



**Public Bill Committee
Immigration and Asylum Bill
Bar Council Written Evidence**

About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Summary

The Bar Council addresses two areas of concern:

- (1) Part 1 of the Immigration and Asylum Bill (Bill), which proposes to establish an adjudicator appeals authority in substitution for the role presently played by the First-tier Tribunal (Immigration and Asylum Chamber), and
- (2) Part 2 of the Bill and the proposals made in respect of the interpretation and application of Article 8 of the European Convention on Human Rights (ECHR).

Both matters concern the rule of law, access to remedies, and compliance with international legal obligations that the United Kingdom has freely assumed. The Bar Council takes no position on the substantive policy choices in the Bill as they concern protection status and asylum, asylum support, and modern slavery.

As developed below, the Bar Council makes the following points:

- (i) Immigration appeals should continue to be decided by legally qualified persons,
- (ii) The judicial/adjudicative body deciding immigration appeals should remain under the control of the independent Senior President of Tribunals and should not be transferred to the Home Secretary,
- (iii) Procedural Rules need to be made independently and to be consistent with the common law requirement of fairness,
- (iv) The proposals in Part 1 of the Bill will likely increase the burden of independent legal adjudicative work on appeal from executive adjudicators to the Upper Tribunal in the result,
- (v) The proposals in the Bill must march in step with the United Kingdom's existing international law commitments in respect of fundamental rights,

- (vi) The proposed provision for a 'sponsor human rights claim' will be the only practical gateway for persons granted UK asylum/international protection to apply to have their family members join them in the United Kingdom. In so far as such claims will be determined under a narrow definition of 'family life' and an overbroad definition of the 'public interest', the provision being made risks keeping families apart,
- (vii) The definition of 'family life' is over-particularised, essentially rigid, inhibits judicial assessment, and risks putting the UK in breach of its ECHR obligations in individual cases, and
- (viii) The definition of the 'public interest' is over-broad, inhibits judicial assessment, and risks putting the UK in breach of its ECHR obligations in individual cases.

In what follows, so as to avoid undue length, the Bar Council does not work through the Bill clause by clause. Instead, it provides a thematic analysis.

(1) The proposed 'Independent Immigration Appeals Authority': Part 1 of the Bill

Part 1 of the Bill proposes the establishment of an 'Independent Immigration Appeals Authority' (IIAA) to decide appeals on matters such as protection claims (e.g., in relation to refugee status), human rights (e.g., family life matters), Withdrawal Agreement EU Citizens' Rights cases, and deprivation of British citizenship.¹ This new body will replace the function of the First-tier Tribunal (Immigration and Asylum Chamber) (FTT).

The key features of this proposed body include:

- (i) appeals being decided by 'executive adjudicators' who need hold *no legal qualification* at all² (presently FTT judges are required to have held a legal qualification *for 5 years*)³,
- (ii) the appointment of those adjudicators by the Chief Executive of the IIAA (the first Chief Executive being appointed by the Home Secretary, the latter being *one party in all immigration appeals*)⁴ instead of by the independent Senior President of Tribunals (originally, the Lord Chancellor) as is the case with FTT judges,⁵
- (iii) a stated objective that does not simply seek to deal with cases 'fairly and justly' (as the FTT must do at present under its procedural rules)⁶ but rather which seeks to integrate the adjudicative process into the executive/Home Office 'immigration and asylum system'⁷,

¹ Clause 1.

² Clause 2 and Schedule 2. NB Alongside 'executive adjudicators' the Bill provides for the appointment of 'senior adjudicators' with some prior legal experience. However, even this limited concession to professional competence requires only *2 years* in practice, or experience of '*law-related activities*' (undefined) that makes an applicant suitable for appointment in the opinion of the Chief Executive. Further, it is clear that the Home Office intend that most immigration appeals will be decided by non-legally qualified 'executive adjudicators'.

³ Section 4 of and Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.

⁴ Clause 2(3) and (5).

⁵ Section 4 of and Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.

⁶ Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

⁷ In exercising its functions, the IIAA must, among other things, 'have regard to the public interest, and in particular to the fact that the IIAA operates as a key part of the immigration and asylum system', Clause 1(5).

- (iv) the ouster of the supervision of the High Court by way of judicial review of IAA functions and decisions,⁸
- (v) rules of procedure to be made not by the independent Tribunal Procedure Committee (as with the FTT)⁹ but by an IAA controlled board,¹⁰
- (vi) the power to control expedited appeal timetables to rest solely with the Home Secretary (who is one party in every appeal)¹¹, and
- (vii) non-legally qualified adjudicators to be given the power to charge (fine) an appellant's representative (who may be a barrister) on the basis of so-called improper conduct.¹²

Taken as a package, these proposals move immigration appeals away from being solely part of the independent judicial branch of government and bring them, at least in part if not mainly, within the domain of the executive (the Home Office). This is a retrograde step and has implications for the quality of the rule of law.

- (i) *Immigration appeals should continue to be decided by legally qualified persons*

First, the Bar Council considers that it is in the interests of justice that the persons who decide immigration appeals are legal qualified, as FTT judges are at present.

When an immigration appeals system was first set up under the Immigration Appeals Act 1969 and modified thereafter by the Immigration Act 1971, there was *no requirement* for 'adjudicators' (as they were then called as well) to be legally qualified. However, in the operation of the appeals system under the Immigration Act 1971, the quality of adjudicators and their decisions were criticised by service users and others.¹³

The problem occasioned by the lack of legal qualifications for office was rectified finally by the then Labour Government's Immigration and Asylum Act 1999, which imposed a requirement for adjudicators to hold a legal qualification *for 7 years* (or hold equivalent legal and other experience)¹⁴. In practice, all new appointees were legally qualified thereafter. At present, as noted above, FTT judges are required to have held a legal qualification *for 5 years*.¹⁵

The proposal to remove the requirement for persons deciding appeals to be legally qualified lacks any convincing justification. Appeals ought to be decided by legally qualified persons. The judicial branch of government in its various iterations in courts and tribunals makes use of qualified

⁸ Clause 1(8).

⁹ Section 22 of and Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

¹⁰ Clause 4 and Clause 5.

¹¹ Clause 9.

¹² Clause 10.

¹³ See for example, the Annual Report of the Joint Council for the Welfare of Immigrants (JCWI) 1975-1976, the UKIAS Report for 1977-78, both cited in *Immigration Law and Practice* (2nd edition, 1987), Ian A. Macdonald, pp. 418-419.

¹⁴ Section 57(3) of and Schedule 3 to the Immigration and Asylum Act 1999.

¹⁵ Section 4 of and Schedule 2 to the Tribunals, Courts and Enforcement Act 2007. NB while provision is also made for persons to be appointed who are not legally qualified but who have 'gained experience in law' that makes them suitable for appointment, in practice, FTT judges sitting in its immigration and asylum chamber the judicial appointment eligibility condition on a 5-years' legally qualified basis.

lawyers to decide cases. That ensures high quality and legally sound dispute resolution. There is no good reason to depart from that longstanding approach.

The prescribed elements of legal education and training are there for a reason. Among other things, the academic stage provides the necessary education in a full range of areas of law that concern immigration, including administrative law (including the English legal system), common law principles (such as fairness principles), the interpretation and application of statute law, criminal law, and so on. Thereafter, the vocational stage (for example, 'Bar School' for barristers) builds on that foundation, with training on matters such as the law of evidence, civil procedure, and legal writing (for example, written opinions and advice, both being techniques of legal writing the practise of which lays the foundations for being able to write good judgments). The final stage of preparation for legal practice is being a trainee for a year (such as being a pupil barrister in a set of chambers). This provides the necessary real-world experience of practice of the law to enable a person to be able to exercise all the responsibilities of a professional lawyer in practice who is to have care for the lives of their clients and their interests. Thereafter, the 5-years' legal practice requirement in order to be an FTT judge ensures that immigration judges have the experience of the practice of law and of arguing cases to be able to move to the next stage of responsibility in judicially deciding cases of vital importance to people's lives.

It is fanciful to suggest that that legally-unqualified persons can go on a lesser course of training to become immigration adjudicators and ensure that law and justice are dispensed to the necessary standard in deciding cases, such that legally qualified lawyer judges may be dispensed with safely. Deciding immigration law cases involves many things, including application of knowledge and understanding of international treaties (including the UK's 2020 EU Withdrawal Agreement, the 1951 United Nations Refugee Convention, and the 1950 European Human Rights Convention (EHCR)/Human Rights Act 1998), the domestic structure of immigration control and immigration laws, British nationality law, administrative law, common law principles, how to approach evidence including that of non-English speakers, how to assess cross-examination, how to assess credibility, how to weigh questions of fact, and how to interpret and apply the law.

No matter how well-intentioned, a non-legally qualified adjudicator will struggle to master these things. *Legal qualifications and experience are there for a reason: not to assert status but to provide the necessary skills to do the job.* A non-legally qualified adjudicator may produce something called a judgment but it risks being at least to some degree a simulacrum or hallucination of the real thing, with all the risk for sound judicial determination that implies. In the result, on account of a material error of law by an executive adjudicator, a British citizen may wrongly be deprived of British citizenship, a refugee be returned to a place where they risk persecution or torture, a British family with a foreign member may be broken up, or an EU citizen be denied Withdrawal Agreement rights.

Further, it is a matter of concern that non-legally qualified adjudicators are to be given the power to charge (fine) an appellant's legally qualified representative (who may be a barrister) on the basis of so-called improper conduct.¹⁶ A barrister must be able to advance their client's case with vigour, mindful always of the respect due to a court or tribunal and of its procedural requirements. Where a non-legally qualified executive adjudicator fails to grasp the fundamental basis on any applicable law or legal principle, vigorous exchanges may result between them and a legally qualified

¹⁶ Clause 10.

advocate. To give a non-legally qualified adjudicator the power to charge (fine) an appellant's legally qualified representative on the basis of so-called improper conduct hands them a penal sanction power that they do not need and which may have a chilling effect on the ability of a legal representative to make a case fearlessly on behalf of their client. There is already a sufficient safeguard. Barristers must comply with the Bar Standard's Board Handbook and Code of Conduct and¹⁷ any alleged improper conduct is capable of leading to an advocate being referred at discretion to the appropriate regulator, if referral is indeed really merited, in the usual way.

It is no answer to these objections to opine that there are other examples of complex and weighty decisions being made by legally unqualified persons. Each context is different. In any event, in judging summary criminal proceedings, lay magistrates are supported in the court room during the hearing by legally qualified justices' clerks, while in the field of planning law, planning inspectors need to be full or chartered members of a professional body such as the Royal Institute of Chartered Surveyors. In immigration appeals, complex questions of fact and law, that involve international treaty commitments, fall to be decided. Legally qualified judges are necessary.

Further, the proposed onward right of appeal from adjudicators to the Upper Tribunal is no guarantee that adjudicator errors will be corrected. First, it is wrong in principle to plan for an increase in legal error in first-instance decision-making. Second, there is no guarantee that a materially flawed adjudicator decision will be made the subject of onward appeal (a poorly advised or unrepresented person may not pursue one), that permission to appeal will be granted, or that any error will be corrected on appeal.

If at present the FTT lacks the capacity to handle the number of appeals or the flexibility to cope with any surge in demand, it is right to fix that problem rather than to dismantle it. Were the County Court, which decides civil claims, to face similar issues, a solution would no doubt be found that did not involve its abolition. It is better to fix what exists than to engage in structural revolution.

The proposed adjudicators ought to be required to hold the same minimum legal qualification as FTT judges. To have adjudicators with no legal qualification deciding appeals increases the risk of material legal error in the decisions made, with attendant practical and cost implications occasioned by the need to rectify or otherwise overcome them.

- (ii) *The judicial/adjudicative body deciding immigration appeals should remain under the control of the independent Senior President of Tribunals and should not be transferred to the Home Secretary*

Second, the Bar Council considers that it is in the interests of justice that persons deciding appeals ought to be appointed by the independent Senior President of Tribunals and not by the Home Secretary (or IIAA appointees accountable to the Home Secretary). Under the Immigration Act 1971 adjudicators were appointed by the Secretary of State (i.e., the Home Secretary, one party in every immigration appeal). That appearance of bias and want of independence and impartiality was criticised. Those criticisms formed the backcloth to the action taken by the then-Conservative Government in 1987 when it transferred the role of adjudicators away from the Home Secretary to

¹⁷ Bar Standard's Board Handbook and Code Guidance <https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance.html>

the Lord Chancellor¹⁸ (then also a judicial office holder and simply a Minister) by the Transfer of Functions (Immigration Appeals) Order 1987.¹⁹ At the time, the Prime Minister, the Rt Hon. Margaret Thatcher MP, stated: “I have decided to transfer full administrative responsibility for the immigration appellate authorities to the Lord Chancellor. *He is already responsible for appointments to the immigration appeal tribunal*²⁰ and it is sensible therefore that he should appoint the adjudicators, be responsible for the procedural rules and administer the appellate authorities as a whole”²¹ (emphasis supplied). That reasoning remains apposite.

Today, immigration FTT judges are appointed by the Lord Chancellor’s replacement in the tribunal system, the Senior President of Tribunals, as part of the organisation of the judicial branch of government. There is no case for the Home Secretary (a Minister and member of the executive) or body charged with furthering her immigration and asylum system to appoint the persons who decide appeals to which she is a party. Under the Tribunals, Courts and Enforcement Act 2007²² the Senior President of Tribunals in carrying out the functions of that office, among other things, must have regard to the need for proceedings before tribunals to be fair and handled quickly and efficiently, as well as for members of tribunals *to be experts in the subject-matter of, or the law to be applied* in cases in which they decide matters, and must have regard to the need to develop innovative methods of resolving disputes that are of a type that may be brought. By such existing means, the public interest is protected and the statutory tools to manage both capacity and flexibility are provided. There is no cogent case made to take away the Senior President’s role.

Legal and political principles

In addition to considering the issues of capacity and flexibility when considering the abolition of the FTT and its replacement by the IIAA, it is right too that Parliament be appraised of and consider the applicable legal and political principles at large in the United Kingdom’s constitutional arrangements. While Parliament is free to make such laws to provide for immigration appeals as it sees fit, we suggest it should do so mindful of the legal and political principles embodied in the structure of the United Kingdom’s government.

The separation of powers is a British constitutional principle that divides the exercise of governmental power by function between Ministers/the government (the executive), Parliament (the legislature), and judges (the judiciary). In addition, but distinctly, the need for the independence and impartiality of judges charged with deciding cases is also one of our legal and political principles. These principles deserve respect both as regards the conservation of existing laws that further them and also as regards the making of any new laws that impact upon them. Parliament needs to consider carefully whether these proposals in Part 1 of the Bill, sponsored as they are by a Minister who is and who will continue to be a party to every immigration appeal, pays the necessary respect to these principles.

The United Kingdom is a democratic society in which Parliament makes laws, Ministers govern within the scope of their legal powers, and the courts and tribunals interpret the law and ensure its

¹⁸ The equivalent senior judge today in the tribunals system is the Senior President of Tribunals.

¹⁹ SI 1987/465.

²⁰ The forerunner of the immigration chamber of the Upper Tribunal.

²¹ Hansard, HC Deb 12 March 1987, vol 112, cc267W.

²² Section 2(3).

compliance.²³ Courts and tribunals are often called upon to *uphold the will of Parliament*, as expressed in legislation, against Ministers who exceed the lawful scope of their power when making policy or individual decisions. Each branch of government operates within its domain and in so doing contributes to the rule of law²⁴; the latter being another principle embedded in our constitutional arrangements.

In the United Kingdom's system of Parliamentary government, the separation of powers is necessarily fused at certain points in order to achieve democratic accountability, the government (Ministers) derive its authority to govern from its ability to command a majority in the democratically-elected House of Commons. Further, Ministers sit in one or other House of Parliament and are responsible to Parliament. That being so, to maintain the separation of powers it is even more important the judicial branch of government *remains wholly distinct*. Part 1 of the Bill expressly and by design enmeshes first-tier immigration appeals in the new IAA into the Home Office's immigration and asylum system. It does so expressly by making the IAA a part of the Home Office administration of immigration policy at every level, in terms of appointments to the IAA, the making of its procedure, the specification of the interests to be upheld, and the one-sided powers to be available to the Home Secretary within proceedings. That advantage is further compounded by the ouster of the supervision of the High Court by way of judicial review of IAA functions and decisions.²⁵ This is a step too far.

The Home Secretary, as a Minister and a part of the executive, already has the ability to administer immigration policy and, as part of a government that has a Commons majority, to make immigration laws. If she also dominates the judicial branch of government as regards immigration appeals, as Part 1 of the Bill proposes, she will be in control of the executive, legislative, *and also* the judicial aspects of government in the field of immigration. In such a scenario the rule of law insofar as it includes respect of the separation of powers principle is weakened, as there would be an end to the distinct role of immigration judges in interpreting, applying, and enforcing the rule of law, *so as to uphold the laws made by Parliament against* an overmighty executive making poor, legally erroneous, decisions and policies. It is a matter for Parliament to decide whether to tolerate this diminution in the role of the courts and tribunals to defend and uphold the laws that Parliament itself makes. However, if it does so, it should do so with its eyes open.

Further, as regards the efficacy of the proposed IAA, both the common law and the ECHR require remedies to be real and not theoretical or illusory. For example, Article 13 ECHR provides for a right to an effective remedy.²⁶ The Bar Council has concerns that the IAA and its role in the Home

²³ For a judicial statement to that end, see, the Opinion of Lord Mustill in *R v Secretary of State for the Home Department, ex parte Fire Brigades Union and others* [1995] 2 AC 513, at 567 C-E, House of Lords; see also *State of Mauritius v Khoyratty* [2006] UKPC 13, [2007] 1 AC 80, Judicial Committee of the Privy Council at §12 'The idea of a democracy involves a number of different concepts. The first is that the people must decide who should govern them. Secondly, there is the principle that fundamental rights should be protected by an impartial and independent judiciary. Thirdly, in order to achieve a reconciliation between the inevitable tensions between these ideas, a separation of powers between the legislature, the executive, and the judiciary is necessary.'

²⁴ While there is a lively debate over the content of the rule of law, even in its thinnest version, requiring only that executive power be exercised under laws that are made by established procedures and that are published, necessarily requires independent and impartial judges to determine compliance.

²⁵ Clause 1.

²⁶ While Article 13 ECHR has not been incorporated into domestic law by the Human Rights Act 1998, it binds the UK as international law and also may form the basis of an individual application to the European Court of Human Rights for non-compliance.

Office's immigration and asylum system will not provide a sufficient basis for there to be an effective remedy. Those concerns arise out of the matters already addressed above, that there would insufficient independence, and also out of concerns about a lack fair procedure as set out below. These concerns are not ameliorated by the proposals to put ministers under a statutory requirement to uphold the independence of the IAA²⁷, nor the proposed external oversight by the Independent Chief Inspector of Borders and Immigration.²⁸ What matters are the defects in the particularity and substance of the proposed scheme.

(iii) *Procedural Rules need to be made independently and to be consistent with the common law requirement of fairness*

The Bill provides for the 'IAA Procedure Rules Board'²⁹ to produce new procedure rules having regard to the need for the IAA to secure the objectives identified, namely, ensuring justice is done, being accessible, fair and independent as well as handling cases quickly and efficiently and in the '*public interest*', and in particular to the fact that the IAA operates as a key part of the immigration and asylum system.³⁰ Schedule 3 of the Bill provides for the rules to introduce, among other things, time limits, restrictions on fresh applications, matters to be dealt with in the absence of a hearing and declarations regarding an appellant's efforts and ability to access advice.

First, this unnecessarily reinvents the wheel at considerable public expense and government resources. There already exists Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014³¹ that incorporate all necessary procedural rules for first instance immigration and asylum appeals and applications that strike a fair and just balance between the parties.

Second, the IAA Procedure Rules Board responsible for drafting the new rules will comprise appointees of the Home Secretary, as compared to the extant procedure rules that were drafted by an *independent* Tribunal Procedure Committee established pursuant to the Tribunal, Courts and Enforcement Act 2007³² that comprises legally qualified appointees of the Senior President of Tribunals, the Lord Chancellor, and the Lord Chief Justice.

Given that the Home Office is a party to every appeal, its *de facto* substantial control over formulating the proposed procedure rules governing these appeals permits the possibility of the deck being stacked in its favour. The want of clear independence for the IAA Procedure Rules Board risks undermining the critical legal maxim that '*not only must Justice be done; it must also be seen to be done*' and, in turn, that could erode both service user and public confidence in the new appeals system.

Third, the prospect of the new IAA immigration and asylum appeal procedure rules aligning with the so-called '*public interest*' objective is of grave concern, not least given that this now includes the interest of one party's 'immigration and asylum system'. Fundamentally, the rule of law requires

²⁷ Clause 1(6).

²⁸ Clause 13.

²⁹ Clause 5.

³⁰ Clause 1.

³¹ 2014/2604.

³² Section 22 of and Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

that appeals against a public body's decisions are determined against existing and published laws. The embedding of such '*public interest*' considerations, prioritised as a key objective of the IIAA, within the procedure rules governing how applications and appeals are managed taints this process with unfairness and an unnecessary politicised subjectivity.

Fourth, the government's continued focus on expedited appeal hearings will continue to be of grave concern if these measures are not properly balanced with substantive and procedural safeguards that protect the fairness of proceedings. The Nationality and Border's Act 2022 provides for fast-track appeals for detained applicants.³³ Further, appeals lodged by non-detained foreign national offenders *and* individuals in receipt of asylum support and accommodation must now be determined by the FTT within 24 weeks.³⁴ Part 1 of the Bill similarly reiterates the requirement of the IIAA to handle cases quickly and efficiently³⁵ and provides for the IIAA Procedure Rules Board to incorporate time limits within the new procedure rules applicable to proceedings before the IIAA.³⁶ Earlier fast-track schemes have been impugned by domestic courts for want of fairness.³⁷ If this approach is now reinforced by new IIAA procedure rules that will operate in the context of other measures all designed to prioritise speed and so called '*public interest*' considerations over the common law standards of procedural and substantive fairness, the individual outcomes and the system will be susceptible to legal challenge at considerable public expense.

Finally, but critically, if appeals are to be accelerated, determined on the papers, or otherwise restricted, we consider it imperative in the interests of access to justice and fairness that appellants are guaranteed access to fully funded (means tested) legal aid advice and representation throughout the process at rates that are sustainable for legal aid providers.

It is unclear what purpose will be served by the provisions in Schedule 3 of the Bill³⁸ requiring a mere declaration of an appellant's efforts and (in)ability to access legal advice or representation if, as is currently the case, this is not accompanied by provisions that substantively address the risk of serious and potentially irremediable injustice and harm arising from their inability to access legal advice and representation.

³³ Section 27 of the Nationality and Borders Act 2022 (partially in force) provides for accelerated appeals for applicants who are detained that require a notice of appeal to be filed within 5 working days of the negative decision, determination of the appeal by the FTT within 25 working days of the appeal notice, and thereafter determination of any permission to appeal application against the FTT's decision within 20 working days.

³⁴ Home Office announcement dated 14 August 2026, applicable to new appeals lodged from 12 August 2026: <https://www.gov.uk/government/news/asylum-appeals-target-launched-for-faster-removals>

³⁵ Clause 1.

³⁶ Schedule 3(3).

³⁷ In *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840; [2015] 1 W.L.R. 5341 the Court of Appeal upheld the decision of the Administrative Court ([2015] EWHC 1689 (Admin)) that found the then-detained fast track appeal system to be inherently unfair. The rules governing asylum appeals contained in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 were found by the Court of Appeal to be ultra vires and declared "*systematically unfair and unjust*". Lord Dyson (then Master of the Rolls) confirmed that s.22(4) of the Tribunals, Courts and Enforcement Act 2007 (the legislative power to make Tribunal Procedure Rules) recognises "*that justice and fairness should not be sacrificed on the altar of speed and efficiency*", at § 49.

³⁸ Schedule 3, paragraph 9(2), (3) and (4). These provisions require an applicant to make a statement (i) declaring whether they have received advice or will be represented, (ii) if not, confirming that they do wish to receive advice or be represented and (iii) explaining why they have not obtained advice or representation and what steps they have taken in this regard. There is no associated provision envisaged within the rules that seeks to address or resolve an applicant's inability to obtain advice or representation despite their expressed wishes to receive this support.

It is publicly known and widely reported that legal aid deserts and shortages in legal aid solicitors exist in the field of immigration and asylum law. It is also well documented that Legal Aid firms struggle to survive financially, and that the low numbers of legal aid immigration solicitors and barristers is in part attributable to chronically underfunded and unsustainable legal aid remuneration for this work. These factors inhibit migrants and asylum seekers from being able to access good quality immigration advice and representation. In May 2026 the Law Society analysed data from the Legal Aid Agency directory of providers (April 2026) and the Office of National Statistics (2025) and reported that in England and Wales 63% of the population do not have access to a local immigration and asylum legal aid provider in their local authority area and that there can often be a mismatch between supply and demand due to the Home Office's dispersal policy, with those in-need of support housed in areas without legal aid provision.³⁹

Poor quality legal advice, or litigants in person unable to access legal representation despite efforts to do so, can complicate appeals, cause or contribute to delays, increase the court and judicial resources required and adversely impact the outcomes for applicants. Proper legal aid funding at financially viable rates is therefore imperative, as a minimum, to ensure appellants' access to legal advice and representation to underpin the effective and fair operation of any appeal system.

The Bar Council considers that amendments to this Bill and/or associated legislation are required to significantly increase the legal aid capacity in the field of immigration and asylum law – particularly if, pursuant to Part 1 of the Bill, adjudicators deciding appeals for the new IAA are not legally qualified.

(iv) *The proposals in Part 1 of the Bill will displace the burden of legal adjudicative work into the Upper Tribunal rather than reducing it*

The proposed change to the immigration appeals system contained in Part 1 of the Bill is unlikely to resolve the issue of backlogs and delays. The more likely outcome is a significantly increased caseload of appeals against IAA decisions being pursued in the Upper Tribunal as onward appeals on points of law, amounting to a transfer of the backlog to a higher tribunal rather than reduction and or elimination of the backlog.

The Home Office justifies its legislative objective to scrap the FTT and replace it with a new appeals body (the IAA) as a means of resolving appeal backlogs. In its earlier policy statement entitled 'Restoring Order and Control' ('ROAC') first published on 17 November 2025, the Home Office relied on statistics that are said to reveal that between 2023 and 2025 there was an increase from 7,000 unresolved appeals to 51,000.⁴⁰

As to the cause of the backlog, the Home Office acknowledged that during this same period, it put asylum decision-making *on hold* (that is to say, it stopped deciding any asylum applications) as in conjunction with its Rwanda scheme (to remove asylum seekers to that country) with only 30,000 appeal decisions made in the first half of 2024. The Home Office also accepted in ROAC that steps that have *already being taken* are effectively addressing the problem within the current FTT appeal

³⁹ The Law Society, '[Immigration and asylum – legal aid deserts](#)' 12 May 2026

⁴⁰ Home Office Policy Paper, '[Restoring Order and Control](#)' ('ROAC'), 17 November 2025

system, with decision backlogs being 47% lower than they were in June 2023 due to increased asylum decision-making and returns.⁴¹

Therefore, as a starting point, it remains our concern that the significant step of scrapping the FTT to replace it with the IIAA lacks sufficient justification and evidential basis to demonstrate it is capable of resolving the problem identified.

In view of the Bar Council, better quality initial asylum decisions made by the Home Office would significantly reduce the number of appeals and in turn enable the FTT to process outstanding appeals more quickly.

In summary, it is a concern that Part 1 of the Bill, that provides for non-legally qualified adjudicators to determine appeals, will invariably result in increased numbers of appellants pursuing an appeal on a point of law to the Upper Tribunal, thereby shifting and exacerbating the backlog faced by another tribunal. This outcome will be of no benefit to applicants, the Home Office, the Treasury, or the taxpayer.

Conclusion on Part 1 of the Bill

Part 1 of the Immigration and Asylum Bill requires further consideration. In the Bar Council's view persons deciding immigration appeals should be legally qualified as they are at present. Further, such persons ought to be appointed by the Senior President of Tribunals and not by the Home Secretary. In addition, provision needs to be made so that the proposed procedural rules are made independently and are consistent with the common law requirement of fairness. Finally, as matters stand, if enacted, the proposals in Part 1 of the Bill will likely increase the burden of independent legal adjudicative work on appeal from executive adjudicators to the Upper Tribunal.

Considering all aspects of Part 1 separately and as a package, Parliament ought to consider carefully whether the proposals are consistent with the separation of powers principle, the need to ensure the independence and impartiality of those persons deciding immigration appeals, and the need for remedies to be effective.

(2) Article 8 ECHR: Part 2 of the Bill

Part 2 of the Bill proposes to alter the interpretation and application of Article 8 ECHR,⁴² as it is provided for in Part 5 and Part 5A of the Nationality, Immigration and Asylum Act 2002, and as it takes effect in domestic law for the purposed of immigration applications and, thereafter, the onward consideration of immigration appeals. It does four things:

⁴¹ Home Office Policy Paper, "[Restoring Order and Control](#)" ('ROAC'), 17 November 2025

⁴² **Article 8**

Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- (i) It introduces provision for a UK-resident ‘sponsor’ to make a human rights claim to bring a family member to the United Kingdom⁴³,
- (ii) It prescribes, and in so doing narrows, the definition of ‘family life’ for the purpose of deciding whether there is family life for Article 8(1) ECHR purposes⁴⁴,
- (iii) It widens and re-defines the ‘public interest’⁴⁵ for the purposes of striking the balance under Article 8(2) ECHR between it and any family and/or private life relied upon by the applicant, and
- (iv) It extends the ‘public interest’ tests applicable to ‘foreign criminals’ to all those facing deportation, notwithstanding any family and/or private life relied upon by the applicant.⁴⁶

The Bar Council has four principal points of concern⁴⁷:

- (i) The proposals in the Bill must march in step with the United Kingdom’s existing international law commitments in respect of fundamental rights,
- (ii) The proposed provision for a ‘sponsor human rights claim’ will be the only practical gateway for persons granted UK asylum/international protection to apply to have their family members join them in the United Kingdom. In so far as such claims will be determined under a narrow definition of ‘family life’ and an overbroad definition of the ‘public interest’, the provision being made risks keeping families apart,
- (iii) The definition of ‘family life’ is over-particularised, essentially rigid, inhibits judicial assessment, and risks putting the UK in breach of its ECHR obligations in individual cases, and
- (iv) The definition of the ‘public interest’ is over-broad, inhibits judicial assessment, and risks putting the UK in breach of its ECHR obligations in individual cases.

History of the ECHR

It is important not to lose sight of legal history. After the First World War there was no notion that international institutions might inform states how to treat their citizens in addition to regulating relations between states. Treaties between states and the institutions they created were completely inaccessible to individuals. After the Second World War, international criminal jurisdiction was asserted by the Allied powers against the leaders of Nazi Germany, so as to try the latter not only for war crimes but also for crimes against humanity, notably the Holocaust. Thus, in 1945-46, the first international tribunal at Nuremberg (the International Military Tribunal (‘IMT’)) was the start, in a modern historical context, of a recognition of crimes against humanity in addition to war crimes.

‘Crimes against humanity’ received its definition in Article 6(c) of the Charter of the IMT (‘Nuremberg Charter’). Clear criminal responsibility was laid on the state agents who authorized murder, extermination, enslavement, deportation, and other inhumane acts against any civilian population including their own. Individuals had minimum fundamental human rights in relation

⁴³ Clause 17.

⁴⁴ Clause 18.

⁴⁵ Clause 19.

⁴⁶ Clause 20.

⁴⁷ The Joint Committee on Human Rights has identified clauses 17-20 of the Bill concerning the application of Article 8 ECHR as requiring scrutiny for compatibility with the UK’s ECHR obligations, see Human Rights (Joint Committee) [JCHR launches legislative scrutiny of the Immigration and Asylum Bill](#), 9 July 2026

to treatment by their own states. Another legacy of Nuremberg was of course the Universal Declaration of Human Rights on 10 December 1948 – now celebrated as International Human Rights day. This was a marking of the world throwing up its hands in shame and horror after the atrocities of the Second World War. However, it did not pretend to be a treaty or statement of legal obligation but rather an “international Magna Carta of mankind” (Eleanor Roosevelt). The accompanying treaty pillars were the Convention on the Prevention and Punishment of Genocide⁴⁸ and the Geneva Conventions that set the standards for the treatment of people affected by armed conflict.⁴⁹

The United Nations International Covenant on Civil and Political Rights (‘ICCPR’)⁵⁰ and International Covenant on Economic, Social and Cultural Rights (‘ICESCR’)⁵¹ took another 30 years materialise. Further, regional instruments also came out of the Universal Declaration. In effect the message was that rights should not simply be a matter for the UN - which repeatedly has become paralysed by political sparring - but are also the responsibility of individual States domestically and also in their making of regional arrangements.

As a result, the 1950 European Convention on Human Rights (ECHR) (ratified by the UK in 1951), the 1981 African Charter on Human and Peoples Rights, the 2004 Arab Charter on Human Rights and the 1969 American Convention on Human Rights were established. Behind all of these regional instruments is the agreed ethos that human rights are universal, indivisible, interdependent and interrelated.⁵²

From its constant course of conduct, it can be seen how the UK repeatedly commits itself to this ethos. The Thatcher government ratified the UN Convention against Torture in December 1988 and the UN Convention on the Rights of the Child was ratified by John Major’s government in 1991. These acts are unremarkable as they are part of the tenements of democracy and rule of law. They should cut across party political divides. As is well-known, the ECHR was drafted by jurists led by the Conservative Sir David Maxwell Fyfe KC MP and strongly supported by Winston Churchill. Later, in 1996, the UK accepted the right of individual petition to the European Court of Human Right.

The Human Rights Act 1998 was a creature of the Labour party. Its goal was to “bring rights home”⁵³ and so avoid the lengthy and expensive journey to Strasbourg. As Lord Bingham said in *R (on application of Begum) v Denbigh High School Governors* the purpose “was not to enlarge.....rights

⁴⁸ Signed 9 December 1948 and in force 12 January 1951.

⁴⁹ Adopted 12 August 1949 and in force 21 October 1950.

⁵⁰ Signed 16 December 1966 and in force 23 March 1976.

⁵¹ Signed 16 December 1966 and in force 3 January 1976.

⁵² See Article 5 of the Vienna Declaration and Programme of Action (25 June 1993), World Conference on Human Rights, Vienna 1993.

⁵³ *Bringing Rights Home* (the Labour Party consultation document prior to the 1997 General Election):

“1.18 We therefore believe that the time has come to enable people to enforce their Convention rights against the State in the British courts, rather than having to incur the delays and expense which are involved in taking a case to the... Court in Strasbourg and which may altogether deter some people from pursuing their rights. Enabling courts in the United Kingdom to rule on the application of the Convention will also help to influence the development of case law on the Convention by the European Court of Human Rights on the basis of familiarity with our laws and customs and of sensitivity to practices and procedures in the United Kingdom.”

or remedies “of those whose rights had been violated but simply to give effect to the Convention rights through the domestic courts.”⁵⁴

- (i) *The proposals in the Bill must march in step with the United Kingdom’s existing international law commitments in respect of fundamental rights*

The Bill gives rise to a number of issues of concern, both procedurally and substantively, that directly engage the United Kingdom’s obligations arising under international law, as a party to the Council of Europe’s 1950 European Convention on Human Rights (‘ECHR’), as well as the 1951 United Nations Convention Relating to the Status of Refugees (‘the Refugee Convention’) and the Council of Europe’s Convention on Action against Trafficking in Human Beings (‘ECAT’).

As regards appeals against Home Office refusal to grant applications for international protection (asylum or humanitarian protection) and to refuse to recognise refugee status (where applicable), these involve claims of a risk of persecution and/or serious harm in the country of origin (or country of proposed return). They engage the Refugee Convention and/or Article 3 of the ECHR. If these protection claims are not decided lawfully, the individuals concerned are at risk of return to a country where they may face death, torture or inhuman treatment. Thus, such a return could amount to a breach of *the non-refoulement* principle, a principle that has been held to have the status of customary international law⁵⁵ and which is also enshrined in or given effect by international treaties by which the United Kingdom is bound, including Article 33(1) of the Refugee Convention⁵⁶, Article 3 of the ECHR⁵⁷, and the UN Convention on the Rights of the Child, as well as in domestic legislation.⁵⁸

As regards human rights, the UK, as a member of the Council of Europe and a party to the ECHR, is required to secure to everyone within its jurisdiction the rights and freedoms provided for in the ECHR.⁵⁹ Among other rights, this includes the right to life (Article 2), the prohibition against torture and inhuman or degrading treatment (Article 3), the prohibition against slavery and forced

⁵⁴ *R (Begum) v Denbigh High School* [2006] UKHL 15, [2007] 1 AC 100, per Lord Bingham at §29.

⁵⁵ The United Kingdom subscribed to this view, in the 2001 Declaration of States Parties to the 1951 [Refugee] Convention and/or its 1967 Protocol Relating to the Status of Refugees.

⁵⁶ “Article 33 - Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

⁵⁷ See *Soering v United Kingdom* (1989) 11 EHRR 439: removal of an individual from a Council of Europe state to another country is forbidden if it is shown that there is ‘a real risk’ that the individual transferred will suffer treatment contrary to Article 3 of ECHR in the receiving state.

⁵⁸ As regards the Refugee Convention, see s. 2 of the Asylum and Immigration Appeals Act 1993:

“Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the [Refugee] Convention”; as regards Article 3 ECHR and its domestic transposition, see ss. 1 and 6 of and Schedule 1 to the Human Rights Act 1998.

⁵⁹ “ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”

labour (Article 4) and the right to a fair trial (Article 6). This also requires the UK to act compatibly with the judgments of the European Court of Human Rights in Strasbourg to which it is a party.⁶⁰

A breach of these fundamental rights by the UK and the absence of an effective domestic remedy may result in individuals pursuing successful applications before the European Court of Human Rights for a declaration of a violation of Convention rights and for just satisfaction (which may include damages) against the UK, and/or another Council of Europe member state referring the United Kingdom to that Court for breach of its obligations arising under the Convention.⁶¹

Against this backdrop, the proposals for the IIAA to be able to conduct appeals on consideration of the papers only⁶², and/or in a fast-track process under Home Office inspired procedural rules, with non-legally qualified executive adjudicators giving judgment, risks breaching international law commitments relating to fair trial rights, as well other substantive fundamental rights, diminishing the United Kingdom's standing and reputation on the global stage, eroding trust in the justice system, denying access to justice, and undermining minimum standards of procedural and substantive fairness. Such a shaking of confidence and trust also impacts on legal services, which currently contribute £38 billion of the UK economy.⁶³

Moreover, there are concerns as to how these defects in the Bill's provision for the structure and operation of the IIAA will impact the UK's existing multi-pronged legislative domestic protection of human rights. First, there is an interpretive obligation. Section 3 (1) of the Human Rights Act 1998 is clear and unambiguous. The obligation upon the courts is to interpret legislation "so far as possible" in a way which is compatible with Convention rights. This is an alternative to the constitutional entrenchment of rights as a form of higher law but it seeks to make Convention rights real. Second, while the European Court of Human Rights in Strasbourg does not dictate domestic caselaw, Parliament has enacted s. 2(1) (a) of the Human Rights Act, which obliges courts to "take account" of Strasbourg jurisprudence. Third, where legislation cannot interpret compatibly with Convention rights, the courts may make declarations of incompatibility under s. 4 of the Human Rights Act 1998. These are a last resort⁶⁴ and only mean that the courts can tell Parliament that it acted wrongly (not unlawfully as section 6 of that Act makes it clear that Parliament is not a public authority). The proposal in the Bill risk placing the courts in the position of having to make such last resort declarations.

⁶⁰ Article 32 ECHR confirms that the jurisdiction of the Strasbourg Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols, and Article 46 ECHR confirms that the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties and that the final judgment of the Strasbourg Court shall be transmitted to the Committee of Ministers responsible for supervising execution of judgments. Further, enshrined in domestic law is the requirement at s. 2(1) of the Human Rights Act 1998 that provides "A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any— (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights"

⁶¹ "Article 33 ECHR.

Inter-State cases Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party."

⁶² Section 4(2) of and paragraph 7 of Schedule 3 to the Bill.

⁶³ The CityUK, '[UK legal services 2025: Legal excellence, internationally renowned](#)' 5 December 2025

⁶⁴ See *Ghaidan v Godin-Mendoza* [2004] UKHL 30, [2004] 2AC 557, per Lord Steyn at §§ 38 and 46.

(ii) *The significance of 'Sponsor Claims'*

The Bill expands the definition of a 'human rights claim' in the Nationality, Immigration and Asylum Act 2002⁶⁵ so that it also includes a 'sponsor human rights claim'.⁶⁶ For such a claim to arise, a UK-based sponsor must apply for their family member living outside of the UK to be granted entry clearance to travel to the UK (so as to enter and reside) on the basis of their family life and/or private life within the scope of Article 8 ECHR. As a result of the proposed statutory innovation, a UK based sponsor will be able to bring an immigration appeal⁶⁷ against a decision to refuse the sponsor human rights claim made in respect of their overseas family member. Until now, an application for entry clearance to come to the UK had to be made by the person overseas and any appeal against refusal had to be brought by them.

It remains to be seen how the particulars of a 'sponsor human rights claim' are to be elaborated in the accompanying Home Office's Immigration Rules that will need to be made if these statutory provisions are enacted. However, in the light of the Bill's proposals as regards 'family life' and the 'public interest' (see below), the rules made for sponsor human rights claims are likely to be tightly circumscribed.

The impact of such an approach is likely to be felt most keenly by persons granted asylum/international protection in the UK, who wish to apply to have their family members join them in the UK. The September 2025 suspension (still on-going) of the Immigration Rules' route for refugee family reunion has left the overseas family members of UK-recognised refugees having to use the route under Appendix FM of the Immigration Rules to bring partners and children to the UK. Among other things that route requires a sponsor to have an income of £29,000, a level unlikely to be met by a newly recognised refugee, recently granted asylum. A sponsor human rights claim may open up an alternative route. However, in so far as sponsor human rights claims will be determined under the Bill's narrow definition of 'family life' and its definition of the 'public interest', the provision made risks keeping families apart, one in the UK as a refugee, the rest overseas perhaps in a place where they themselves are at risk of persecution and/or serious harm.

(iii) *The narrowing of 'Family Life'*

For the purposes of immigration appeals, clause 18 of the Bill amends Part 5A of the Nationality, Immigration and Asylum Act 2002,⁶⁸ so that a court or tribunal must (i) first decide whether Article 8 ECHR is engaged on the basis of the person's private and family life, (ii) in so doing must have regard to prescribed considerations, and (iii) if it decides that there is family life and/or private life, it must then consider the public interest and strike the balance between the two.

For the first time, the content of 'family life' is to be set out in legislation,⁶⁹ a change which circumscribes the ability of those judging immigration appeals to evaluate the matter for themselves in accordance with the applicable settled case law. A person's family life for Article 8 ECHR purposes is to be *normally* limited to their 'core cohabiting family': (i) spouse, civil partner

⁶⁵ Section 113.

⁶⁶ Clause 17.

⁶⁷ Under s. 82 of the Nationality, Immigration and Asylum Act 2002.

⁶⁸ Section 117A.

⁶⁹ In provisions to be inserted into Part 5A of the Nationality, Immigration and Asylum Act 2002.

or partner; (ii) where a person is a parent, their minor children, and (iii) where the person is a minor, their parents.

Under the new provisions, the finding of family life between other adult family members is to be found only abnormally and only on satisfaction of further, highly particularised matters. For example, it will not be enough to establish family life by showing the dependency of one family member on another by reference to illness or infirmity, instead it must also be shown that (i) the illness or infirmity means that the person is incapacitated to such an extent that they are in need of constant care and support, (ii) the other family member is or would be able to provide that care and support, and (iii) the person would not receive adequate care and support if they were not in the same country as their family member. Hitherto, the existence or otherwise of family life between adult family members has been determined by judges hearing an appeal on the application of the relevant case law, see for example the Court of Appeal's judgment *IA & Others v Secretary of State for the Home Department* [2025] EWCA Civ 1516⁷⁰. There is no basis to consider the court's approach deficient. There is no warrant for legislation on this matter.

In the result, the proposed definition of 'family life' is over-particularised, essentially rigid, and inhibits judicial assessment and evaluation (i) of any non-typical but real family relationships, such as where a child is cared for by a non-parental family member, or (ii) of family life between two adult members if that is the only family life they have at all but it nonetheless falls short of the statutory test. It risks putting the UK in breach of its ECHR obligations in individual cases, leading inevitably to some refused family members having to apply to the European Court of Human Rights to establish that there has been a violation of their Convention Rights.

(iv) *The widening Public Interest considerations*

Part 5A of the Nationality, Immigration and Asylum Act 2002 already makes provision for how the 'public interest' is to be treated in immigration appeals where a person has family life and/or private life under Article 8 ECHR, and that life must be balanced against the public interest by the person judging the appeal in order to determine whether there has been a violation of Article 8 ECHR in refusing immigration permission to enter or reside. As proposed in the Bill⁷¹, that statutory specification of the public interest is to be widened in scope.

While UK authorities may be free to specify the public interest for Article 8 ECHR purposes, there comes a point where the definition risks nullifying the essence of the right to family and/or private life making it impossible or almost impossible to satisfy. For example, the Bill proposes that it is in the public interest, and in particular the interests of the prevention of disorder or crime, that persons who seek to enter or remain in the UK (i) have not been convicted of a criminal offence, (ii) have co-operated with immigration authorities and processes, and (iii) are *otherwise of good character*. That last provision of 'good character' is undefined and hands the Home Office a general evaluative test that is highly subjective in scope. That there is already a good character test when seeking to naturalise as a British citizen⁷²; under that provision, the fallback position to a refusal of naturalisation is that the person remains in the UK with permanent residence. That is in stark

⁷⁰ §§42-112.

⁷¹ Clause 19.

⁷² Section 6 of and Schedule 1 to the British Nationality Act 1981.

contrast to the impact of the proposed changes in the Bill. Here a good character test is to be imposed in circumstances where if it is not satisfied, a family may be kept from being together in one country, perhaps the only country where the family can be together safely.

By way of another example, the provision made in Part 5A of the Nationality, Immigration and Asylum Act 2002 to specify the public interest in a person's financial self-reliance is to be further particularised so that it expressly includes those who are not, and are not likely to become, reliant on public services, in particular health or social care services, in the long-term. That will likely disproportionately impact appellants who are living with certain types of disabilities, and this must include those with intersecting characteristics protected under the Equality Act 2010, including race (sickle cell anaemia), and sexual orientation (HIV).

In the result, the definition of the 'public interest' is over-broad, inhibits judicial assessment, and risks putting the UK in breach of its ECHR obligations in individual cases, leading inevitably to some refused family members having to apply to the European Court of Human Rights to establish that there has been a violation of their Convention Rights.

Conclusion on Part 2 of the Bill

Taken as a package, Part 2 of the Bill gives rise to what is a fundamental challenge to the independent role of judges in evaluating compliance with fundamental human rights protection. 'Family life' for Article 8 ECHR purposes requires no particularisation in legislation; the existing case law sets the bar and judges are skilled at and well used to applying it.⁷³ In addition, there is no need for further over-elaboration of the public interest for Article 8 ECHR purposes. There is a risk that such innovation will end up in the practical nullification of the essence of the right to family and/or private life.

It is important to reflect upon the skill of the Judges of England and Wales, upon the high regard in which they are held, and upon their contribution to the global rule of law. Protection of human rights does not start and end with the case law of the European Court of Human Rights in Strasbourg. There is no discreet body of law based on the judgments of the European Court of Human Rights. Human rights law permeates our entire legal system, in the making of principled legislation by Parliament and in that legislation being interpreted and applied by the courts and tribunals. The Human Rights Act 1998 marches in step with our common law. It was not intended to make the common law an ossuary⁷⁴.

Finally, recalling the words of Lord Bingham⁷⁵:

"It seems to me highly desirable that we in the United Kingdom should help mould the law by which we are governed in this area ... British judges have a significant contribution to make to the development of the law of human rights"

There is no evidence that issues within the immigration system are due to judges' application of Article 8 ECHR. Rather, the focus ought to be on better application decision-making by the Home

⁷³ See for example *Entry Clearance Office v BB and others* [2026] EWCA Civ. 973 per Singh LJ at §§31-34.

⁷⁴ See *Kennedy v The Charity Commission* [2014] UKSC 20, [2015] AC 455, per Lord Toulson at §133.

⁷⁵ Hansard, Human Rights Bill debate, House of Lords, HL Deb 03 November 1997 vol 582 c 1245.

Office (which would reduce the number of appeals), greater transparency by the FTT as to its judgments (something recently achieved by their being made easily available to the public), and responsible reporting of those judgments by the press when it chooses to focus upon them.

The Bar Council
9 September 2026