



we stand up for all migrants

## Migrants' Rights Network's response to the Ministry of Justice consultation *Human Rights Act Reform: A Modern Bill of Rights*

Question 8: Do you consider that a condition that individuals must have suffered a 'significant disadvantage' to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way of making sure that courts focus on genuine human rights matters? Please provide reasons.

This question is based on a premise that there is currently a problem that needs to be addressed. It is unclear to us, however, that there are significant numbers of cases that could be considered "frivolous or spurious"; if the Government believes this is the case then it should provide figures to demonstrate the scale of this alleged problem.

The Government's solution, to put the onus on claimants to prove "they have suffered a significant disadvantage", would prove an additional deterrent for people seeking to have their human rights upheld. As Liberty have highlighted, there is no other area of law where it is necessary to reach a threshold as high as 'significant disadvantage' in order to bring a claim. This is a particular concern when access to legal aid is difficult to obtain and individuals may have to try and make their case without access to legal advice (and certainly without the resources that public bodies and governments have). Moreover, it is unclear how this would work in practice: if a court is to consider the merits of the case in order to grant permission, might it not as well also decide if the person's human rights have been breached? And how would "significant disadvantage" be defined and judged?

Finally, someone's human rights may have been breached without them suffering "significant disadvantage." By that individual taking their case, however, they may be able to prevent the situation arising again and therefore prevent others from suffering in future. The issue in question should be whether there has been a failure to uphold somebody's rights, and not the extent of the damage it has caused.

Question 9: Should the permission stage include an ‘overriding public importance’ second limb for exceptional cases that fail to meet the ‘significant disadvantage’ threshold, but where there is a highly compelling reason for the case to be heard nonetheless? Please provide reasons.

We raised in response to question eight our concern that someone’s human rights may have been breached without them suffering “significant disadvantage,” and by that individual taking their case they may be able to prevent the situation arising again and therefore prevent others from suffering in future. Setting the threshold at “overriding public importance” is, in our opinion, far too high, and it is unclear how this would be defined. Any breach of human rights is significant, and worthy of investigation and action.

Question 10: How else could the government best ensure that the courts can focus on genuine human rights abuses?

As noted in our response to question eight, we are not aware, and the Government has provided no evidence, that there is a problem being caused by ‘non-genuine’ human rights cases being taken. If the Government is serious about enabling courts to address human rights abuses, however, there are a number of actions they could take. Most obviously, they should make it easier for people to bring human rights claims and to access high-quality legal support to do so. The proposals set out in this consultation, however, do the opposite and create further unnecessary barriers to access to justice. The suggestion that people should not be able to bring a human rights claim if there are other legal avenues that they could pursue is troubling: as stated in our response to question nine, any breach of human rights is significant, and worthy of investigation and action, and ability to take such claims is a vital mechanism to hold public authorities to account.

Question 24: How can we make sure deportations that are in the public interest are not frustrated by human rights claims? Which of the options, below, do you believe would be the best way to achieve this objective? Please provide reasons.

- Option 1: Provide that certain rights in the Bill of Rights cannot prevent the deportation of a certain category of individual, for example, based on a certain threshold such as length of imprisonment;
- Option 2: Provide that certain rights can only prevent deportation where provided for in a legislative scheme expressly designed to balance the strong public interest in deportation against such rights; and/or
- Option 3: provide that a deportation decision cannot be overturned, unless it is obviously flawed, preventing the courts from substituting their view for that of the Secretary of State.

The question is based on the premise that some people do not deserve to have their human rights upheld; a premise that we fundamentally reject. It would be entirely contrary to the spirit of human rights to legislate that certain categories of people cannot make a human rights claim. We do not support any of the options set out in this section.

Question 25: While respecting our international obligations, how could we more effectively address, at both the domestic and international levels, the impediments arising from the Convention and the Human Rights Act to tackling the challenges posed by illegal and irregular migration?

The short answer is that you can't, and it is shocking and shameful that a government would include in a consultation a question that asks the public to help provide it with the rationale for abandoning such fundamental and internationally respected agreements such as the Refugee Convention and the principle of non-refoulement.

If the Government is serious about addressing the problem of people arriving in the UK via irregular routes, then it needs to provide other mechanisms for people to be able to enter the UK. As stated in our response to question 24, the idea that human rights do not apply to certain categories of people (in this case, migrants) is

fundamentally at odds with the concept of human rights: being a migrant does not make you any less human than a non-migrant.

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