in the UK.

### Senait\*

Senait is a young woman from the Horn of Africa, who left her home country as an underage girl. After an unfathomable journey across the Sahara and Mediterranean, she was trapped in northern France trying to reach the UK where she has a social support network. She was raped and faced other forms of sexual abuse, and eventually sold her body to a smuggler to cross the UK border. She arrived pregnant in the UK where she applied for asylum.

*\*All names have been changed in order to protect the individuals' identities.*



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