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BUREAUCRATIC WARFARE: ADMINISTRATIVE JUSTICE AND THE CRISIS OF THE 'NEW BESPOKISM'

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Abstract. *After the Russian Federation invaded Ukraine in February 2022, the UK joined many other states in announcing that it would provide refuge for people fleeing the conflict. To implement this policy, the UK government diverted Ukrainians out of the standard asylum process. It funnelled them into 'bespoke humanitarian routes' that were to be administered separately, reflecting an emerging 'new bespokism' approach to asylum law and policy. By the end of April 2022, there was a widely shared view that these new processes had failed to operate justly in the critical early months of the war. Combining legal analysis with quantitative data and original qualitative data, this article offers the first extended critique of the barriers to administrative justice within the 'new bespokism,' ultimately suggesting it may contain the seeds of its own destruction as it requires administrators to build systems in crisis conditions and thereby places administration itself in crisis.*

A. Introduction

The Russian Federation's unlawful invasion of Ukraine, beginning in February 2022, shocked the international community.[1] In the early stages of the war, the attack met stiff Ukrainian resistance, and many military analysts took the view that the invasion was not going to plan. The tactics of the Russian military became more brutal and bloodier, including the use of cluster

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[1] The invasion formed part of a longer history of Russian aggression towards Ukraine in recent years, including the annexation of Crimea in 2014, see: S. Rosenfield, *The Kremlin Strikes Back: Russia and the West After Crimea's Annexation* (Cambridge University Press 2016).

munitions, intense shelling of civilian areas, and the breaking of ceasefires to fire upon humanitarian evacuation corridors. Allegations of war crimes followed.

These disturbing events naturally caused a vast number of people to flee Ukraine to other states and relocate within the country. By only the tenth day of the conflict, the United Nations estimated there were already more than 1.5 million refugees. At that point, the United Nations High Commissioner for Refugees, Filippo Grandi, described the situation as 'the fastest-moving refugee crisis we have seen in Europe since the end of the second world war.'[2] By the 28th of April 2022, approximately 5,429,739 people had fled Ukraine to other states (Figure 1).[3]

[INSERT FIGURE 1, SEE APPENDIX 1]

The management of forced mass migration crises is a transnational concern that inevitably places intense demands upon national administrative agencies.[4] Shortly after the invasion began, the UK joined many other states in announcing that it would take in and provide refuge for people fleeing Ukraine. However, the Ukraine crisis has occurred at a moment when the asylum system is under pressure. There had been an uptick in the number of

[2] L. Tondo, 'Ukraine: UN says more than 1.3 million have fled since Russian invasion began' (*The Guardian*, 5 March 2022) <https://www.theguardian.com/global-development/2022/mar/05/ukraine-un-says-more-than-13-million-have-fled-since-russian-invasion-began> (accessed 14 March 2022).

[3] This UN data is compiled from a variety of sources but mainly from data provided by authorities from official border crossing points. While every effort is made to ensure that all statistical information is verified, figures on some arrivals represent an estimate.

[4] In recognition of this, public administration scholars have been increasingly focused on developing analyses of transnational crises, including mass migration crises, see *e.g.* S. Eckhard, A. Lenz, W. Seibel, F. Roth, M. Fatke, 'Latent Hybridity in Administrative Crisis Management: The German Refugee Crisis of 2015/16' (2021) 31(2) *Journal of Public Administration Research and Theory* 416; C. Ansell, A. Boin and A Keller, 'Managing transboundary crises: Identifying the building blocks of an effective response system' (2010) 18(4) *Journal of Contingencies and Crisis Management* 195; A. Boin and M. Lodge, 'Designing resilient institutions for transboundary crisis management: A time for public administration' (2016) 94(2) *Public Administration* 289; B.G. Peters, J. Pierre, and T. Randma-Liiv. 'Global financial crisis, public administration and governance: Do new problems require new solutions?' (2011) 11(1) *Public Organization Review* 13.

people claiming asylum in the UK (Figure 2). An increase in arrivals by small boats was becoming a mainstay of the headlines and an increasingly vexed policy issue (Figure 3).[5] Asylum system backlogs were also a growing problem (Figure 4), with the number of people waiting more than six months for a decision increasing (Figure 5). The government, free of the constraints of European Union membership, had been advancing the solution of marginalising the general asylum process and the 1951 Refugee Convention that provides its foundation. It has enacted the Nationality and Borders Act 2022—which, amongst other aggressive measures, introduces a new criminal offence of arriving in the UK without entry clearance and provides the legal basis for differential treatment of refugees.[6] The government had also announced a controversial policy to send some asylum seekers to Rwanda, not for 'offshore' processing but so they can instead apply for asylum there.[7] For groups seeking asylum deemed particularly worthy of assistance by the UK government, 'bespoke humanitarian routes' were to be established.[8] In essence, this meant that certain groups were to be taken out of an increasingly hostile asylum process and made to apply to come to the UK in a form more akin to conventional immigration processes.[9] Given the government's general policy to support Ukrainians, people seeking to come to the UK to escape the war found themselves in the middle

[5] For a critical analysis of this issue in media and public discourse, see: S. Parker, S. Bennett, C.M. Cobden and D. Earnshaw, ''It's time we invested in stronger borders': media representations of refugees crossing the English Channel by boat' (2021) *Critical Discourse Studies* (online pre-publication).

[6] Section 40 and Section 12, Nationality and Borders Act 2020 (at the time of passage, there were arguments being made that the Bill is in breach of the Refugee Convention).

[7] Home Office, *Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement* (14 April 2022). At the point of writing, these arrangements are subject to various legal challenges.

[8] This phrase, or the phrase 'bespoke humanitarian pathways,' has been widely used in policy announcements, *e.g.* HC Deb 28 February 2022 vol 709, col 700. This substantive policy raises questions about the ethics of the differential treatment of different groups of refugees, which are outside of the scope of this article. For a recent discussion of the ethics surrounding state responses to refugees, see: D. Owen, *What do we owe to refugees?* (Polity 2020).

[9] Another recent example can be seen in the treatment of Afghan refugees following Operation Pitting and the Taliban takeover of the country. For a useful overview, see: M. Gower, *UK immigration routes for Afghan nationals* (House of Commons Library Paper No. 9307, 27 January 2022).

of an experiment in, what may be called, a 'new bespokism' in asylum law and policy.[10] The Government calls it the 'New Plan.'[11]

[INSERT FIGURE 2, SEE APPENDIX 1]

[INSERT FIGURE 3, SEE APPENDIX 1]

[INSERT FIGURE 4, SEE APPENDIX 1]

[INSERT FIGURE 5, SEE APPENDIX 1]

Against this backdrop, the UK government moved to set up two 'bespoke' administrative systems for Ukrainians.[12] The first, administered by the Home Office, was a system that allows people with family ties to the UK to apply for a visa.[13] This was known as the 'Ukraine Family' scheme. The second was the 'Homes for Ukraine' scheme, administered by the Department for Levelling Up, Housing and Communities. Under this scheme, people in the UK could nominate a named Ukrainian individual or a family to stay with them rent-free or in another property for at least six months.[14] In exchange, hosts received a payment of £350 per month. The Government's stated aim was to allow Ukrainians to come to the UK but,

[10] It is 'new' in the sense it is arguably a return to the approach prior to the 1951 Refugee Convention, though the Convention, of course, remains.

[11] The most detailed articulation of which can be seen in: Home Office, *New Plan for Immigration* (CP 412, 2021).

[12] Immigration Rules: Appendix Ukraine Scheme. See also: Home Office, *Ukraine Scheme: Version 4.0* (11 March 2022). There was also a third system for Ukrainians already in the UK (the 'Ukraine Extension Scheme'), which allowed such people to extend their visas or switch to another immigration route (if eligible). It is not analysed in this article as the focus is on people seeking to enter the UK.

[13] To be eligible, a person has to: be applying to join or accompany a UK-based family member; be Ukrainian or the immediate family member of a Ukrainian national who is applying to the scheme; and must have been residing in Ukraine on or immediately before 1 January 2022. The relevant family member must be either a British national, someone settled in the UK (*e.g.* have indefinite leave to remain, settled status or proof of permanent residence), someone with pre-settled status who started living in the UK before 1 January 2021, or someone with refugee status or humanitarian protection in the UK. The UK-based family member is required to be: an immediate family member; an extended family member; or an immediate family member of an extended family member (as defined in the rules).

[14] Ukrainians have to pair themselves with hosts as the government has not coordinated matching, though some civil society organisations have sought to set up matching processes. The viability of this approach is widely debated, however, it did not arise in the course of data collection, given the research methods.

alongside that overarching goal, it insisted that the processes by which that happened reflected national security and safeguarding interests. That is, to seek to ensure that nobody who posed a security risk to the UK public was allowed to enter and that Ukrainians themselves, particularly vulnerable people, were not at risk of exploitation (*e.g.* through trafficking).[15]

By the end of April, when millions had already fled, there was a widely shared view that these systems had failed in the critical early months of the war. The Home Secretary Priti Patel was 'apologising with frustration',[16] the newly appointed Refugees Minister Lord Harrington described the implementation of the schemes as 'unacceptable' and acknowledged that 'we know things are not good,'[17] backbench Conservative MPs were demanding ministers 'go back to the Home Office and tell it to get a grip',[18] and the opposition were calling the government's response 'shocking' and 'truly shameful'.[19] Public opinion also reflected this shared sense of failure. A representative UK survey undertaken on the 27th and 28th of April 2022 showed that a majority (55%) of the public thought government processes were still making it too difficult for Ukrainian refugees to come to the UK (see Table 1 and Figure 6).[20] That majority included 50% of Conservative voters and 50% of Leave voters—both groups of voters typically associated with a preference for more restrictive policies on immigration and

[15] On which, see: E. Cockbain and A. Sidebottom, *The war in Ukraine and associated risks of human trafficking and exploitation* (University College London 2022).

[16] A. Forrest and M. Bulman, 'Priti Patel apologises over 'frustrating' time taken to grant visas to Ukrainian refugees' (*The Independent,* 8 April 2022) <https://www.independent.co.uk/news/uk/politics/priti-patel-apology-ukraine-refugees-b2053883.html> accessed 13 April 2022.

[17] M. Dathan, 'Minister admits embarrassment over visa delays for Ukrainian refugees' (*The Times,* 7 April 2022) <https://www.thetimes.co.uk/article/ukraine-war-visa-delays-are-disgrace-i-dont-disagree-minister-f8ws6xsxc> accessed 13 April 2022.

[18] HC Deb 8 March 2022 vol 710, col 212 (Alec Shelbrooke MP).

[19] J.P. Ford Rojas, 'UK visa scheme now 'motoring', minister claims - as Labour attacks 'shameful' delays' (*Sky News*, 10 April 2022) <https://news.sky.com/story/ukraine-war-uk-visa-scheme-now-motoring-minister-claims-as-labour-attacks-shameful-delays-12587213> accessed 13 April 2022.

[20] This survey, commissioned by the author, had a total sample size of 1,988 adults. Fieldwork was undertaken between 27th - 28th April 2022. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+).

asylum.[21] Ultimately, the bottom line was damning by any reasonable measure of the declared policy intention: only 27,100 Ukrainians had arrived in the UK by the 27th of April 2022 (Table 2). This figure represented only 0.5% of the total estimated number of refugees at that time. By comparison, Poland had taken in approximately 2,992,575 refugees (55%) by the same point, and other countries neighbouring Ukraine had also taken in much higher numbers (Figure 7).[22]

[INSERT TABLE 1, SEE APPENDIX 1]

[INSERT FIGURE 6, SEE APPENDIX 1]

[INSERT TABLE 2, SEE APPENDIX 1]

[INSERT FIGURE 7, SEE APPENDIX 1]

Seasoned observers may have expected this apparent failure of administrative justice, given the UK government's dubious track record on immigration and asylum administration generally[23] and its glacial response to the forced mass migration crisis resulting from the Taliban takeover of Afghanistan just a few months before the war in Ukraine began.[24] But it is vitally important to develop a detailed understanding and clear analysis of how people fleeing Ukraine, who sought to make use of these government systems, faced barriers to administrative

[21] For a recent account of these dynamics, see: T. Bale, 'Policy, office, votes – and integrity. The British Conservative Party, Brexit, and immigration' (2022) 48(2) *Journal of Ethnic and Migration Studies* 482.

[22] It must be noted that Russia and Belarus are obviously the aggressor and a state facilitating the aggression respectively, so not attractive destinations for most Ukrainians. Some people seeking to leave eastern Ukraine had no other option than to go to Russia.

[23] Administrative justice scholarship has increasingly been documenting how immigration and asylum decision-making failures are common both on the individual and systemic level, and how the justice system is often left with a complex caseload as a result, see: R. Thomas, *Administrative Law in Action: Immigration Administration* (Hart 2022); C. O'Brien, *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Hart 2017); S. York, *The Impact of UK immigration Law: Declining Standards of Public Administration, Legal Probity and Democratic Accountability* (Palgrave Macmillan 2022); J. Maxwell and J. Tomlinson, *Experiments in Automating Immigration Systems* (Bristol University Press 2022); R. Thomas and J. Tomlinson, *Immigration Judicial Reviews: An Empirical Study* (Palgrave Macmillan 2021). Similar themes have been present in government-led reviews, e.g. W. Williams, *Windrush Lessons Learned Review* (HC 93, 19 March 2020).

[24] For an overview of progress with that crisis at the point of writing, see: M. Gower, *UK immigration routes for Afghan nationals* (House of Commons Library Paper No. 9307, 27 January 2022).

justice when the state was declaring it wanted to welcome them with open arms.[25] Doing so also provides an essential window into the 'street level' operation and impact of the emerging 'new bespokism' in asylum law and policy. The importance of developing greater understanding of the justice dynamics of 'frontline' administrative processing has been repeatedly underscored in the academic literature.[26] Official actions at this level are not only 'essential expressions of state power,'[27] not least when this power is exercised over those in circumstances of vulnerability, but it is through such actions that law and policy are primarily transformed into social reality and experienced by the public.[28]

This article presents a critical-empirical analysis of the administrative barriers experienced by those seeking to use these systems during the period from the start of the invasion on 20 February 2022 to the end of April 2022. Three key sources of evidence are drawn upon to inform this study: legal and policy documents and announcements during this period, including relevant exchanges in Parliament; administrative data on the operation of the schemes;[29] and semi-structured interviews that were conducted with legal advisors (as key informants) who had advised people fleeing Ukraine to the UK during this period.[30]

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[25] For previous scholarship showing the importance of 'administrative barriers' in migration systems in the UK, see: C. O'Brien, *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Hart 2017), Ch. 8.

[26] For a detailed and recent survey of the literature, see: R. Martin, 'Administrative Decision-Making on the Frontline' in J. Tomlinson, M. Hertogh, R. Thomas, and R. Kirkham (eds), *Oxford Handbook of Administrative Justice* (Oxford University Press 2022).

[27] CJ. Jewell and B.E. Glaser, 'Toward a General Analytic Framework: Organizational Settings, Policy Goals, and Street-Level Behavior' (2006) 38(3) *Administration & Society* 335.

[28] For excellent demonstrations of this approach and its value, see: M. Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (Sage Foundation 1980); B. Zacka, *When the State Meets the Street: Public Service and Moral Agency* (Harvard University Press 2017).

[29] The Home Office and the Department for Levelling Up released very limited administrative data, and Freedom of Information Act 2000 requests were made for further data relevant to this analysis.

[30] 17 interviews were conducted with advisors (barristers, solicitors, and immigration advisors). The focus on interviewing advisors is justified primarily on the basis that these advisors had the necessary expert knowledge of immigration law and administration coupled with the experience of ground-level issues via interactions with their clients (making them key informants, see: V.J. Gilchrist, 'Key informant interviews' in B.F. Crabtree and W.L. Miller (eds), *Doing Qualitative Research* (Sage 1992)). A secondary factor was the practical and ethical issues relating to interviewing those who are entering the UK from Ukraine and the inaccessibility of relevant officials

It is argued, drawing upon this evidence base, that the typically dominant concerns of administrative justice—the quality of official decision-making and the effectiveness of redress routes[31]—were marginalised and, instead, four central barriers to administrative justice undermined the schemes' effectiveness during this period: (1) legal architectures that deny the complexity of the problems administrators are confronted by; (2) the geographical dynamics of the administrative process, that kept people in unsafe or unsuitable conditions or even deterred them from applying; (3) how the individualisation of decision-making had adverse consequences; and (4) poor communication of policy and guidance and at the individual case level.[32] This article is structured around elaborating and analysing each of these barriers in detail, followed by some reflections on the future of the underlying approach. Overall, what is revealed through this analysis is how it was far too likely that those fleeing war in Ukraine found themselves battling UK bureaucracy and that, as a result, the 'new bespokism' may contain the seeds of its own destruction: it requires administrators to build systems in crisis conditions and thereby places administration itself in crisis.

B. Legal architectures

during this period. Interview participants were recruited purposively through calls for interviews with advisors experienced in proving advice in this context. Targeted requests for participants were made via the established advisor networks of the Ukraine Advice Project UK and the Immigration Law Practitioners Association. All interviews were conducted via online video calls during the period 4th to 10th May 2022.

[31] There was no administrative review or tribunals appeal process attached to the schemes. On the dynamics of this choice in relation to immigration administration, see: R. Thomas and J. Tomlinson, *Immigration Judicial Reviews: An Empirical Study* (Palgrave Macmillan 2021), pp.22-28. The lack of administrative review and tribunal appeals may become more contested if there is a rise in refusal decisions beyond the period of the study. When people were seeking to complain in the early months, they were often going to an MP, on which see: R. Rawlings, 'The MP's Complaints Service' (1990) 53(1) *Modern Law Review* 22. Judicial review was, of course, an option but no such cases appeared in the data or reached a public judgment in the period of the study. There were a few cases where Pre-action Protocol letters had been sent to force administrative action.

[32] The analysis is at a generalised level insofar as many individuals will have faced unique circumstances that could have presented challenges for their capacity to engage with the UK schemes, but the focus here is on barriers that affect a significant number of people seeking to use these systems.

Ukrainians cannot enter the UK without a visa. To provide a specific legal basis for and framework around the granting of visas, the government created new Immigration Rules.[33] These Rules essentially provided the detailed parameters of the policy to welcome Ukrainians to the UK. They provided criteria regarding eligibility for a visa and other rules applicable to decision-making. One of the four critical barriers to administrative justice that emerged from the data is that the legal architecture created by these rules, at least in places, denied the complex reality of the problems administrators were being confronted with.

The most prominent example of this barrier is the definition of 'family member' under the Ukraine Family Scheme. As is routine, the new Immigration Rules pertaining to Ukraine were drafted using tightly worded criteria.[34] Given that this scheme operated on the basis of a Ukrainian national having a family member in the UK willing to sponsor them for the purpose of their visa, the scope of the scheme was in large part determined by this definition. That definition was initially very narrow, but it was quickly expanded due to political pressure. After the change, the relevant family member in the UK was required to be an immediate family member, an extended family member, or an immediate family member of an extended family member.[35] That family member was required to be either a British national, someone settled in the UK (*e.g.* have indefinite leave to remain, settled status, or proof of permanent residence), someone with pre-settled status who started living in the UK before 1 January 2021, or someone with refugee status or humanitarian protection in the UK.[36] In adopting this

[33] Immigration Rules: Appendix Ukraine Scheme. In the early days of the conflict, the Home Office was granting Ukrainians leave outside of the Immigration Rules.

[34] On approaches to drafting rules in this policy and administrative environment, see. Thomas, 'Agency Rule-making, Rule-type, and Immigration Administration' [2013] *Public Law* 135. For a recent review of the tensions within the drafting of the Immigration Rules, see: Law Commission, *Simplification of the Immigration Rules: Report* (HC 14, 2020); Law Commission, *Simplification of the Immigration Rules* (Consultation Paper 242, 2019).

[35] UKR 6.2, Immigration Rules: Appendix Ukraine Scheme.

[36] UKR 6.1, Immigration Rules: Appendix Ukraine Scheme.

conception of 'family,' the Rules often clashed with the complex reality of family life, both generally and particularly during the disruption inherent in armed conflict. As one interviewee put it, the definition failed to:

> [a]dequately encompass the fact that, in a war situation, we have men and certain sectors of society not being able to travel… you can't just focus on the nuclear. And even with the extended families they are talking about, you would be very naturally and quickly looking after your sister's child and stepchild.[37]

One interviewee described the position that one of their clients had been put in through the effect of these rules:

> The British national was married to a Ukrainian. The Ukrainian's parents wanted to come. But the Ukrainian herself was on a spouse visa, so she could not be the sponsor as you had to be British or settled and she wasn't yet. Therefore, the only relative who could sponsor was her husband. So, son-in-law of the Ukrainians fleeing the war. That wasn't an allowable relationship… totally bonkers.[38]

The attempt to precision-engineer the definition of 'family member' resulted in situations where administrators were being confronted with complex family situations in which supporting the applicant(s) to enter the UK was almost certainly within the broad intention of the overarching policy but seemingly outside of the letter of the Rules. As one interviewee put it, this was ultimately an issue of drafting: 'when you are doing a bespoke scheme, drafting—if you are going to insist on that—then draft… it widely enough and with enough flexibility.'[39]

The second prominent example was the treatment of unaccompanied children. The Ukrainian government's position was that no unaccompanied minor should leave the country

[37] Interview #1.
[38] Interview #5.
[39] Interview #1.

without its permission. However, on the ground, children were still leaving the country. In an effort to respect the wishes of the Ukrainian government, the UK created Rules which meant there was no legal basis and no mechanism for the processing of these children under the Homes for Ukraine scheme.[40] One interviewee described the circumstances of a minor whom they were assisting:

> The issues that we are facing is that unaccompanied children are not allowed to come to the UK generally. The case I was working on, it was a young woman, teenage girl, who was in an area where the Russian forces were advancing. This was during the period where there were reports of sexual violence being used. The family had a number of teenage children who they just wanted to get out. They basically had people who could take them in various countries… they were quite fortunate. I was approached by someone who had a close connection with them, but was not biologically related to them, who were asked to take in one of these teenage girls. We drew up a consent form and made sure it was all legitimate. We didn't have any safeguarding concerns at all. But they were not in the immigration rules... the legal issue is that the Ukrainian government don't want unaccompanied Ukrainian children rehomed without their, the Ukrainian government's, permission. Which all makes sense from a safeguarding position. The issue we have from a legal perspective is that there is no mechanism to get that permission, which basically means our government aren't doing anything because they are respecting the wishes of the Ukrainian government. But they have also not done anything to create a system…. There are going to be an awful lot of people in similar situations.[41]

This left applicants and those supporting them in a stark position: 'we don't have contact with the Ukrainian government and there is no formal administrative process.'[42] Another case involved an application for a visa which was refused:

[40] UKR 11.3, Immigration Rules: Appendix Ukraine Scheme (which is a ban on processing applicants under the age of 18 years who are not with a parent or guardian). By contrast, there is a more flexible position, rooted in a consent mechanism, under the Family Visa Scheme, see: UKR 8.1-8.2.

[41] Interview #2.

[42] Interview #2.

> It was 16-year-old boy in Germany with friends, both of his parents are still in Ukraine, and they cannot come. The father is not allowed to leave, and Mum is looking after family, Grandmother, and a baby that she has. First of all, she can't leave. Second of all, the baby doesn't have any documents—she is just born. So, she has got friends that agreed to accept him as a sponsor, and act as sponsor for him. Council came and inspected the property, the family was fine, the property was fine, the checks were done. But they received an email from the Home Office saying 'because you are not the legal guardian of this boy, even though you have permission from parents, we cannot let you accept this boy and unfortunately at this stage we don't have an option for you'… this boy is with a friend who has nothing to do with him in Germany. The family here don't know what to do.[43]

This administrative vacuum is also liable to create confusion on the ground:

> There was a massive lack of support for unaccompanied minors in lots of situations. So people, children who basically fled on their own. One child we know of had to return back and returned back to Ukraine as he just didn't know what to do.[44]

> Of the cases I've dealt with, the fathers aren't able to leave because they are in the army. But that raises the question of whether the child is allowed to leave without the explicit permission of the father… it's not really clear if the Home Office is taking a view on that.[45]

In this context, the understandable intention of the UK government to respect the wishes of the Ukrainian government meant that when administrators were confronted with unaccompanied minors who had left Ukraine or had a viable pathway out of harm's way, there were Rules which meant they met an administrative vacuum. This position created, contrary to the very

[43] Interview #11.
[44] Interview #3.
[45] Interview #8.

purpose of the Ukrainian government's position, new safeguarding risks around children that the initial policy was seeking to avoid.

To circumvent or mitigate the hard edges of the Rules, and the barrier they create to administrative justice, the Home Office sought to deploy its decision-making discretion.[46] The *Ukraine Scheme* guidance recommended this approach in multiple places.[47] Most interviewees noted how Home Office officials had been 'quite generous,'[48] 'fairly lenient,'[49] and even 'kind with their decisions and understanding…the people making the decisions and trying to apply the policy are trying to do it the best they can.'[50] Given this approach, refusal decisions were almost unheard of. Only two examples of refusal decisions emerged from interview data. For instance, in one case:

> [A] woman who was here doing a PhD and she wanted to bring her two younger brothers over. They are both teenagers and she was living in kind of like of halls of residence or student accommodation, and she only had a studio flat which was one room which had kitchen, bathroom, and bedroom all in one. And the local council said it was a safeguarding issue as she couldn't have two teenagers plus herself living there. I think if she had been able to find alternative accommodation, it would have been granted. But the checks the Council were doing were just saying, you know, this would be overcrowded, and they couldn't allow the children to come and be accommodated there... I thought that was fair to be honest, I don't think you could have three people living in a small studio flat in halls of residence. [51]

[46] One area where it appears the Home Office has not been exercising discretion is in relation to unaccompanied minors and has, instead, been sticking closely to the letter of the Rules.

[47] Home Office, *Ukraine Scheme: Version 4.0* (11 March 2022), p. 13.

[48] Interview #5.

[49] Interview #10.

[50] Interview #9.

[51] Interview #8.

The use of discretion as a general workaround, however, gave rise to new problems—revealing once more the long-recognised 'two faces' of discretion.[52] The flexible and generous style of decision-making was seen as 'very, very weird' for the Home Office, which is a department with a reputation for a strict approach to decision-making.[53] As one interviewee put it, the Home Office arguably entered this crisis 'at the top of the wave where they are so ridiculously ridiculous that there is no way to move forward here, so they calmed down a little bit.'[54] However, this helpful use of discretion also created a significant degree of uncertainty for applicants and the people trying to support them:

> [A] lot of the advice I'm giving people is, you know, you don't quite meet the Rules or I'm not sure if you can argue if you do meet the Rules, but I think you should put in an application anyway and hope the Home Office are still taking a broad view of the requirement.[55]

> They still write in the Rules and application forms that all your documents need to be translated… most that submit applications don't do any translation at all and their applications are approved. As a solicitor, I cannot advise my client not to translate documents. I say, the Rules are to translate them officially but, if not, to ask a friend to translate them. If not, your application may be delayed or even refused. [56]

> We are having to second guess a lot of the time.[57]

Furthermore, lodging applications that did not fit with the precise rules and hoping for discretion to be exercised was, even when positive decisions resulted, widely observed to create

[52] K.C. Davis, *Discretionary Justice* (University of Illinois Press 1971); R. Baldwin and K. Hawkins, 'Discretionary Justice: Davis Reconsidered' [1984] *Public Law* 570. See also: L. Sossin, 'The Politics of Discretion: Towards a Critical Theory of Public Administration' (1993) 36 *Canadian Public Administration* 364.

[53] Interview #12.

[54] Interview #11.

[55] Interview #8.

[56] Interview #11.

[57] Interview #14.

'unnecessary stress'[58] and 'add to people's fears.'[59] This perception was of course not assisted by a view that the Home Office has a natural tendency to be stricter in decision-making, and that the evident generosity exercised through discretion may be fleeting: 'I don't know if the Home Office's attitude to applications will harden over time… and whether they will be more strict.'[60] This concern was often linked to a sense that the positive use of discretion was being compelled by high levels of public, political, and press attention that was sympathetic to Ukrainians—'[i]f they do refuse, it will be a big news story'[61]—and the expectation that this attention may fade as the conflict goes on. There was a concern that this could lead to inconsistent decisions in similar cases.[62] Discretion was also not too helpful for those who may just read guidance or the Rules online and are deterred from applying in the first instance—after all, the Home Office was at pains to stress that making the application should not require the assistance of an advisor. Those with lawyers or advisors are likely given an advantage in these circumstances.

Using discretion in decision-making was clearly necessary under the schemes the government chose to adopt, but it was largely a response to the approach taken to the construction of the relevant Immigration Rules and how they were routinely liable to deny the complex reality of the problems administrators faced. The use of discretion mitigated the impacts of this barrier, but it was far from a satisfactory response. As one interviewee summed up the position, '[t]here is scope for flexibility, and I have to praise the Home Office for that… But I wouldn't say that's something fit for the largest humanitarian crisis in a generation.'[63]

[58] Interview #5.
[59] Interview #5.
[60] Interview #14.
[61] Interview #12.
[62] Interview #17.
[63] Interview #14.

C. Geographical dynamics

A second major barrier to administrative justice in the Ukraine schemes was rooted in the geographical dynamics of the process and, principally, the location of the applicants throughout the application and decision-making process. Ukrainians had to make an application prior to coming to the UK. Without permission to travel to and enter the UK, they are not allowed to board a plane.[64] This meant that applicants were typically in one of two situations while the application and decision-making processes were in progress. They were still at home in Ukraine. Of course, this meant the process was often happening while the applicant was in or near an active warzone. Alternatively, they had fled their home and were in transit or had found temporary accommodation (typically in another nearby country such as Poland), either with friends and family, at a shelter, or through a private hotel or hostel. It was the fact that applicants are effectively pinned, by virtue of administrative process, in these geographical locations that often greatly exacerbated the negative effects of the decision-making process itself. Four instances of this dynamic were particularly prominent.

First, there was the issue of apparent delays in determining whether visas would be issued. During the period of the study, this was the issue that attracted the most mainstream press attention.[65] Though the government published no data on waiting times, reported processing times varied greatly, ranging from a few days to more than a month. It also is clear

[64] Under Section 40 of the Immigration and Asylum Act 1999, airline carriers are liable to charges if they carry a passenger to the UK who is an 'inadequately documented arrival.' The current charge for each inadequately documented arrival is £2,000.

[65] See *e.g.* A. Forrest and M. Bulman, 'Priti Patel apologises over 'frustrating' time taken to grant visas to Ukrainian refugees' (*The Independent,* 8 April 2022) <https://www.independent.co.uk/news/uk/politics/priti-patel-apology-ukraine-refugees-b2053883.html> accessed 13 April 2022.

that some people were experiencing significant delays, with one interviewee giving the following example of an applicant to the Ukraine Family Scheme:

> The worst case I've had... she was on Indefinite Leave to Remain in the UK. She was in Ukraine when the war happened. She took her granddaughter in and left. She went to Romania. Parents stayed behind with a child. When she made an application for [her granddaughter], she waited six weeks.[66]

The critical issue, however, was that almost any delay was problematic when put in the context of the applicant's circumstances. As one interviewee put it, '[s]ix days is not great in wartime.'[67] In this respect, it is important to recognise there can be reasonable disagreement about what the appropriate metric for 'excessive delay' is, but it is equally important to recognise the perception of time, and therefore the appropriate metric of 'excessive delay,' may shift depending on the circumstances.[68] Delay also had indirect impacts when put in the context of the reality applicants are facing. For instance, delay had economic consequences:

> It's administrative but it's also a financial burden, having to host yourself in a hotel.[69]

> I have spoken to families and even sponsors… who have been paying for a hotel in Poland for five weeks.[70]

[66] Interview #11.

[67] Interview #5.

[68] M. Griffiths, 'Out of Time: The Temporal Uncertainties of Refused Asylum Seekers and Immigration Detainees' (2014) 40(12) *Journal of Ethnic and Migration Studies* 1991; L. Axelsson, 'Border timespaces: Understanding the regulation of international mobility and migration' (2022) 104(1) *Geografiska Annaler: Series B, Human Geography* 59. See also: M. Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge 2015).

[69] Interview #9.

[70] Interview #9.

> A couple, a husband and wife, who come from UK who are not on that high of incomes and are hosting a whole family—most Ukrainians don't have access to their bank accounts at the moments—so it's the sponsors who have been paying… but they just feel so angry.[71]

> I don't think it's acceptable to ask family members or a person running from war to spend hundreds, sometimes thousands, of pounds to seek refuge.[72]

The ground-level reality was that, while formal fees (such as application fees) may have been removed from the process, applying for a visa to come to the UK was, indirectly, often expensive. Furthermore, holding people in limbo was creating safeguarding risks.[73] As one interviewee put this point: 'I am well aware of cases where, you know, pressure being experienced with people who are in refugee accommodation, and children are uniquely vulnerable there to predation. It's real.'[74]

A second issue arose from how the Home Office required everyone who wished to enter the UK to provide biometric information before their applications was processed.[75] In practice, that meant people had to attend a Visa Application Centre—which the UK had dotted around Europe through a partnership with a private company, TLS—to have this biometric information

[71] Interview #9.

[72] Interview #4.

[73] E. Cockbain and A. Sidebottom, *The war in Ukraine and associated risks of human trafficking and exploitation* (University College London 2022). See also: P. Haynes, 'Global points of 'vulnerability': understanding processes of the trafficking of children and young people into, within and out of the UK' (2010) 14(6) *The International Journal of Human Rights* 952; A. Geddes, 'Chronicle of a Crisis Foretold: The Politics of Irregular Migration, Human Trafficking and People Smuggling in the UK' (2005) 7(3) *The British Journal of Politics and International Relations* 324.

[74] Interview #1.

[75] For wider critical analysis of the use of biometrics in migration systems, see: L. Amoore, 'Biometric borders: Governing mobilities in the war on terror' (2006) 25(3) *Political Geography* 336; J. Kim, 'Establishing Identity: Documents, Performance, and Biometric Information in Immigration Proceedings' (2011) 36(3) *Law & Social Inquiry* 760; B. Ajana, 'Asylum, Identity Management and Biometric Control' (2013) 26(4) *Journal of Refugee Studies* 576; B. Muller, *Security, Risk and the Biometric State: Governing Borders and Bodies* (Routledge 2010).

collected (see Table 3 for a list of the nearest Centres to Kyiv and the distances to them).[76] Originally, everyone applying had to do this. That led to Visa Application Centres being overrun with people in the first few weeks of the war, a situation that was administratively unsustainable and, as one interviewee described it, 'craziness.'[77] It also led to 'lots of people driving halfway around Europe going from one place to another, trying to get appointments.'[78] In view of this, the UK government relaxed the position so that anyone with an international Ukrainian passport could travel after making a visa application that is approved. Such people could then submit their biometric data once arrived in the UK. Everyone else, however, still had to attend a Visa Application Centre prior to submitting their application. This meant they had to travel long distances to a Centre and wait for a longer period of time overall before reaching the UK. For most of the duration of the study, this latter rule was in place. While the immediate mass chaos was abated by the government's shift in position, the requirement to submit biometrics continued to be a major barrier for those without international passports.

[INSERT TABLE 3, SEE APPENDIX 1]

Several problems arose due to the continuing application of the rule to Ukrainians without international passports. As least two groups were disproportionately hit by the rule, as they were less likely to have an international passport: the elderly and very young children. This meant that two groups that were often least able to travel long distances and were generally

[76] The parent company of TLS, Teleperformance Ltd, was awarded a £167m contract by the Home Office in 2014 to run the UK's visa centres across Europe under the TLSContact brand. It has previously been criticised by the Independent Chief Inspector of Borders and Immigration, see: *An Inspection of UK Visas and Immigration Front End Services (August 2020 – June 2021)* (2021).

[77] Interview #1.

[78] Interview #4.

amongst the most vulnerable were being asked to carry this extra burden. The continuing application of the rule also imposed a further financial burden on applicants:

> That's probably the biggest headache because it depends on where they are, if they have access to a Centre, which may be hundreds of miles away from where they are staying. They may not have the resources to do that.[79]

It was also apparent that, in lots of situations, the rule was biting on one member of a family unit that did not have an international passport when the other members of the group did hold a passport and could therefore travel. In many such cases, the only person without their own international passport was a baby or a child:

> [The] most affected by it are people with really young children. So, babies. Who, obviously, in lots of cases, don't have a valid international passport yet. And they'll be the sole family member in the family that doesn't have a valid passport. What that means is, especially if you are in Eastern Ukraine, you are speaking to people with maybe three or four young kids—I spoke to one with a 9-month old baby that was the only person in the party without their own international passport. The baby was in his mother's passport, but they came to me because they had done the whole application and everything… and then the Home Office had come back to them and said you have to go to a biometric appointment.[80]

> Children and much older people don't have passports, so the most vulnerable in the situation have been made to wait the longest. And they are the least risk, if you look at it from a security point of view. A three-year old is not a security risk for the UK. That has probably been the chief delay in most families I've helped to bring here—there has been one or two children who've taken longer.[81]

[79] Interview #5.
[80] Interview #9.
[81] Interview #3.

> I have a case where I have a lady who is a Ukrainian national. She has a passport. She submitted her application online. She has a daughter who doesn't have a passport. She is twelve years old. They are currently in Warsaw as they had to travel out of Ukraine to make the application, which is ridiculous and unacceptable. But there is just no way around it.[82]

> It's really common… so families that have young children or babies still had to go to biometric appointments. Which was something that was missed and is still missing… we felt listened to when that change [to the initial rule] happened. But there are still continuing problems with it and it's going ignored now. No one cares anymore. It's like, 'well they fixed it, it's done' but it's not fixed.[83]

The primary rationale for the Home Office's insistence on biometrics was security.[84] Certainly as it relates to children (and arguably other groups), there seemed to be no rational basis for insisting that babies and children, when they are the only person in their party without a valid international passport, should trigger the need for a Visa Application Centre visit.[85] On top of these challenges, it was apparent that Visa Application Centres, were continuously under extreme pressure, with experiences reflecting a '[m]assive lack of personnel… people are queuing for hours.'[86] The insistence on Visa Application Centre appointments also created pressure on the areas surrounding the Centres, where people often tried to stay and wait for a decision: '[w]e still have huge issues with creating physical pressure in locations by these systems.'[87] Overall, the impacts of this rule ranged from inconvenience to tragedy. One interviewee gave an example of the deterrence effect of the rule:

[82] Interview #6.

[83] Interview #9.

[84] The policy was recently defended in such terms in *R (JZ) v Secretary of State for Foreign, Commonwealth and Development Affairs & Ors* [2022] EWHC 771 (Admin).

[85] On this basis, it is arguable the application of the rule, at least in certain circumstances, was unlawful.

[86] Interview #3.

[87] Interview #1.

> Many people who left Ukraine decided to stay at the border, then realised two months in that they are running out of money to even pay for food, so they have to return to Ukraine, because at least there they have their own accommodation and they feel safe. But they've returned to Ukraine and now they have to attend a biometric appointment. That stops them from applying.[88]

Another interviewee described the tragic case of an elderly woman she was supporting:

> The most distressing cases I've ever worked on is where you are getting a grandmother out of a bombed-out basement and putting her on a train for four hours and then insisting that she then travels arbitrarily to a designated Visa Application Centre. And that is still happening for everyone who doesn't have a valid passport… My most distressing case was one where the grandma actually died of a stroke having gone through this incredibly stressful process, having gone once for a Visa Application Centre that was an unnecessary five-hour train journey from where she was located and back again, and then was asked to go back to collect her visa. She actually died on the morning she was supposed to go. And you just think 'this is revolting.'[89]

The continuation of the rule requiring biometric data to be submitted prior to an application had a negative and even discriminatory impact. This issue was inherently connected to the geographical dynamics of the administrative process as it turned on where people were being asked to submit biometrics. Had biometrics been collected in the UK entirely, or for certain groups (*e.g.* young children), then this barrier would have been eradicated or much reduced. It is difficult to see why the government did not change the approach.

A third issue arose from the application form that each person had to complete and the length and complexity of the form.[90] Many observed that, given the haste with which the

[88] Interview #12.

[89] Interview #1.

[90] Every individual in a family group had to make a separate application; this is discussed in the section below. On forms as a barrier to access, see: T. Grieshofer. M. Gee, and R. Morton, 'The Journey to Comprehensibility:

systems were established, the 'application forms themselves look to be largely lifted from an existing application form.'[91] While some recognised this 'made sense' within the context of the approach the government has decided to take, it often means, particularly in the early weeks of the schemes, that 'most of the questions are just not relevant to what the applicants are coming here for.'[92] Examples of this included how applicants were being asked to provide ten years of travel history when '[t]he travel history requirements have nothing to do with the application they are making.'[93] More broadly, there were mixed views on their accessibility:

> They're not the easiest to complete.[94]

> Most people seem to be able to do the application forms themselves.[95]

> I did not find the application forms particularly difficult.[96]

> It would be very difficult for an applicant who does not have experience of this system, for them to be able to do it on their own.[97]

However, it was clear that certain applicants struggled with the demands of the application:

> Two of the cases I've put through most recently are cases that are relatively straightforward on paper, but have taken me, in one case it took me nearly two weeks to get the case done because of that kind of

Court Forms as the First Barrier to Accessing Justice' (2021) *International Journal for the Semiotics of Law* (online pre-publication); G. Stygall, 'Textual Barriers to United States Immigration' in J. Cotterill (ed), *Language in the Legal Process* (Palgrave 2002).

[91] Interview #2.

[92] Interview #2. On the ways in which forms can be flawed, see: J. Meers, 'Forms of fettering: application forms and the exercise of discretion in the welfare state' (2020) 42(2) *Journal of Social Welfare and Family Law* 221.

[93] Interview #2.

[94] Interview #6.

[95] Interview #8.

[96] Interview #10.

[97] Interview #2.

> burden. In one of those cases, it was the case of spending six hours in the middle of the night with a client… as they didn't have documents with them.[98]

Once again, issues with the application form itself were made worse by virtue of the conditions in which it is being completed: '[t]here wasn't a lot of thought into the human aspect of how vulnerable and traumatised people are. They are running from their homes, leaving their loved ones behind. Walking around in a daze not knowing what is going to happen to them.'[99]

Fourth, there was the issue of digital exclusion. The application form was only available online and other communications, such as notice of a decision, took place online. For some, online communication was quicker and more convenient. However, there were problems with this 'digital by default' strategy. People were filling out forms in less-than-ideal situations, *e.g.* on their phones while in transit. Inconsistent internet access was widely perceived to be creating problems, as was access to the necessary devices. But the position of certain groups, such as elderly people, as regards access to technology and the capability to use it was a wide-ranging concern:

> A lot of the application process depends on you being IT literate and having internet access. And those two things are massive barriers, especially for older people on their own with no one to help them with the process.[100]

In normal circumstances, the Home Office would point to its Assisted Digital programme in such cases. However, given the geographical dynamics of this process, this was not an available option.

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[98] Interview #2.
[99] Interview #4.
[100] Interview #3.

The geographical dynamics explored here not only worsened the strife created by administrative problems but, in some circumstances, created a deterrence to applications. Some people did not apply in the first place or, if they did apply, were not able to travel due to how the process played out for them and their family:

> People have given up trying to come here and have settled in Europe. We've had lots of people express to us that.[101]

> They [the people the advisor was assisting] thought it was done on purpose so people wouldn't come here. Obviously, people see lots of news reports on immigration and a lot of it is quite negative, so they already have that perception it's quite a hostile environment.[102]

> [N]ow they have to attend a biometric appointment. That stops them from applying… they are reluctant to go back again across the border, visit the Visa Application Centre, and wait God knows how long.[103]

The fact that processes were having such effects, and frustrating the stated purpose of government policy, should be regarded as no less than a fundamental failing of the schemes.

D. Communication

Poor communication proved to be a barrier to administrative justice on two levels. First, in terms of the communication of general policy and guidance. Second, in terms of communication around individual applications and circumstances. In a situation such as the Ukraine crisis, the reality for people fleeing is that 'you are just desperate for information

[101] Interview #4.
[102] Interview #4.
[103] Interview #12.

wherever you can get it.'[104] Yet information was often not available, and it was often unclear when it was provided. Little useful information was also available on individual applications.

At the level of general policy and guidance, there was a lack of clarity and inconsistent messaging in relation to the two schemes:

> Inconsistent information is the thing that has driven me up the wall.[105]

> The biggest thing for me seems to be a lack of clarity around all of the Ukrainian schemes.[106]

> The lack of information about what to do and where to go to apply to come to the UK.[107]

> Lots of families in the UK with contacts of people from Ukraine were finding that very stressful, as they didn't know where to start.[108]

One specific example given was how there 'was and still is a lack of information about how people in the UK are being assessed on if they can take someone into their homes.'[109] Another was how '[t]here was no information on whether they should do [Tuberculosis] testing before they came, which was actually relaxed but they didn't tell people that.'[110] The guidance that was published also focused largely on the rules relating to qualification for a visa, rather than on process: '[i]t's still not apparent to anyone anywhere what are the steps this process is going to go through.'[111] Many people wanted to know more about the process they are going through,

[104] Interview #2.
[105] Interview #2.
[106] Interview #8.
[107] Interview #3.
[108] Interview #3.
[109] Interview #3.
[110] Interview #3.
[111] Interview #1.

not just the content of the Immigration Rules: 'I have some sympathy with the speed that guidance has to go out… but we need guidance that goes to qualification but also goes to end-to-end process, and engages with processing times.'[112]

A key challenge in relation to the communication of general policy and guidance was that the need to create new schemes—very quickly—in crisis conditions meant that policy and guidance were often changing rapidly, and this was particularly pronounced in the first month of the crisis. Applicants were routinely confused by announcements that were made ahead of schemes being set up properly: '[s]ometimes they announce something, and it didn't happen… so you get loads of calls from people asking 'what do I do?' and the answer is 'nothing.''[113] When the policy and guidance changed quickly, it was liable to have a similar effect on the ground:

> It's just been kneejerk decision after kneejerk decision and that's not helped the applicants.[114]

> The whole thing almost feels retroactive. Like, you know, they do one thing and realise it's wrong, so they change it. And they change it again. And they change it so fast and so many times that people just get confused.[115]

Language barriers were also often cited as a 'key' barrier in relation to communication, and thus administrative justice.[116] Initially, all relevant forms and information were only in English:

[112] Interview #1.
[113] Interview #12.
[114] Interview #3.
[115] Interview #12.
[116] Interview #12.

> Language has obviously been a massive barrier. Something straightforward they could have done from the very start is to make the whole… application transferred into the language or a few different languages… but it took them a long time to get over that hurdle.[117]

While the government managed to fix this problem, there were still issues arising around language barriers. For instance, the question of whether the documents required for the application needed to be translated was widely perceived to be a source of uncertainty, stress, and delay:

> The same for language, which was massive barrier from the start. Usually, when you make a visa application, you have to translate all documents that aren't in English and Welsh... people didn't know if they had to get translations so that was slowing things down.[118]

> It's not been made clear in any of the guidance if translations are necessary. It's just been left off. It's very odd.[119]

As regards communications over individual applications and decisions, the Home Office set up a helpline. It was widely seen as providing little help in practice:

> The Ukraine advice line is either rung off the hook or people have no idea what to suggest when you get through to somebody… it was just completely useless as the people on the other end of the phone just didn't know what to do or say.[120]

> You ring them and they have very little information.[121]

[117] Interview #3.
[118] Interview #3.
[119] Interview #5.
[120] Interview #3.
[121] Interview #6.

> They talk like robots…they are terribly unhelpful.[122]

> It's just some phone line that doesn't do anything other than answering the phone.[123]

> You can never find out where your case is up to, you can never speak to anyone meaningful. They literally read out a script to you… it's utterly frustrating to try and communicate with them.[124]

One of the key problems with the helpline was that the people answering phones often did not appear to have access to individual application information: 'there was no access to any information at all when I called for update. I can't even escalate the issue. They don't have a system.'[125] Instead, they typically just read out guidance that was already available online. There were concerns about poor advice being given, including one 'utterly crazy' case at the start of the conflict where a person was told to go back to Kyiv, which was an active warzone, by the helpline.[126] There were also complaints about inconsistent information: 'you will call it twice on the same day and get two different answers.'[127] The most successful interactions with the Home Office around particular applications seemed to arise where established advisors have developed contacts with 'people inside.'[128] Unfortunately, most experienced advisors see this overall level of performance from the helpline as 'fairly par for the course'[129] as '[c]ommunications with the Home Office are always like this.'[130]

[122] Interview #9.
[123] Interview #12.
[124] Interview #9.
[125] Interview #12.
[126] Interview #9.
[127] Interview #2.
[128] Interview #6.
[129] Interview #2.
[130] Interview #9.

A further significant issue around the communication on particular applications arose in relation to the notification of decisions: people were not being told when their visas had been granted. There were many reports of this:

> She applied online on the 4th March, she attended the VAC in Budapest on the 8th of March, she gave her biometrics and was told she would receive her visa within five days. On the 11th March, which was three days later, they confirmed a decision was made. There was no email after that. The email on the 11th said she should visit the [Visa Application Centre] to collect the decision. She did visit it on the 16th March and was told it was approved but no decision letters were issued. And then there was some communication problem and the caseworker just read from the screen to her and told her no e-visas were being approved to anyone who applied before 15th March. She was left not knowing what to do at that point.[131]

> Many are being told they need to wait for UK Visas and Immigration to contact them but when they go to the [Visa Application Centre] they are being told their visas have been granted and they are there waiting to be picked up, but nobody has told them that.[132]

> All they said is wait for the email. My mum is an impatient Slavic lady. She goes to the Visa Centre, her visa was lying there for two weeks, decided.[133]

Such communication failures generated delays—with all the problems that delay entails—and were liable to prevent people from travelling entirely.

[131] Interview #3.
[132] Interview #3.
[133] Interview #12.

In a crisis, clear communication is generally necessary for an effective response.[134] The Home Office fell short in this respect, both at the policy and guidance level and in relation to individual applications. As one advisor put the point, 'I wouldn't have a job if information was adequately available.'[135] Some communications problems, particularly around rapid changes to policy, appeared to be lessening as the schemes became established, but, in many cases, it was too little too late.

E. The crisis of the 'new bespokism'

This article has shown how the bespoke schemes established to assist Ukrainians fleeing the war and trying to enter the UK suffered serious systemic difficulties in the critical first few months of the conflict. It has traced the central problems underlying the bureaucratic systems put in place and identified how, even where a humanitarian-oriented policy is adopted, these processes can frustrate the stated public policy aim. Importantly, this frustration has generally not occurred through incorrect or contestable adverse decisions or a lack of accountability systems—the typical central concerns of administrative justice—but through the sharp effects of bureaucratic process. The result, in many cases, has been that the state has inflicted further human suffering on a group of people it was claiming to be trying to welcome with open arms.

The problems examined in this article are, in many ways, the inevitable product of building 'bespoke' administrative systems every time there is a mass migration crisis where the UK government perceives itself to have a greater sense of obligation to a particular group of people. Building bureaucratic systems is tough and unglamorous work. While it can be done

[134] see *e.g.* S. Eckhard, A. Lenz, W. Seibel, F. Roth, M. Fatke, 'Latent Hybridity in Administrative Crisis Management: The German Refugee Crisis of 2015/16' (2021) 31(2) *Journal of Public Administration Research and Theory* 416

[135] Interview #1.

quickly, building good systems that are sensitive to the complex realities of the people who use them—or simply work in a way approximating their policy intention—cannot be done overnight. Even when there is more time available, it is well-established that administrative systems routinely experience 'teething problems.'[136] Yet, building complex systems that process large cohorts of vulnerable people at a significant pace is exactly what the 'new bespokism' approach to asylum policy entails. It consigns public officials to build systems in crisis and thereby puts those officials themselves in crisis. As one interviewee put it, 'to have to, in the midst of a crisis, build out systems is insanity if you are actually engaged with efficient processing… it's a very good way to delay and build barriers.'[137]

The Ukraine schemes, and their impact, demand further detailed scrutiny. This article has traced the critical early months of the schemes, but there is much more that needs to be done to understand them in the long term. We do not, for instance, know when the schemes will close. We also do not know if there will be more innovation or change in response to the type of problems set out in this article and whether any further changes will prove effective. Beyond the schemes' ability to allow Ukrainians to enter the UK, there are also major questions about the experience of Ukrainians once they are in the UK, including their access to public services, housing and accommodation, healthcare, and their right to work. Given that the leave to remain granted under the schemes is for a limited period, there is an outstanding question of what will happen at the end of that period. The intense administrative focus placed on the Ukraine schemes has also had an impact on other migration systems, which needs to be analysed. As one interviewee put it, 'other lives are being sacrificed for the benefit of the Ukrainians and I also don't think that's fair.'[138]

[136] See *e.g. The Director of Legal Aid Casework and The Lord Chancellor v IS* [2016] EWCA Civ 464.
[137] Interview #1.
[138] Interview #10.

The Ukraine schemes must also be seen as part of the wider picture of the 'new bespokism' approach to asylum policy. In terms of the bespoke systems that the government may seek to establish from time to time, serious questions emerge from the analysis presented in this article. There are obvious problems with having a humanitarian policy that, once administrated, has negative effects or little success. If a policy cannot be administered well, that is grounds—in addition to substantive legal and policy arguments—to doubt the wisdom of policy itself. Moreover, from the perspective of the government's concern for control, security, and safeguarding, there is a real question about whether bespoke systems create any more than an illusion of control. In relation to the Ukraine schemes, refusal decisions appear to be very rare, and there are many cases where official discretion has been applied to the effect that flawed applications receive a positive determination. This is to be welcomed as a benefit for individual applicants despite the extra uncertainty it involves. But it raises the question of whether the systems constructed—which came at great human and financial costs—provided much value in terms of security and safeguarding that could not have been delivered in a much more targeted, proportionate, and effective manner, and there are credible grounds to suggest that the schemes increased safeguarding risks in places. It must also be remembered that schemes such as the one examined in this article are effectively the new 'gold standard' for asylum-seekers in the UK—they offer preferential treatment when compared to the general asylum system. Asylum-seekers who fall outside of these schemes are either being thrown into an administrative system riddled with delay or facing a hostile framework that intends to deter them from seeking asylum in UK in the first place. This emerging system must be understood as an integrated whole.

F. Conclusion

This article has offered the first extended analysis of a critical component of the 'new bespokism.' Through a detailed exploration of the schemes set up to respond to the Ukraine crisis, it has shown how people who sought to make use of these schemes faced significant barriers to administrative justice. Most notably, those barriers consisted of: (1) legal architectures that deny the complexity of the problems administrators are confronted by; (2) the geographical dynamics of the administrative process, that kept people in unsafe or unsuitable conditions or even deterred them from applying; (3) how the individualisation of decision-making had adverse consequences; and (4) poor communication of policy and guidance and at the individual case level. The discussion of these barriers reveals how the 'new bespokism' represents a profound shift in the UK's approach to mass migration crises and, moreover, how it presents many complexities at the intersection of law, administration, and society—which may often be hidden behind ostensibly more generous law and policy frameworks—that we must strive to understand and scrutinise in the coming years.

Appendix 1

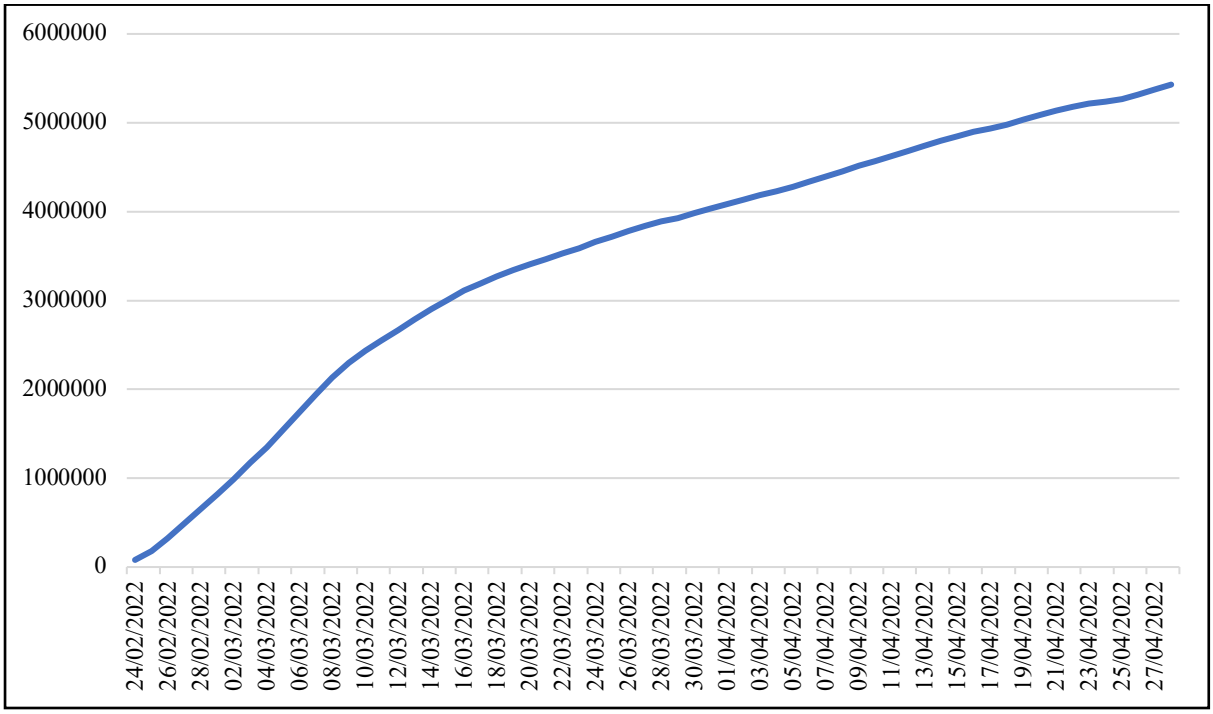

Figure 1: Number of refugees fleeing the war in Ukraine from 24th February 2022 to 28th April 2022 (Source: UNHCR Operational Data Portal)

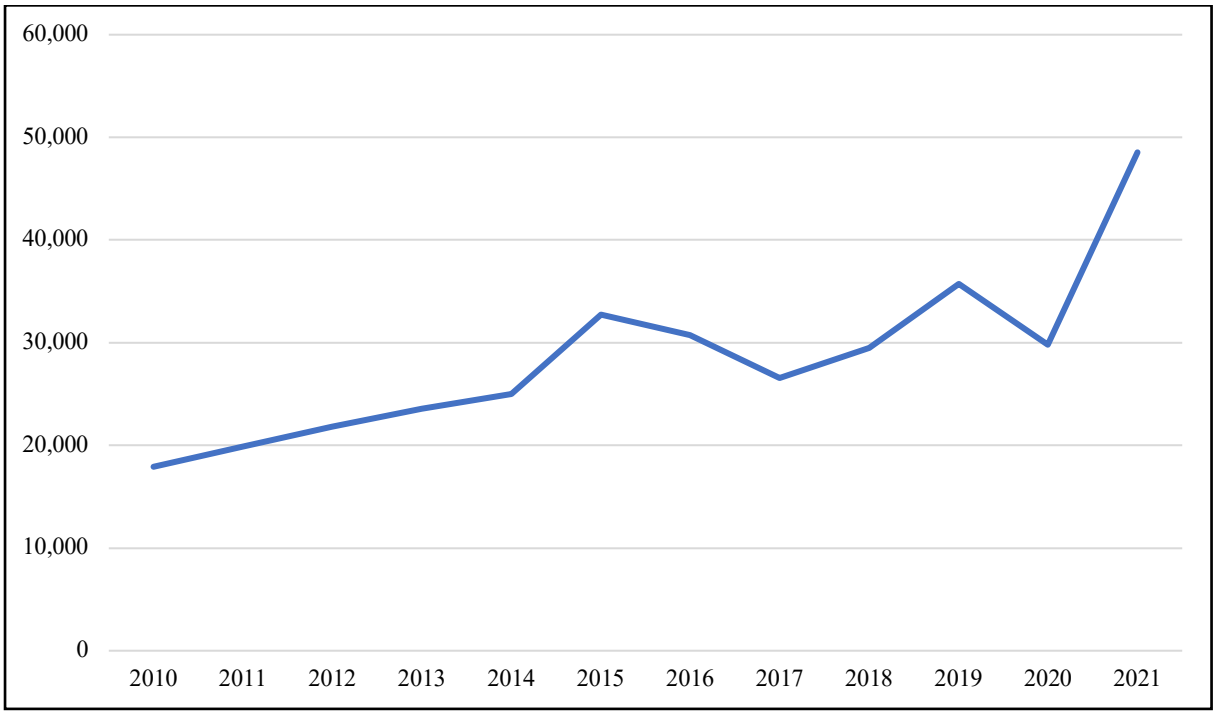

Figure 2: Number of asylum applications (Source: Immigration statistics for year ending December 2021, UK Government statistics)

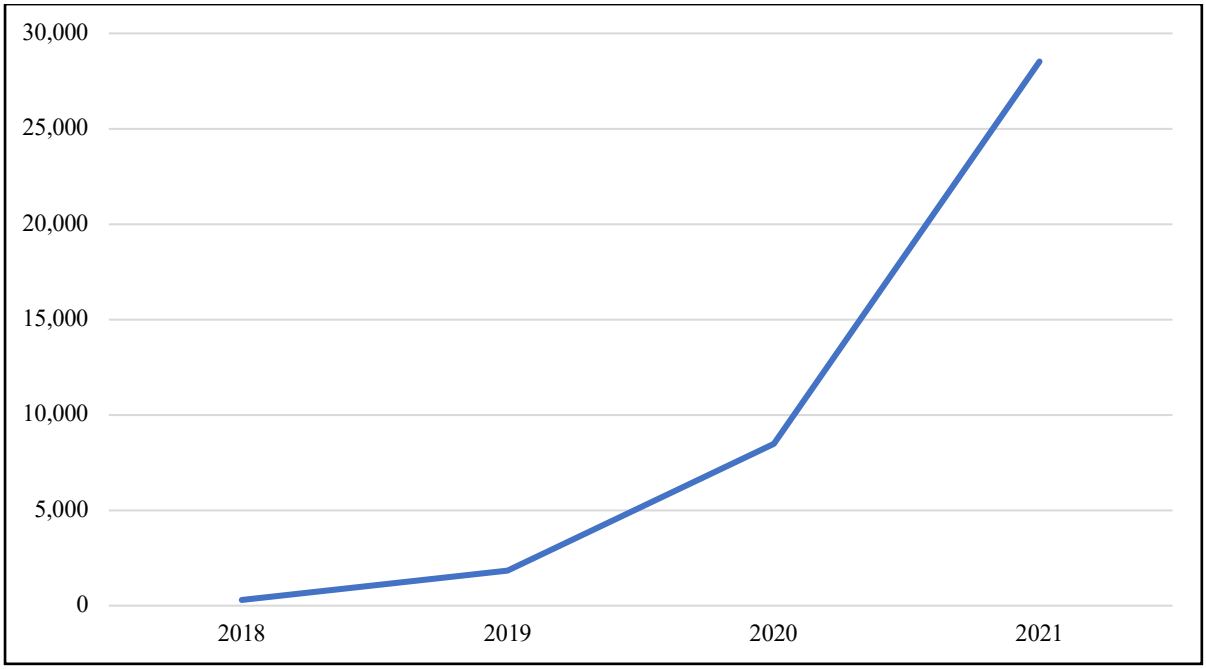

Figure 3: Number of asylum seekers arriving by small boat in the UK (Source: Irregular migration to the UK, year ending December 2021, UK Government statistics)

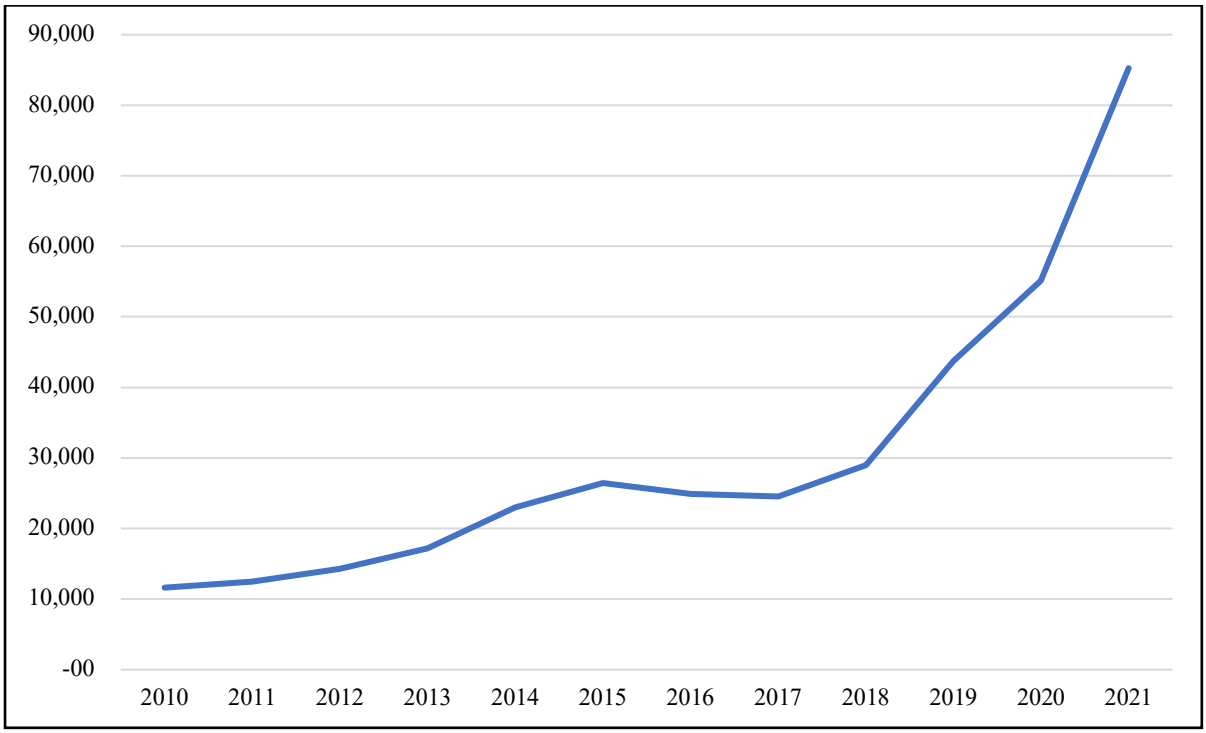

Figure 4: Number of undecided asylum applications (Source: Immigration statistics for year ending December 2021, UK Government statistics)

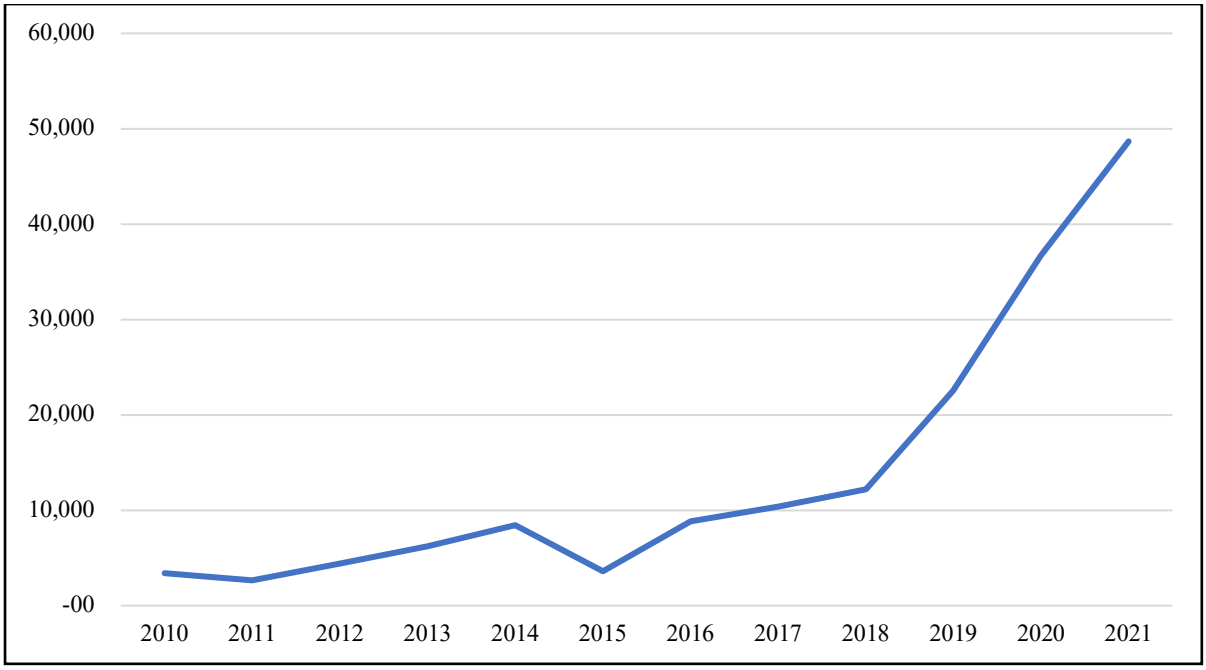

Figure 5: Number of people waiting more than six months for an asylum decision (Source: Immigration statistics for year ending December 2021, UK Government statistics)

		Vote in 2019 General Election			Vote in EU Referendum 2016	
	Total (%)	**Con (%)**	**Lab (%)**	**Lib Dem (%)**	**Remain (%)**	**Leave (%)**
Much too difficult	31	23	46	54	45	25
Slightly too difficult	24	27	28	24	26	25
TOTAL DIFFICULT	55	50	74	78	71	50
About right	19	29	10	9	12	25
Slightly too easy	3	4	2	3	2	3
Much too easy	5	5	4	2	2	8
TOTAL EASY	8	9	6	5	4	11
Not sure	16	13	10	8	13	13

Table 1: Public perception of government processes related to Ukrainian refugees (Source: YouGov Survey, weighted UK sample of adults (18+), undertaken 27th - 28th of April 2022)

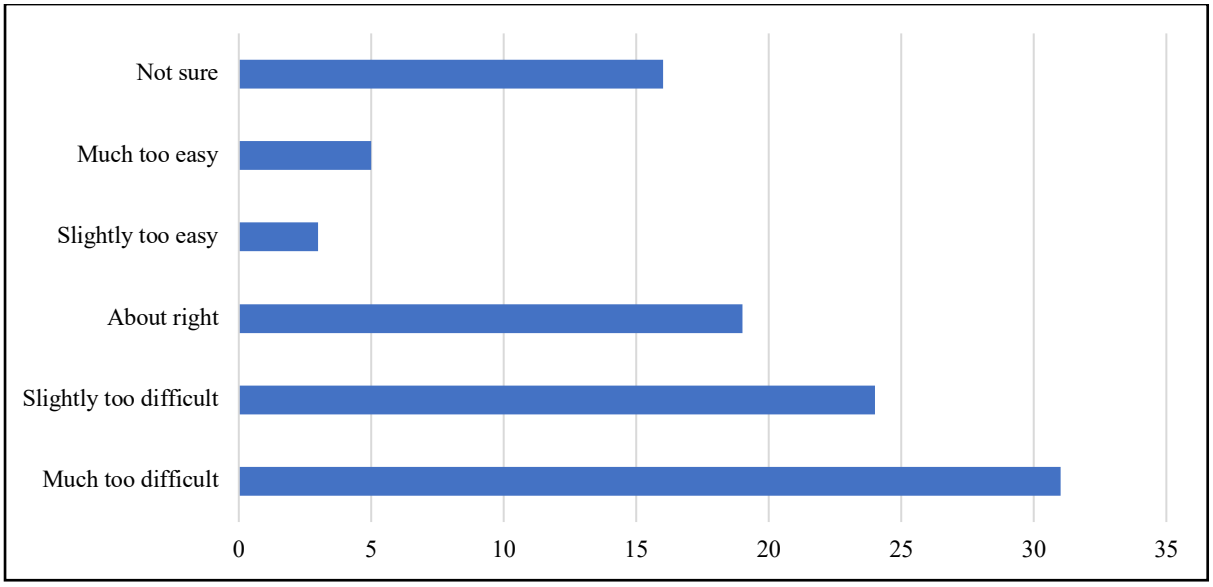

Figure 6: Public perception of government processes related to Ukrainian refugees (Source: YouGov Survey, weighted UK sample, undertaken 27th - 28th of April 2022)

	Homes for Ukraine	**Ukraine Family Visa Scheme**	**Total**
Visa Applications	74,700	42,900	117,600
Visas issued	51,300	34,900	86,100
Arrivals in the UK	11,100	16,000	27,100

Table 2: Number of visas granted under the Ukraine Family Visa and the Homes for Ukraine schemes to April 27th 2022 (Source: GOV.UK data)

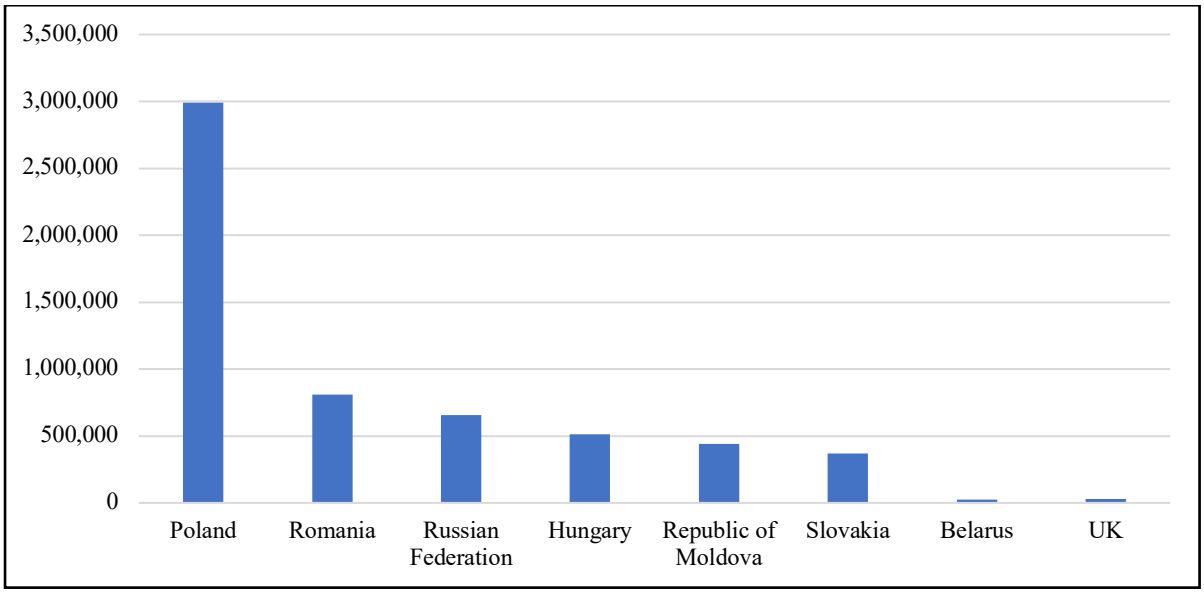

Figure 7: Number of refugees in Ukraine's neighbouring countries on 28th April 2022 compared with the number in the UK on April 27th (Source: UNHCR Operational Data Portal)

Visa Application Centre Location	Distance from Kyiv (Kilometres)
Budapest, Hungary	1117
Bucharest, Romania	917
Warsaw, Poland	786
Rzeszow, Poland (Temporary Centre)	735
Chisinau, Moldova	473

Table 3: Distance of the five closest Visa Application Centres to Kyiv, Ukraine, measured using shortest road routes (source: Google Maps)