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The UK's Points Based System for Employment Migration: The Missing Social Dimension

At a Glance

This article argues that policy and law-making with respect to the points based system (PBS) of employment migration to the UK is missing the social dimension: a recognition of the importance of family life to migrants and the importance of family life to their decisions about whether and where to migrate for employment. The UK's immigration rules restrict the ability of employment migrants who enter the UK through the PBS to secure entry for their family members, in line with general trends to restrict immigration flows. This article argues that the social dimension to migration policy is important for three core reasons. The first is that the UK's restrictive rules on family migration negatively impacts the wellbeing of employment migrants and their families, and particular the best interests of their children. The second is that the neglect of the social dimension of migration policy is a further aspect of the indirect gender discrimination of the PBS. Third, the ability of employment migrants to secure the entry of family members may be a relevant factor in the quest for a globally competitive migration market. This article concludes that there is a need for greater research attention to the social dimension of employment migration and for a whole system approach to remedy the issues identified.

1. Introduction

This article argues that the social dimension to migration has been consistently absent from policy making with respect to the UK's Point Based System (PBS) for employment migration. Immigration commentators described the UK government's plans for employment migration post-Brexit as turning 'people into commodities'¹ and 'crudely reduces a person's value to their income'.² This article demonstrates that policy making has consistently overlooked the

¹ Maya Goodfellow, 'The NHS surcharge shows what the Tories really think of key workers' (*The Guardian*, 19 May 2020) <<https://www.theguardian.com/commentisfree/2020/may/19/nhs-surcharge-tories-key-workers-government-healthcare>> accessed 4 April 2022.

² Migrant Voice, 'Reducing People to Income: The Bleak Vision of the New Immigration Report' (*politics.co.uk*, 29 January 2020) <<https://www.politics.co.uk/comment-analysis/2020/01/29/reducing-people-to-income-the-bleak-vision-of-the-new-immigr>> accessed 4 April 2022.

importance of the family lives of migrants under the PBS. Consequently, the immigration rules restrict the ability of employment migrants who enter the UK through the PBS to secure entry for their family members, in line with general trends to restrict immigration flows.

This article argues that the family lives of migrants entering to work under the PBS – the social dimension to migration policy – is important for three core reasons. The first is that the UK’s restrictive rules on family migration negatively impacts the wellbeing of employment migrants and their families, and particular the best interests of their children. The second is that the neglect of the social dimension of migration policy is a further aspect of the indirect gender discrimination of the PBS. Third, the ability of employment migrants to secure the entry of family members may be a relevant factor in the quest for a globally competitive migration market.

This article proceeds in four further sections: a brief overview of the immigration rules relevant to the PBS and migrant families; the UK’s history of immigration of workers and their dependents; a close reading of government policy documents, and reports of the Migration Advisory Committee, which discloses the missing social dimension; an explanation of the three core reasons for the importance of the social dimension; and, policy recommendations. This article sets out the need for a concerted research agenda to fill the evidence gaps in current understandings on how on the social dimension impacts employment migration and individual migrants. It also argues that revisions to the PBS to reflect the social dimension of migrants’ lives ought to be done on a system wide basis, rather than on a sector by sector one.

2. The UK’s Points Based System for Highly Skilled Migration

The UK’s points based system (PBS) for employment migration was introduced in 2008 to govern the entry requirements for economic migrants from outside the European Union (EU). The 2005 White Paper³ preceding the introduction of the PBS emphasised that ‘immigration policies was to be driven solely by economic imperatives’⁴ and the PBS was designed to determine the rules for the admission and permanent residence of economic migrants, improve the enforcement of immigration controls, and (reflecting the primary political bogey-man of

³ HM Government, ‘Controlling our borders: Making migration work for Britain’ (Cm 6472, February 2005) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251091/6472.pdf> accessed 4 April 2022.

⁴ Gloria Agyemang and Cheryl R Lehman, ‘Adding Critical Accounting Voices to Migration Studies’ (2013) 24 *Critical Perspectives on Accounting* 261, 268

the moment)⁵ promoting methods by which to remove “failed asylum seekers”.⁶ Prior to 1 January 2021 the PBS operated so that:

Visa eligibility [was] determined by satisfying a set of mandatory criteria, to which a fixed number of symbolic points are attached. [...] There [were] five ‘tiers’ to the points-based system. These cater for high skill/high value migrants; sponsored skilled workers; low-skilled workers; students; and temporary workers. Each tier contain[ed] several different visa categories (and some sub-categories), with varying associated conditions and mandatory eligibility requirements. The tier for low skilled workers has never been used, because it has been assumed that any need for low-skilled workers can be met from within the UK/European Economic Area (EEA) workforce.⁷

The UK’s departure from the EU meant an end to the freedom of movement rights that EU nationals had to enter the UK for work (and of UK workers to correspondingly enter other EU member states). The government argued that the UK’s immigration system was ‘distorted by European free movement rights’.⁸ Therefore, post-Brexit, the PBS was altered so that both EU and non-EU nationals would be ‘treated equally’ by ‘ending free movement and [the government] will introduce an Immigration Bill to bring in a firm and fair points-based system that will attract the high-skilled workers we need to contribute to our economy, our communities and our public services.’⁹

⁵ Don Flynn, ‘New Borders, New Management: The Dilemmas of Modern Immigration Policies’ (2005) 28 *Ethnic and Racial Studies* 463, 466.

⁶ Gloria Agyemang and Cheryl R Lehman, ‘Adding Critical Accounting Voices to Migration Studies’ (2013) 24 *Critical Perspectives on Accounting* 261, 268

⁷ Madeleine Gower, ‘The UK’s Points-Based System for Immigration’ (House of Commons Library, Briefing Paper 7662, 9 July 2018) <<http://researchbriefings.files.parliament.uk/documents/CBP-7662/CBP-7662.pdf>> accessed 4 April 2022, p3.

⁸ HM Government, ‘The UK’s Points-Based Immigration System: Policy Statement’ (February 2020, CP 220) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866744/CCS_0120013106-001_The_UKs_Points-Based_Immigration_System_WEB_ACCESSIBLE.pdf> accessed 4 April 2022, p3.

⁹ *ibid*

The post-Brexit system for employment migration is still referred to as a “points based system” by government,¹⁰ media,¹¹ and academic commentators.¹² However, the nomenclature of “Tiers” has been replaced with descriptive titles.

Sumption suggest that there are three main categories of work visas in the UK:

- (1) employer-sponsored, long-term work visas (Skilled Workers; Health and Care visas;¹³ and intra-company transfers);
- (2) unsponsored long-term work visas (Innovators; Global Talent; Start-up visas);
- (3) temporary work visas (Graduate; Youth Mobility Scheme; Seasonal Agricultural Workers Pilot; domestic workers in private households; and temporary work in specific sectors).¹⁴

This article focuses on the most significant labour market route for skilled workers (Appendix Skilled Workers of the immigration rules), which enables ‘employers to recruit people to work in the UK in a specific job’.¹⁵ Applicants must have a job offer from an approved sponsor, a job at an appropriate skill level, and English language skills at level B1 (intermediate).¹⁶ Meeting these means that the applicant will be ‘awarded 50 mandatory

¹⁰ Home Office, ‘New immigration system: what you need to know: The UK has introduced a points-based immigration system.’ (*gov.uk*, 8 March 2022) <<https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know>> accessed 4 April 2022; UK Visas and Immigration, ‘The UK's points-based immigration system: an introduction for employers’ <<https://www.gov.uk/government/publications/uk-points-based-immigration-system-employer-information/the-uks-points-based-immigration-system-an-introduction-for-employers>> (*gov.uk*, 25 February 2022) accessed 4 April 2022.

¹¹ BBC, ‘Brexit: How does the new UK points-based immigration system work?’ (24 September 2021) <<https://www.bbc.co.uk/news/uk-48785695>> accessed 4 April 2022.

¹² Peter William Walsh, ‘Policy Primer: The UK’s 2021 points-based immigration system’ (*The Migration Observatory*, 17 May 2021) <<https://migrationobservatory.ox.ac.uk/resources/primers/policy-primer-the-uks-2021-points-based-immigration-system/>> accessed 4 April 2022.

¹³ Functionally identical to Skilled Worker visas, but attracting lower application fees (Madeleine Sumption, ‘Work visas and migrant workers in the UK’ (*The Migration Observatory*, 17 September 2021) <<https://migrationobservatory.ox.ac.uk/resources/briefings/work-visas-and-migrant-workers-in-the-uk/>> accessed 13 May 2022).

¹⁴ *Ibid.*

¹⁵ Home Office, ‘Immigration Rules Appendix Skilled Worker’ <<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-skilled-worker>> accessed 4 April 2022.

¹⁶ Immigration Rule SW 4.1.

points'.¹⁷ An additional 20 points is awarded for meeting one of six options for combining mandated levels of salary, educational qualifications, and/or being sponsored for a job on the shortage occupation list.¹⁸ A total of 70 points must be awarded to the applicant for them to qualify for entry clearance.

In addition, the applicant must not fall foul of the general grounds of refusal¹⁹ or be in breach of immigration law.²⁰ A medical certificate²¹ and/or criminal record certificate²² are required in some circumstances. Applicants for entry clearance must show that they have access to at least £1,270 or employer provided maintenance and accommodation to a value of at least £1,270, to tide them over for a month.²³ In addition, an application fee (2022 rates of between £625-£1423) and the 'healthcare surcharge' (2022 rates of 'usually £624 per year')²⁴

The immigration rules permit the partner and child/ren of a skilled worker to obtain entry clearance alongside the primary labour migrant. Adult dependents are excluded. The partner of a skilled worker may be a spouse, civil partner, or unmarried partner.²⁵ Their relationship must be 'genuine and subsisting'²⁶ and they 'must intend to live together throughout the applicant's stay in the UK.'²⁷

As for the child dependents of PBS labour migrants applying under the skilled worker visa rules, the rules bear reproducing in full as their impact is discussed in detail in section 5 of this article:

¹⁷ *ibid*

¹⁸ Immigration Rule SW 4.2.

¹⁹ Immigration Rule SW 2.1

²⁰ Immigration Rule SW 2.2

²¹ Immigration Rule SW 3.2

²² Immigration Rule SW 16.1

²³ Immigration Rule SW 15.2. The government clearly assumes that skilled are paid monthly in arrears, and is taking no chances that the immigrant will fall into destitution waiting for their first paycheck.

²⁴ Gov.uk, 'Skilled Worker Visa' <<https://www.gov.uk/skilled-worker-visa/how-much-it-costs>> accessed 13 May 2022.

²⁵ Immigration Rule SW 29.2.

²⁶ Immigration Rule SW 29.3.

²⁷ Immigration Rule SW 29.4.

The applicant's parents must each be either applying at the same time as the applicant or have permission to be in the UK (other than as a Visitor) unless:

- (a) the parent applying for or with entry clearance or permission to stay as a Skilled Worker is the sole surviving parent; or
- (b) the parent applying for or with entry clearance or permission to stay as a Skilled Worker has sole responsibility for the child's upbringing; or
- (c) the parent who does not have permission as a Skilled Worker –
 - (i) is a British citizen or a person who has a right to enter or stay in the UK without restriction; and
 - (ii) is or will be ordinarily resident in the UK; or
- (d) the decision maker is satisfied that there are serious and compelling reasons to grant the child entry clearance or permission to stay with the parent who is applying for or has entry clearance or permission as a Skilled Worker.²⁸

In effect the above rules require that the child's parents be migrating to the UK together, be widowed or a widower, have 'sole responsibility', or demonstrate 'serious and compelling reasons' for the entry of the child. The immigration tribunals have interpreted 'sole responsibility' to have a narrow meaning requiring only that the other parent has 'continuing control and direction of the child's upbringing'.²⁹ These dependents rules have largely unchanged since the inception of the PBS, and as section 3(b) below demonstrates, the concept of sole responsibility goes back to the Commonwealth Immigrants Act 1962.

3. Labour migration to the UK

The history of labour migration to the UK is largely inseparable from the history of how the UK has, over time, separated and converged the rights of entry of 'aliens', British subjects from the Commonwealth, and EU-nationals. The regulation of labour migration to the UK has

²⁸ Immigration Rule SW 30.2. The immigration rules for child dependents of 'global talent scheme' migrants are worded identically (Immigration Rule GT 20.2).

²⁹ *TD (Paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 00049, [52]. Although this case is related to the entry of children of a settled migrant, the rule it refers to was couched in an identical manner to the PBS rule regarding 'sole responsibility' at issue in this article and so provides good authority.

therefore not been confined to a specific legal category of ‘worker’ but instead been co-dependent with broader classifications of different migrant groups. As such, we find that the wording of some of the legal provisions related to the dependents of PBS migrants today – significantly, such as ‘sole responsibility’ – was used to address perceived issues arising with other categories of migrant.

3(a) Aliens and Commonwealth nationals

The first relevant distinction was that between ‘aliens’ and ‘British subjects’. Prior to 1962 unrestricted entry to the UK was guaranteed (at least in theory) for all British subjects across Britain’s imperial possessions.³⁰ Aliens (i.e. immigrants to the UK not from the colonies or Commonwealth) first faced restrictions to entry in the Aliens Act 1905, which classed migrants as desirable or undesirable.³¹ However, as the 1905 Act was motivated as a response to the entry of Jewish refugees from programs in Eastern Europe,³² the Act was not per se about restricting the entry of labour migrants. The entry for aliens explicitly as labour migrants was first restricted during World War I, followed by the introduction of work permits in 1919-20.³³ The 1953 Aliens Order required all aliens to obtain a work permit, usually valid for 12 months and ‘was extended each year and after four years the restrictions usually were removed.’³⁴ In 1980, ‘clear criteria’ for the issuance of a work permit were introduced.³⁵ Work permits were ‘market-led’, requiring employers to apply for a specific permit for a specific worker for a

³⁰ Sarah Spencer, *The Migration Debate* (Policy Press 2011), 23.

³¹ Nicolas Rollason, ‘International Mobility of Highly Skilled Workers: The UK Perspective’ in OECD, *International Mobility of the Highly Skilled* (OECD Publishing, 2001), 328.

³² Sarah Spencer, *The Migration Debate* (Policy Press 2011), 23

³³ John Salt and Victoria Bauer, ‘Managing Foreign Labour Immigration to the UK: Government Policy and Outcomes since 1945’ (*UCL Migration Research Unit*) <<https://www.geog.ucl.ac.uk/research/research-centres/migration-research-unit/pdfs/managing-foreign-labour-immigration-to-the-uk-government-policy-and-outcomes-since-1945>> accessed 13 May 2022.

³⁴ Ian Macdonald, ‘Rights of Settlement and the Prerogative in the UK - A Historical Perspective’ (2013) 27 *JIANL* 10, 13

³⁵ Nicolas Rollason, ‘International Mobility of Highly Skilled Workers: The UK Perspective’ in OECD, *International Mobility of the Highly Skilled* (OECD Publishing, 2001), 329.

specific post.³⁶ The work permit scheme remained in force for aliens until work permits were displaced by the Points Based System in 2008.³⁷

In contrast to aliens, prior to 1948, the free entry to the UK of all British subjects, from anywhere in the world was guaranteed (at least in theory), by the logic of empire.³⁸ The British Nationality Act 1948 retained subjecthood and its legal guarantee of unrestricted entry to the UK for all those living in the UK's colonies, even post-independence.³⁹ However, before 1948, this right was more theoretical than practical for all but a small handful of non-white migrants.⁴⁰ Increases in post-war labour immigration to the UK was only made practically possible 'by changes in post-war economic conditions, chiefly the achievement of full employment in the UK and the availability of cheap transportation.'⁴¹ The Commonwealth labour migrant arrivals of this period were men, by an 'overwhelming majority'.⁴² In 1953, 73.9 per cent of Caribbean migrants were male. Around 1960, more children and women began to arrive into Britain: in 1960, 56.3 per cent were male.⁴³

As political anxieties about the number of non-white, Commonwealth migrants increased in the late-50s and early-60s, UK law remained open to the inward migration of female and child dependents whilst restricting the primary labour migration of (typically) male workers. Thus the Commonwealth Immigrants Act 1962 (CIA) placed the first restrictions on primary labour migration from the Commonwealth by introducing a requirement that prospective workers obtain a work voucher, 'graded according to the applicant's employment

³⁶ *ibid*

³⁷ UK Border Agency, 'Guidance: Work Permit Holders (INF 13)' (16 July 2008) <<https://web.archive.org/web/20100106120501/http://www.ukvisas.gov.uk/en/howtoapply/infs/inf13workpermitholders>> accessed 13 May 2022.

³⁸ Randall Hansen, *Citizenship and Immigration in Post-War Britain* (Oxford University Press 2000), 39.

³⁹ *ibid*, 45.

⁴⁰ *ibid* 54.

⁴¹ *ibid*.

⁴² Mike Phillips & Trevor Phillips, *Windrush* (Harper Collins, 1998), 124.

⁴³ *ibid*.

prospects.’⁴⁴ In contrast to work *permits* for aliens,⁴⁵ the number of work *vouchers* issued for Commonwealth migrants was capped annually so that the numbers entering the UK was in the control of the UK government.⁴⁶ From at least 1963, alien immigration was higher than Commonwealth immigration.⁴⁷

Despite the desire to control primary labour migration ‘there was no desire to restrict the entry of family members; quite the reverse, their entry was seen as essential’.⁴⁸ Although the CIA restricted primary labour migration, it ‘also guaranteed the entry of spouses, [...] and grandparents over 65’.⁴⁹ As for children, those under 16 years of age were able to join both, or either, parents in the UK.⁵⁰ Policy was clearly being pulled in different directions. Policy makers of the time clearly wanted fewer non-white immigrants to enter the UK, but perceived the entry of dependents as a means of mediating the social ills associated with a single, male, immigrant population.⁵¹ However, pulling on one policy lever pulled the other in the opposite direction so that by permitting the continued immigration of dependents, the CIA ‘marked the *beginning* of the process of significant Black and Asian immigration, not the end. By the 1981 Census, well over three quarters of Asian immigrants had arrived after the 1962 Act, not before.’⁵²

From March 1968, instead of children being able to join any parent in the UK, even if their other parent remained in the country of nationality, the immigration rules changed so that

⁴⁴ The Cabinet Papers, ‘Commonwealth Immigration control and legislation’ (*The National Archives*) <<https://www.nationalarchives.gov.uk/cabinetpapers/themes/commonwealth-immigration-control-legislation.htm>> accessed 13 May 2022.

⁴⁵ Nicolas Rollason, ‘International Mobility of Highly Skilled Workers: The UK Perspective’ in OECD, *International Mobility of the Highly Skilled* (OECD Publishing, 2001), 329.

⁴⁶ Callum Williams, ‘Patriality, Work Permits and the European Economic Community: The Introduction of the 1971 Immigration Act’ (2015) 29 *Contemporary British History* 508, 510-11.

⁴⁷ *ibid*, 512.

⁴⁸ Helena Wray, ‘“A Thing Apart”: Controlling Male Family Migration to the United Kingdom’ (2015) 18 *Men and Masculinities* 424, 430

⁴⁹ Randall Hansen, *Citizenship and Immigration in Post-War Britain* (Oxford University Press 2000), 136

⁵⁰ *ibid*, 130 & 138. Children aged 16-18 were able to join both parents, sole surviving parents, or unmarried mothers with sole responsibility for the child. Children aged 18-21 were permitted entry if they were unmarried. Unmarried 18-21 year old daughters were assumed dependent on their parents and so merely had to be unmarried to obtain entry, whereas sons had to demonstrate full dependency.

⁵¹ Helena Wray, ‘“A Thing Apart”: Controlling Male Family Migration to the United Kingdom’ (2015) 18 *Men and Masculinities* 424, 430

⁵² Sarah Spencer, *The Migration Debate* (Policy Press 2011), 25 [emphasis original]

children could only enter if the parent in the UK had sole responsibility for the child or if the child's exclusion was 'undesirable'. The aim was to prevent boys 'of almost working age', particularly from Pakistan, from joining their fathers in the UK as a form of unsanctioned primary labour migration, and 'to stop Caribbean lone parents, usually mothers, from bringing in their children.'⁵³

3(b) The convergence of rules for aliens and Commonwealth nationals

The Immigration Act 1971 'effectively converged'⁵⁴ the rights of aliens and Commonwealth nationals to enter the UK for work. Other than 'patrials' (those who were 'born, adopted, or naturalised in Britain or if they were the child or grandchild of a British citizen'),⁵⁵ Commonwealth nationals now also required work permits to enter the UK as workers.⁵⁶ Although this required Commonwealth immigrants to obtain a job offer from an employer before entry (whereas before the issuance of a work vouchers were not connected to a specific post) the convergence of the labour migration rules actually had the effect of increasing the possibility of immigration to the UK for Commonwealth nationals as permit numbers were not capped, unlike the vouchers that they replaced.⁵⁷ The numbers of Commonwealth migrants entering the UK duly increased from 1971-2, after having fallen away from 1968.⁵⁸

The Immigration Act 1971 took a specifically gendered approach to the migration of dependents. In the Act, family unity was defined as the 'right of men to bring over their wives

⁵³ *ibid*, 130.

⁵⁴ Nicolas Rollason, 'International Mobility of Highly Skilled Workers: The UK Perspective' in OECD, *International Mobility of the Highly Skilled* (OECD Publishing, 2001), 328.

⁵⁵ Callum Williams, 'Patriality, Work Permits and the European Economic Community: The Introduction of the 1971 Immigration Act' (2015) 29 *Contemporary British History* 508, 509

⁵⁶ *ibid*, 512.

⁵⁷ *ibid*, 514.

⁵⁸ *ibid*.

and children'.⁵⁹ There was no such right for women until 1974,⁶⁰ and no equal right to do so until 1985⁶¹ in response to the European Court of Human Rights case of *Abdulaziz*.⁶²

The 1980 immigration rules reinforced that children could only join a lone parent in the UK if that parent had sole responsibility for that child, or the exclusion of the child was undesirable.⁶³ The sole responsibility rule had particular negative effect on single women from the Caribbean who had often left their children with aunts or grandparents to care for whilst they came to the UK to build a life, before sending for their child to join them in the UK.⁶⁴ The exclusion undesirable rule was a high barrier, requiring that 'the circumstances in which a child is living have to be particularly terrible for that child'.⁶⁵

3(c) European Economic Community and European Union membership

Soon after the distinction between aliens and Commonwealth nationals were converged by the Immigration Act 1971, a new distinction between migrant groups opened up: that between European Economic Community (EEC) nationals and non-EEC nationals. Freedom of movement for workers was included in the EEC founding treaties in 1957.⁶⁶

The primary reason that the numbers of work permits were not capped in 1971, despite government concern about the numbers of alien labour migrants arriving in the UK, was that the government 'had one eye on Britain's accession negotiations with the EEC'.⁶⁷ The

⁵⁹ Jacqueline Bhabha and Sue Shutter, *Women's Movement: Women Under Immigration, Nationality and Refugee Law* (Trentham 1994), 45.

⁶⁰ Helena Wray, "'A Thing Apart': Controlling Male Family Migration to the United Kingdom' (2015) 18 *Men and Masculinities* 424, 430.

⁶¹ 'Changes to immigration rules to comply with the European Court of Human Rights judgements in the cases of *Abdulaziz*, *Cabales* and *Balkandali* vs the UK (applications 9214/80, 9473/81 and 9474/81): rights of settled women to sponsor the admission of their spouses' (HO 274/44).

⁶² *Abdulaziz, Cabales and Balkandali v United Kingdom* [1985] ECHR 7.

⁶³ Jacqueline Bhabha and Sue Shutter, *Women's Movement: Women Under Immigration, Nationality and Refugee Law* (Trentham 1994), 131.

⁶⁴ *ibid*, 143.

⁶⁵ *ibid*, 146.

⁶⁶ Saara Koikkalainen, 'Borderless Europe: Seven Decades of Free Movement' (*Migration Policy Institute*, 3 June 2021) <<https://www.migrationpolicy.org/article/borderless-europe-free-movement>> accessed 13 May 2022.

⁶⁷ Callum Williams, 'Patriality, Work Permits and the European Economic Community: The Introduction of the 1971 Immigration Act' (2015) 29 *Contemporary British History* 508, 513.

introduction of further restrictions on work permits, affecting the entry of EEC-nationals to the UK, was thought to endanger the likely acceptance of the UK's membership application.⁶⁸

After the UK secured its membership to the EEC in 1972, the number of work permits issued to alien, non-EEC-nationals during the 1980s 'fell sharply as a result of the government policy to restrict immigration levels, economic recession and free movement'.⁶⁹ Numbers of work permits for aliens were never capped but instead controlled by adjusting the qualifying criteria (such as the requisite skills and experience) and which jobs workers were deemed to be in short supply for.⁷⁰

In contrast, the numbers of workers exercising the right to free movement to enter the UK from the EEC was constrained only by factors outside the control of the government, particularly the relative health of the economy and the size of the EEC (later, the European Union (EU)). By the mid-1980s, around 9,000 EEC-national workers (excluding Irish nationals) entered the UK per year.⁷¹ Accession of eight eastern European states to the EU led to an estimated 1.5 million workers entering the UK between May 2004 and September 2009 from the new Member States alone (although 800,000 of those are estimated to have left again during the same period).⁷²

Government permissiveness towards low-skilled labour migration flows from EU accession states in Eastern European,⁷³ and subsequent public backlash, directly led to the

⁶⁸ *ibid.*

⁶⁹ John Salt and Victoria Bauer, 'Managing Foreign Labour Immigration to the UK: Government Policy and Outcomes since 1945' (*UCL Migration Research Unit*) <<https://www.geog.ucl.ac.uk/research/research-centres/migration-research-unit/pdfs/managing-foreign-labour-immigration-to-the-uk-government-policy-and-outcomes-since-1945>> accessed 13 May 2022.

⁷⁰ Nicolas Rollason, 'International Mobility of Highly Skilled Workers: The UK Perspective' in OECD, *International Mobility of the Highly Skilled* (OECD Publishing, 2001), 329.

⁷¹ John Salt and Victoria Bauer, 'Managing Foreign Labour Immigration to the UK: Government Policy and Outcomes since 1945' (*UCL Migration Research Unit*) <<https://www.geog.ucl.ac.uk/research/research-centres/migration-research-unit/pdfs/managing-foreign-labour-immigration-to-the-uk-government-policy-and-outcomes-since-1945>> accessed 13 May 2022.

⁷² Madeleine Sumption and Will Somerville, 'The UK's new Europeans: Progress and challenges five years after accession' (*The Equality and Human Rights Commission and Migration Policy Institute*, January 2010) <https://web.archive.org/web/20131207074918/http://www.equalityhumanrights.com/uploaded_files/new_europeans.pdf> accessed 13 May 2022.

⁷³ Robert Ford, Will Jennings and Will Somerville, 'Public Opinion, Responsiveness and Constraint: Britain's Three Immigration Policy Regimes' (2015) 41 *Journal of Ethnic and Migration Studies* 1391, 1401

creation of the Points Based System (PBS) in 2008⁷⁴ to control labour migration from outside the EU. The government retained ‘a commitment to increases in skilled labor [sic] migration’⁷⁵ to feed labour market demands for highly-skilled workers. Because EU migration flows were considered sufficient to feed the UK’s economy’s demands for low-skilled labour,⁷⁶ the PBS categories for non-EU unskilled labour were never opened.⁷⁷ This led to an effective two-track immigration system whereby low- and medium-skilled labour migration was primarily sourced from the EU (only 18 per cent of EU-national workers in the UK in 2016 earned more than £20,800pa, which was the minimum income threshold for a Tier 2 PBS worker at the time),⁷⁸ whereas non-EU workers had to meet the criteria imposed by the PBS to be considered highly-skilled in order to secure entry.

Under EU membership, non-EU national family members of EU nationals exercising treaty rights in another EU state could only be denied entry under limited conditions. One of the stated objectives of Prime Minister David Cameron’s attempted renegotiation of the UK’s EU membership prior to the Brexit referendum was to restrict rights to family migration.⁷⁹ The renegotiation aim was to be able to apply the UK’s more restrictive visa regime for towards all non-EU national family members, regardless of the nationality of the UK based family member.⁸⁰

Despite this, the Brexit referendum campaigns on both remain and leave barely addressed the impact of Brexit on workers, let alone the dependents of workers. Ryan suggests that this was because most EU nationals resident in the UK were denied a vote in the referendum,⁸¹ that the remain campaign was ‘reluctant to address any aspect of immigration

⁷⁴ *ibid*, 1406

⁷⁵ Helena Wray, ‘“A Thing Apart”: Controlling Male Family Migration to the United Kingdom’ (2015) 18 *Men and Masculinities* 424, 431

⁷⁶ Carlos Vargas-Silva, ‘EU Migration to and from the UK After Brexit’ (2016) 51 *Intereconomics* 251, 253

⁷⁷ Helena Wray, ‘The Points Based System: A Blunt Instrument?’ (2009) 23 *Journal of Immigration, Asylum and Nationality Law* 231, 234

⁷⁸ Carlos Vargas-Silva, ‘EU Migration to and from the UK After Brexit’ (2016) 51 *Intereconomics* 251, 252

⁷⁹ Steve Peers, ‘Free Movement of EU Citizens: What Could Renegotiation of EU Membership Mean?’ (2016) 30 *JIANL* 48, 49

⁸⁰ *ibid*

⁸¹ Nationals of the Republic of Ireland, Cyprus and Malta could vote (Full Fact, ‘Who can vote in the EU referendum’ (7 June 2016) <<https://fullfact.org/europe/who-can-vote-eu-referendum/>> accessed 4 April 2022.

policy, as the issue was thought fundamentally unhelpful to their side’, and that most assumed that the UK would remain within the single market after Brexit so that free movement would be unaffected by Brexit.⁸²

However, the Withdrawal Agreement did end the right to free movement of workers from the EU and as a consequence, both EU and non-EU citizens (although not citizens of the Republic of Ireland) must obtain work visas under the PBS in order to enter the UK as workers, and PBS dependent visas for their family members.⁸³ This has drawn EU national workers and their dependents into the ‘logic of exclusion and control’ dominant in UK immigration law.⁸⁴

4. The Social Dimension Missing from the UK’s PBS

In this section, I argue that there is a social dimension to employment migration, and that this social dimension is missing from Migration Advisory Committee (MAC) reports and UK government policy documents on the PBS, since its inception. I define the social dimension of the PBS as being those aspects of a migrant’s life concerned with their existing social relationships with family. In policy terms, the social dimension is concerned with the immigration rules which enable or limit the entry of a PBS labour migrant’s family members.

The introduction of the UK’s Points Based System (PBS) in 2008 was designed to project a vision of technocratic, rational competence onto the UK’s immigration control regime. The aim was to provide an illusion of control over immigration to a voting public who were increasingly expressing unease over apparently unregulated immigration flows.⁸⁵ The Migration Advisory Committee (MAC) was set up in 2007 to provide an ‘evidence based’⁸⁶ approach to the PBS. The MAC’s membership has previously been drawn exclusively from the field of economics, providing its advice an aura – whether deserved or not – of scientific legitimacy, free from political bias. From its inception, the PBS was critiqued for its

⁸² Bernard Ryan, ‘Negotiating the Right to Remain After Brexit’ (2017) 31 *JIANL* 197, 199

⁸³ The Migration Observatory, ‘Work visas and migrant workers in the UK’ (17 September 2021) <<https://migrationobservatory.ox.ac.uk/resources/briefings/work-visas-and-migrant-workers-in-the-uk/>> accessed 13 May 2022.

⁸⁴ Aleksandra Jolkina, ‘Family members not welcome: hostile post-Brexit rules can separate EU citizens from their loved ones’ (*LSE*, 1 December 2020) <<https://blogs.lse.ac.uk/brexit/2020/12/01/family-members-not-welcome-hostile-post-brexit-rules-can-separate-eu-citizens-from-their-loved-ones/>> accessed 4 April 2022.

⁸⁵ Robert Ford, Will Jennings and Will Somerville, ‘Public Opinion, Responsiveness and Constraint: Britain’s Three Immigration Policy Regimes’ (2015) 41 *Journal of Ethnic and Migration Studies* 1391, 1401

⁸⁶ Anna Downs, ‘Identifying Shortage Occupations in the UK’ (2009) 3 *Economic & Labour Market Review* 23, 23

technocratic foundations, with migrant advocate Don Flynn claiming that ‘New Labour’s version of managed migration shows a system which is dominated by business interests and overblown claims for administrative efficiency.’⁸⁷ Although the UK’s PBS has been frequently exposed as being a PBS in name only,⁸⁸ the nomenclature has stuck. The UK public have a generally positive view of the Australian Points Based System, and although this view is not necessarily based on evidence or experience, to label something a ‘Points Based System’ has become in the UK’s popular discourse a ‘shorthand for a controlled and selective immigration system’.⁸⁹

Research on the UK’s PBS have tended to reflect this technocratic character.⁹⁰ In 2004, Kofman pointed to a ‘neglect’⁹¹ of family migration in the academic literature. She argued that this neglect stemmed from ‘the primacy of labour migration’ coupled with the ‘neglect of the family in economic theory, the interpretation of migration as a transaction between individuals and states [...] and its association with female migration and dependency rather than work and autonomy.’⁹² Since then, some studies in the UK have focussed on the migrant family, including studies which have explicitly put race and gender at the centre of their enquiry,⁹³ although none explicitly address the dependents of PBS migrants as a separate category. Global

⁸⁷ Don Flynn, ‘New Borders, New Management: The Dilemmas of Modern Immigration Policies’ (2005) 28 *Ethnic and Racial Studies* 463, 465

⁸⁸ Madeleine Sumption, ‘The Australian Points-Based System: What Is It and What Would Its Impact Be in the UK?’ (*The Migration Observatory*, 22 July 2019) <<https://migrationobservatory.ox.ac.uk/resources/reports/the-australian-points-based-system-what-is-it-and-what-would-its-impact-be-in-the-uk/>> accessed 4 April 2022.

⁸⁹ Jill Rutter and Rosie Carter, ‘National Conversation on Immigration Final report’ (September 2018, British Future and HOPE Not Hate) <<http://www.britishfuture.org/wp-content/uploads/2018/09/Final-report.National-Conversation.17.9.18.pdf>> accessed 4 April 2022, 55.

⁹⁰ Laura Devine, ‘Is the New Highly Skilled Migrant Programme “Fit for Purpose”? If No, the Government’s Proposed Points Based Immigration System Is Fundamentally Flawed’ (2007) 21 *JIANL* 90; Damir Duheric, ‘Employment and Immigration Points Based System (PBS)’ (2008) 84 *Employment Law Bulletin* 2; Damir Duheric, ‘Employment and Immigration: The Points Based System Three Years On’ (2012) 107 *Employment Law Bulletin* 4; Joe Middleton, ‘Turbulent Times For The Points Based System’ (2010) 24 *JIANL* 355.

⁹¹ Eleanore Kofman, ‘Family-Related Migration: A Critical Review of European Studies’ (2004) 30 *Journal of Ethnic and Migration Studies* 243, 245

⁹² *ibid* 244-5

⁹³ Claire Alexander, ‘Marriage, Migration, Multiculturalism: Gendering “The Bengal Diaspora”’ (2013) 39 *Journal of Ethnic and Migration Studies* 333; Elaine Arnold, ‘Separation and Loss Through Immigration of African Caribbean Women to the UK’ (2006) 8 *Attachment & Human Development* 159; Betty de Hart, ‘Superdads: Migrant Fathers’ Right to Family Life Before the European Court of Human Rights’ (2015) 18 *Men and Masculinities* 448; Joint Council for the Welfare of Immigrants (JCWI), ‘United By Love, Divided By Law’ <<https://www.jcwi.org.uk/sites/default/files/UBLfinal.pdf>> accessed 14 September 2016; Helena Wray, ‘Moulding the Migrant Family’ (2009) 29 *Legal Studies* 592; Helena Wray, ‘“A Thing Apart”: Controlling Male Family Migration to the United Kingdom’ (2015) 18 *Men and Masculinities* 424.

studies on employment migration have also focussed on gendered barriers to international employment migration,⁹⁴ and on how the migration experience of female spouse dependents impacts the success of the labour migration of primary, male migrants.⁹⁵ However, none of these studies consider the impact of entry restrictions for family members (beyond labour market attributes such as language or education) and none are concerned with family relationships with children. Indeed, Bhabha argues that children are generally ignored in migration studies because ‘[c]hildren generally migrate because of decisions made by others’.⁹⁶ a particularly acute issue in labour migration.

The neglect of the social dimension of the PBS is somewhat surprising. The social dimension of highly skilled migration policy is important: ‘Family members often come to the UK as a consequence of earlier migrations or by accompanying today’s labour migrants’.⁹⁷ Family migration connected to PBS migrants might occur as any of the three types identified by Kofman: where the whole family migrates together; family reunification (where family later join a PBS migrant); and, family formation (e.g. through marriage).⁹⁸ In 2009, 32,700 dependents of PBS migrants entered the UK, as against 128,300 primary labour migrants. The number of non-EEA nationals arriving in the UK for family reunion and formation was 36,500 (although not all would have been connected to a PBS migrant, and will include the immigration of non-EEA family of refugees and of the British-born population). However,

⁹⁴ Editorial, ‘Gender and Skilled Migrants: Into and Beyond the Work Place’ (2005) 36 *Geoforum* 149; Robyn Iredale, ‘Gender, Immigration Policies and Accreditation: Valuing the Skills of Professional Women Migrants’ (2005) 36 *Geoforum* 155; Desiree Lim, ‘The Indirect Gender Discrimination of Skill-Selective Immigration Policies’ (2019) 22 *Critical Review of International Social and Political Philosophy* 906.

⁹⁵ Stefanie Föbker and Daniela Imani, ‘The Role of Language Skills in the Settling-In Process – Experiences of Highly Skilled Migrants’ Accompanying Partners in Germany and the UK’ (2017) 43 *Journal of Ethnic and Migration Studies* 2720; Daniela Imani, Josef Nipper, and Günter Thieme, ‘Linguistic and Neighbourhood Integration among Highly-Skilled Migrants – A Quantitative Analysis Using the Example of Foreign University Staff Members in Aachen, Bonn and Cologne’ (2014) 39 *Comparative Population Studies* 727; Yvonne Riaño and Nadia Baghdadi, ‘Understanding the Labour Market Participation of Skilled Immigrant Women in Switzerland: The Interplay of Class, Ethnicity, and Gender.’ (2007) 8 *Journal of International Migration and Integration* 163–183; Louise Ryan and Jon Mulholland, ‘Wives Are the Route to Social Life’: An Analysis of Family Life and Networking Amongst Highly Skilled Migrants in London’ (2013) 48 *Sociology* 251; Louise Ryan and Jon Mulholland, ‘French Connections. The Networking Strategies of French Highly Skilled Migrants in London’ (2014) 14 *Global Networks* 148–166; Jan Saarela and Fjalar Finnäs, ‘The International Family Migration of Swedish-Speaking Finns. The Role of Spousal Education.’ (2013) 39 *Journal of Ethnic and Migration Studies* 391.

⁹⁶ Jacqueline Bhabha, ‘“Not a Sack of Potatoes”: Moving and Removing Children Across Borders’ (2006) 15 *Public Interest Law Journal* 197, 199

⁹⁷ Sarah Spencer, *The Migration Debate* (Policy Press 2011), 129

⁹⁸ Eleanore Kofman, ‘Family-Related Migration: A Critical Review of European Studies’ (2004) 30 *Journal of Ethnic and Migration Studies* 243, 246

despite its obvious factual and numerical importance, in this section I argue that the social dimension is missing from both government and MAC documents on the PBS.

I conducted a close textual reading of government policy papers and MAC reports on the PBS, since its inception. The social dimension of employment migration was missing from these documents. Instead of family ties being conceptualised as being an integral aspect of the primary migrant's life, where family members of PBS migrants are considered at all, such consideration predominantly falls under a paradigm of dependants as economic burdens. Dependents are positioned as economic burdens particularly in contrast to – and/or to be balanced against – the economic gains associated with primary labour migration through the PBS.

This paradigm of balancing the economic benefits of PBS migrant labour versus the economic burden of their dependents was evident from the outset of the inception of the PBS. In the 2005 Green Paper which first set out the then government's vision of a PBS, dependants appeared primarily as burdens which are balanced against the benefits of the settlement of labour migrants:

As they learn English and acquire new skills, those who settle in the UK make a larger contribution. But they also start to have families and to make greater use of public services.⁹⁹

The connection between dependents and the burden on public services was revisited in a 2012 MAC report which discussed the cost of educating the children of PBS migrants in UK schools.¹⁰⁰ The same report also considered the impact of including the number of dependents in any cap on PBS entrants, arguing that, 'an additional dependant coming to the UK effectively displaces a main migrant.'¹⁰¹ The implication is clear: economically burdensome dependants should not be traded in the place of an economically advantageous PBS worker.

⁹⁹ HM Government, 'Controlling our borders: Making migration work for Britain' (Cm 6472, February 2005) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251091/6472.pdf> accessed 4 April 2022, [22].

¹⁰⁰ Migration Advisory Committee, 'Limits on Migration: Limits on Tier 1 and Tier 2 for 2011/12 and supporting policies (November 2010), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257257/report.pdf> accessed 4 April 2022, [8.132-4]

¹⁰¹ *ibid.*, [9.135]

The majority of the work done by the MAC on dependants has been directed by the government who asked (as both New Labour administrations in 2009¹⁰² and Conservative administrations in 2015)¹⁰³ about the ‘economic contribution made by the dependants of PBS migrants and their role in the labour market?’¹⁰⁴ The question clearly positioned dependants as economic units, not as a part of the PBS migrant’s social network. In its 2009 report, the MAC’s primary focus was on the employment status of spouses. Again, a dichotomy of economic benefit and burden appeared. It reported that:

Just over half of them are in employment [...] Even though a significant proportion are highly qualified, the majority of dependants who are employed are in unskilled occupations [...] Ideally, we would also examine the impact of dependents on resident workers.¹⁰⁵

This implies a series of value judgements which the MAC report did not explore, or even admit to. The first is that workers employed in unskilled occupations must be an economic burden, either with respect to the simple fact that their work is ‘unskilled’, or that they displace resident workers. The second is that economically inactive dependents are an economic burden. This second assumption is also evident when it listed other economic aspects of the presence of PBS dependents, which the MAC deemed worthy of future research:

A fully comprehensive framework [of research] would also need to explicitly address the issue of whether and how the direct costs and benefits to immigrants themselves should be factored in; and whether to include, or exclude, indirect costs

¹⁰² Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022.

¹⁰³ Migration Advisory Committee, ‘Review of Tier 2: Balancing migrant selectivity, investment in skills na impacts on UK productivity and competitiveness’ (December 2015)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf> accessed 4 April 2022.

¹⁰⁴ Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, 15.

¹⁰⁵ *ibid*, 9.

and benefits such as remittances to the home country and the impact on the source country. In addition, there may be long-term costs and benefits from having more scope for specialisation, a more diverse society, a greater range of skills and experience, a higher population density and more congested living spaces.¹⁰⁶

Even if economic value alone were the only relevant metric for determining the worth of the individual (it is not, and the short reference above to ‘a more diverse society’ at least hints at this), the above list of factors does not consider other positive impacts that PBS dependents might bring. For example, family members of PBS migrants might be active in the community in a voluntary capacity, which is both socially and economically beneficial: formal volunteering was estimated by the Office for National Statistics as having an economic value equivalent to £23.9bn.¹⁰⁷

A 2015 MAC report returned to the question of the right to work of PBS dependents, and again predominantly considered the question through a narrow economic lens, particularly in its conclusion that ‘restricting a dependent’s ability to work will increase the financial burden on migrant households, which will then be reliant on a single source of income.’¹⁰⁸

There are some exceptions to the predominantly economic lens through which dependents are viewed. In its pre-legislative policy document on the PBS, the government did acknowledge the social dimension of PBS dependents, arguing that the entry of dependents to the UK should not be controlled by numeric quota as ‘A rigid quota would cause considerable hardship and is not acceptable.’¹⁰⁹ In its follow-up paper, aside from the above quoted paragraph where they are positioned as an economic burden through settlement, the family members of PBS migrants are otherwise dismissed as an irrelevant consideration as, ‘Family

¹⁰⁶ Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, 10.

¹⁰⁷ NCVO, ‘What’s the voluntary sector’s contribution to the economy?’ <<https://data.ncvo.org.uk/impact/>> accessed 4 April 2022.

¹⁰⁸ Migration Advisory Committee, ‘Review of Tier 2: Balancing migrant selectivity, investment in skills na impacts on UK productivity and competitiveness’ (December 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf> accessed 4 April 2022, [8.54].

¹⁰⁹ HM Government, ‘Controlling our borders: Making migration work for Britain’ (Cm 6472, February 2005) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251091/6472.pdf> accessed 4 April 2022, 22.

reunification routes are not within the scope of the points-based system which is about work and study.’¹¹⁰ It is instructive that both exceptions to the presentation of PBS dependents as economic units appear in government policy documents before the introduction of the PBS – and presumably thereby based on the wider range of disciplines represented across government and the civil service – rather than in the later, economics-focused MAC reports.

The other exception to the economic burden versus economic benefit theme that emerges in the MAC reports is the potential role of a favourable visa regime for PBS dependents might play on the ability of employers to recruit primary labour migration through the PBS. This issue is explored in more detail in section 4(c), below.

Post-Brexit, both government and MAC documents have largely ignored dependents. The government’s 2020 policy statement¹¹¹ and ‘Further Details’ Command Paper¹¹² state only that PBS migrants ‘will continue to have the right to bring dependents’.¹¹³ It notes that dependents have access to the labour market, children can attend state schools, and that dependents must pay the Immigration Health Surcharge,¹¹⁴ but presents this neutrally rather than placing these in a political context of resource drain versus economic benefit as previous documents have.

In its reports since the MAC has been able to engage in a self-directed research agenda,¹¹⁵ dependents are also largely absent (and are entirely absent from the 2020 Annual

¹¹⁰ Home Office, ‘A Points-Based System: Making Migration Work for Britain’ (Cm 6741, March 2006) <<https://www.gov.uk/government/publications/a-points-based-system-making-migration-work-for-britain>> accessed 4 April 2022, 10. Although this itself might imply an economic-led judgment based on the idea that the PBS is for economically beneficial migration streams, which must therefore exclude the migration of family members as they are either not functioning economic units or economic drains.

¹¹¹ HM Government, ‘The UK’s Points-Based System: Policy Statement’ (CP 220, February 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866744/CCS_0120013106-001_The_UKs_Points-Based_Immigration_System_WEB_ACCESSIBLE.pdf> accessed 4 April 2022.

¹¹² HM Government, ‘The UK’s Points-Based System: Further Details’ (CP 258, July 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899755/UK_Points-Based_System_Further_Details_Web_Accessible.pdf> accessed 4 April 2022.

¹¹³ HM Government, ‘The UK’s Points-Based System: Policy Statement’ (CP 220, February 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866744/CCS_0120013106-001_The_UKs_Points-Based_Immigration_System_WEB_ACCESSIBLE.pdf> accessed 4 April 2022, [26].

¹¹⁴ *ibid*

¹¹⁵ Gov.uk ‘Framework Document between Migration Advisory Committee and the Home Office’ (25 September 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924822/The_MAC_Framework_Document_signed.pdf> accessed 4 April 2022, [2.3].

report).¹¹⁶ The 2021 Annual report identifies the visa fees and health surcharge fees for dependents which contribute to the costs of PBS migration for employers and migrants,¹¹⁷ but fails to comment further. The potential impact of this gap in attention is considered further in section 5(c), below.

5. The Impact of the Missing Social Dimension

Having established that the social dimension of employment migration – broadly defined as the family lives of migrants – is absent from government papers and MAC reports on the UK’s PBS, it is argued that the social dimension of employment migration is an important factor which should be considered in future research and policy design. The absence of concern for the social dimension of employment migration in policy research and design has three primary impacts. The first is the personal impact on individuals who have entered the UK for employment but find their access to family life restricted by the UK’s visa regime. By extension, this also has a negative impact on their family members. The second impact concerns how the social dimension particularly impacts on female migrants, and that ignoring the social dimension to employment migration contributes to the indirect discrimination of the PBS. The third impact is on how the social dimension of policy making might impact on the decisions of potential employment migrants to choose the UK as a migration destination, and thus the global competitiveness of the UK in the marketplace for skilled migrants.

5(a) Impact on individuals

The following section on the impact on individuals of the missing social dimension to policy-making with respect to the PBS, is based on a series of articles in *The Guardian* newspaper which highlighted negative visa decisions in individual cases. This evidence base is inherently anecdotal, but I argue its use here is appropriate for the following reasons. Firstly, the issues revealed in these individual cases disclose problems arising from policy design, rather than irrational, or aberrational, decision-making. Secondly, neither the absolute number, nor statistical frequency of the occurrence of similar cases, is determinative of whether or not the

¹¹⁶ MAC, ‘Annual Report’ (December 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944234/Annual_Report_2020_BB.pdf> accessed 4 April 2022.

¹¹⁷ MAC, ‘Annual Report’ (December 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040877/2021_Annual_Report_combined_FINAL_v3.pdf> accessed 4 April 2022, 40.

issues merit research or policy attention. Thirdly, the primary recommendation (section 6(a), below) is that a full research agenda ought to be developed, which would include the prevalence and significance of these issues.

In three specific cases documented by *The Guardian*, PBS migrants granted leave to enter the UK in highly skilled jobs were subsequently denied visas for their children to join them. In each case, the refusal was based on the old Tier 2 rules which required that both parents be in the UK, except where the other parent is deceased, the parent in the UK has ‘sole responsibility’ for the child, or ‘there are serious and compelling family or other considerations which make exclusion of the child undesirable’. The ‘sole responsibility’ requirements primarily arises where there is estrangement from the other parent, and this cannot be waived by the consent of the other parent.¹¹⁸ Although the new Skilled Worker dependent rules (Immigration Rule SW 30.2) omit the addition that ‘exclusion of the child [is] undesirable’, the new rules retain the requirement to show ‘serious and compelling’ reasons for entry, and there is nothing on the facts of the examples used which suggest that they would be decided differently on the new rules.

Each of the cases highlighted by *The Guardian* were ones in which the family had made a voluntary decision to live apart, but the UK-bound migrant was still in a relationship with their spouse and thus they maintained shared parental responsibility. In the case of Dr Wesam Hassan (an Egyptian national) her husband worked for the UN in Yemen, which was declared unsafe for family members of non-Yemeni personnel.¹¹⁹ For Dr Amber Murray (a US national), her husband remained in Cameroon due to business commitments.¹²⁰ The husband of Amany Abdelmeguid (another Egyptian national) resided in Saudi Arabia in order to obtain training to facilitate his future employment in the UK.¹²¹ All three decisions were later overturned by the

¹¹⁸ *D (Paragraph 297(i)(e): “sole responsibility”) Yemen* [2006] UKAIT 00049

¹¹⁹ Anna Fazackerley, ‘UK to deport academic to Democratic Republic of Congo – which she has never visited: Researcher being sent to country notorious for sexual violence, and second Oxford academic refused visa for young son’ (*The Guardian*, 15 October 2019) <<https://www.theguardian.com/education/2019/oct/15/uk-deport-academic-to-democratic-republic-of-congo-never-visited-sexual-violence>> accessed 4 April 2022.

¹²⁰ Anna Fazackerley, ‘Oxford professor’s children refused visas to join her in UK’ (*The Guardian*, 1 October 2019) <<https://www.theguardian.com/education/2019/oct/01/oxford-professors-children-refused-visas-to-join-her-in-uk>> accessed 4 April 2022.

¹²¹ Amelia Hill, ‘NHS doctor must leave the UK to look after daughter in Egypt’ (*The Guardian*, 29 January 2018) <<https://www.theguardian.com/uk-news/2018/jan/29/nhs-doctor-must-leave-the-uk-to-look-after-daughter-in-egypt>> accessed 4 April 2022.

Home Office after it initially refused entry to their children.¹²² That each of these decisions were taken with respect to female labour migrants is discussed in section 5(b), below.

All the cases reported included some description of the negative emotional impact on the PBS migrant and their family members. Amany Abdelmeguid described the emotional impact on her daughter:

She felt abandoned and unwanted. She kept asking me every time I video-called her whether she could get on the plane and come to me. She would tell me ‘you left me’. It has been very hard on both of us. I was being constantly tortured.¹²³

Dr Hassan reported that the separation had caused the family ‘real trauma’¹²⁴ and Dr Murray that ‘We both cried very hard’ when visas were refused.¹²⁵ The emotional and developmental implications of family separation caused by immigration status issues was reviewed for the Children’s Commissioner for England:

The academic literature on child attachment theory demonstrates that children benefit from stable relationships with parents and caregivers and that separation from either parent can be harmful. Effects may include emotional withdrawal from or aggression towards the absent parent, relationship difficulties and low self-esteem. Physical health may also be affected. Children’s ability to manage change in their relationships is also influenced by the feelings and attitudes of other family

¹²² Anna Fazackerley, ‘Home Office reverses visa decision for Egyptian GP’ (*The Guardian*, 15 October 2019) <<https://www.theguardian.com/politics/2019/oct/15/home-office-reverses-visa-decision-for-egyptian-gp>> accessed 4 April 2022; Anna Fazackerley, ‘Home Office reverses visa decision for second Oxford academic’ (*The Guardian*, 22 October 2019) <<https://www.theguardian.com/education/2019/oct/22/home-office-reverses-visa-decision-second-oxford-academic-leicester-no-help>> accessed 4 April 2022; Amelia Hill, ‘Home Office overturns refusal of visa for NHS doctor's daughter’ (*The Guardian*, 21 March 2018) <<https://www.theguardian.com/uk-news/2018/mar/21/home-office-overturns-refusal-of-visa-for-nhs-doctors-daughter>> accessed 4 April 2022.

¹²³ Amelia Hill, ‘Home Office overturns refusal of visa for NHS doctor's daughter’ (*The Guardian*, 21 March 2018) <<https://www.theguardian.com/uk-news/2018/mar/21/home-office-overturns-refusal-of-visa-for-nhs-doctors-daughter>> accessed 4 April 2022.

¹²⁴ Anna Fazackerley, ‘Home Office reverses visa decision for Egyptian GP’ (*The Guardian*, 15 October 2019) <<https://www.theguardian.com/politics/2019/oct/15/home-office-reverses-visa-decision-for-egyptian-gp>> accessed 4 April 2022.

¹²⁵ Anna Fazackerley, ‘Oxford professor’s children refused visas to join her in UK’ (*The Guardian*, 1 October 2019) <<https://www.theguardian.com/education/2019/oct/01/oxford-professors-children-refused-visas-to-join-her-in-uk>> accessed 4 April 2022.

members and by uncertainty as to how long separation may last. Furthermore, security of early attachments has been shown to be particularly vital for young children's long-term well-being.¹²⁶

Notwithstanding that each of the decisions to separate migrant families highlighted above were subsequently reversed by the Home Office after media attention,¹²⁷ the impact on individual PBS migrants, and particularly on their children, is a clear failure of law and policy.

As for failures of law, the statutory phrases 'serious or compelling reasons' does not automatically equate with the best interests of the child (enshrined in statute in section 55, Borders, Citizenship and Immigration Act (BCIA) 2009).¹²⁸ It might be objected that the best interests of the child standard does not apply to children resident outside the UK¹²⁹ and so can have no relevance to PBS dependents: the section 55 duty extends only to 'having regard to the need to safeguard and promote the welfare of children who are *in* the United Kingdom'.¹³⁰ However, Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) 1989, to which the UK is a signatory, requires that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. [Emphasis added]

¹²⁶ Saira Grant and others, 'Family Friendly? The Impact on Children of the Family Migration Rules: A Review of the Financial Requirements' <<https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/CCO-Family-Friendly-Report-090915.pdf>> accessed 4 April 2022, 37.

¹²⁷ The Home Office has a special decision-making unit to deal with cases which are covered in the media: Emily Dugan, 'The Home Office Has Created A Secret Process To Solve Immigration Cases That Generate Negative Headlines' (*BuzzfeedNews*, 31 August 2018) <<https://www.buzzfeed.com/emilydugan/home-office-secret-process-immigration-media>> accessed 4 April 2022.

¹²⁸ 'While section 55 and Article 3(1) of the UNCRC are couched in different terms, there may not be any major difference between them in substance, as the decided cases have shown.' (*JO and Others (section 55 duty) Nigeria* [2014] UKUT 517 (IAC), [6])

¹²⁹ *T (s.55 BCIA 2009 – entry clearance) Jamaica* [2011] UKUT 00483 (IAC)

¹³⁰ Borders, Citizenship, and Immigration Act 2009, s55 [Emphasis added]

There is no territorial exception to this international duty: a duty which section 55 BCIA 2009 was designed to implement.¹³¹ As for failures of policy, the still extant statutory guidelines require that:

UK Border Agency staff working overseas must adhere to the spirit of the [section 55] duty and make enquiries when they have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention.¹³²

Yeo therefore argues that:

it is difficult to contemplate a scenario where the section 55 duty is material to an immigration decision and indicates a certain outcome but Article 8 does not. The fact that section 55 does not apply to children outside the UK therefore should matter very little in practice.¹³³

However, the cases reported above clearly indicate that there is a failure in the operation of the policy. Either the policy is not written widely enough to capture all children whose best interests are interfered with by the ‘serious or compelling reasons’ rules, or the policy is not being implemented properly by decision makers. In either event the absence of a ‘best interests’ exception to the requirement that both parents are entering the UK clearly forces apart migrant parents from their children, with negative emotional impacts on both.

Assuming a lack of political appetite for amending the section 55 duty more generally so that it would cover any immigration decision taken about children, wherever they are physically present, the obvious solution would be to rewrite the PBS dependent rules to include

¹³¹ Article 3 UNCRC ‘is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law.’ *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [23].

¹³² UK Border Agency and Department for Children, Schools and Families, ‘Every Child Matters, Change for Children’ (November 2009) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf> accessed 4 April 2022, [2.34].

¹³³ Colin Yeo, ‘Children of single parents: the sole responsibility and exclusion undesirable tests’ (*Free Movement*, 3 January 2019) <<https://www.freemovement.org.uk/sole-responsibility-and-exclusion-undesirable/>> accessed 4 April 2022.

an explicit best interests route to entry. This would address the failures identified, namely, the absence of a solid legal foundation for the application of Article 3 UNCRC in these circumstances, and the failure to write or implement policy to effect the same result.

There is clear precedent in the immigration rules being amended to give effect to the best interests of the child in specific entry clearance categories. The Supreme Court required the Home Office to take into account the best interests of the child when assessing applications for entry where the strict minimum income requirements for the entry of the children of settled migrants were not met.¹³⁴ In response, the immigration rules were amended to permit other forms of financial support to be considered, where applying the normally strict rules ‘could result in unjustifiably harsh consequences for the applicant, the partner or a child under the age of 18 years old’.¹³⁵ Although the rules change in this instance do not go far enough in protecting the best interests of the child (instead, merely giving ‘the cover of being compliant with section 55’)¹³⁶ they suggest that changing the PBS dependent rules specifically to include a proper best interests exception is legally and politically achievable.

In addition to PBS dependent rules which relate to children, the missing social dimension affects other kinds of family relationships. The requirements on partners to ‘intend to live together [with the primary labour migrant] throughout the applicant’s stay in the UK’¹³⁷ presents potential difficulties to the partners of skilled workers. This would be particularly the case where the partner may intend to live together with the primary migrant for part of their stay in the UK. This might occur in any number of circumstances, but could include situations where:

- a. the partner intends to split their residency in order to care for elderly parents;
- b. the partner needs to split their residency in order to take up employment elsewhere in the UK; and,
- c. where the partner intends at a future point to take up further employment abroad.

¹³⁴ *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10

¹³⁵ Chris Desira, ‘Home Office makes changes to Appendix FM Minimum Income Rule following MM case’ (*Free Movement*, 10 August 2017) <<https://www.freemovement.org.uk/home-office-makes-changes-appendix-fm-minimum-income-rule-following-mm-case/>> accessed 4 April 2022.

¹³⁶ *ibid*

¹³⁷ Immigration Rule SW 29.4.

Situations (a) and (b) have in the past been found by the Tribunals not to be a barrier to an intention to live together (in *Kumar*¹³⁸ and *Niksarli*,¹³⁹ respectively). However, given the relative age of these decisions (decided 1999/2000) and the anti-immigration turn in politics, law, and judicial opinion in the intervening years it is entirely possible that similar factual circumstances would result in a different outcome if decided today.

Situations (b) and (c) are also more likely to arise (although by no means exclusively) in situations where the partner is themselves in a high education, high skilled field where competition for jobs is high, jobs are centred on specific geographic locations, and there is an expectation of a highly mobile workforce. Academia is a clear example where individuals move extensively both nationally and internationally in order to progress their career through access to promotion, research collaborations, and funding. Where the statistical norm is for the primary labour migrant is male and the dependent partner is female, the immigration rules have the potential to penalise economically active women by either separating them from their children by refusing them entry to the UK, or by tying them down to living permanently with the primary migrant instead of permitting them to further their careers by taking up certain opportunities.

5(b) Gender-biased impact

The absence of the social dimension from PBS policy making is gender non-specific. Male PBS applicants would fall foul of the child dependents rules in the same circumstances as the examples above. However, the reality is that, worldwide, caring responsibilities fall disproportionately on women.¹⁴⁰ This means that where PBS migration policy requires employment migrants to choose between their careers and their families, this disproportionately affects women.

Selective employment migration programmes, such as the PBS, already have a number of inbuilt gender-based inequalities which have been identified by existing academic literature. The PBS has high levels of gender imbalance: in 2009, 78% of main PBS Tier 2 applicants

¹³⁸ *Kumar* (17779) INLP Vol. 13, no.3

¹³⁹ *Niksarli* (21663) INLP Vol.14, no 2

¹⁴⁰ 'Around the world, women spend two to ten times more time on unpaid care work than men.' Gaëlle Ferrant, Luca Maria Pesando and Keiko Nowacka, 'Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes' (*OECD Development Centre*, December 2014) <https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf> accessed 4 April 2022.

were male whilst 92% of spouses were female.¹⁴¹ In 2015, 71% of adult Tier 2 dependants were female.¹⁴² Lim points to four factors which contribute to the gender imbalance in the PBS:

- (i) ‘The majority of sectors that hire ‘talented’ migrants under the UK points based system are male-dominated’;
- (ii) ‘Societal interpretations of what count as “skilled” or “unskilled” labour, for the purposes of migration categories, may already favour male dominated professions, or those involving work that is perceived as traditionally “male”’;
- (iii) ‘generic skills categories that use years of labour market experience and income levels to allocate points are also likely to place women at a disadvantage, because they are more likely to take career breaks, earn lower salaries, and experience difficulties in breaking through the glass ceiling’; and,
- (iv) ‘the high costs of migration’.¹⁴³

Additionally, the MAC itself in its 2009 report cite Kofman et al¹⁴⁴ to note that ‘the fixed maintenance requirement under the PBS [...] is likely to deter immigrants from bringing in family members, and that this might be particularly difficult for women.’¹⁴⁵

I argue that the missing social dimension is potentially an additional factor which contributes to the gender imbalance in PBS applications. Although women still take

¹⁴¹ Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, [133].

¹⁴² Migration Advisory Committee, ‘Review of Tier 2: Balancing migrant selectivity, investment in skills na impacts on UK productivity and competitiveness’ (December 2015)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf> accessed 4 April 2022, [8.23].

¹⁴³ Desiree Lim, ‘The Indirect Gender Discrimination of Skill-Selective Immigration Policies’ (2019) 22 Critical Review of International Social and Political Philosophy 906, 909-10.

¹⁴⁴ Eleonore Kofman, Sue Lukes, Alessio D’Angelo and Nicola Montagna, ‘The equality implications of being a migrant in Britain’ (*Equality and Human Rights Commission*, 2009)
<<https://www.equalityhumanrights.com/sites/default/files/research-report-19-the-equality-implications-of-being-a-migrant-in-britain.pdf>> accessed 4 April 2022.

¹⁴⁵ Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, [7.88].

disproportionate responsibility for childcare¹⁴⁶ the ‘sole responsibility’ threshold in the immigration rules is a high one:

The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child’s upbringing including making all the important decisions in the child’s life. If not, responsibility is shared and so not “sole”.¹⁴⁷

However, ‘control and direction’ of a child’s upbringing – questions over where and how the child should be educated, consent to healthcare, decisions about religious instruction, etc – are the easiest elements of child raising to be conducted at a distance and so ‘sole responsibility’ is easiest to evidence in situations of complete estrangement of parent and child.¹⁴⁸ Therefore it is a threshold liable to exclude the children of most women applying for a skilled worker visa who remain in relationships with their children’s fathers, but – as with the women described above – whose circumstances or choices lead them to live separately in transnational households.

One possible justification for the ‘sole responsibility’ rule is that children should not be unnecessarily separated from both parents as it is in the best interests of the child that they be brought up by both parents. The irony of this argument would not be lost on any immigration practitioner. The Home Office frequently justifies the removal and deportation of parents in circumstances which would split families as being the choice of the parents to cause the separation (i.e. that the parents could both choose to relocate outside the UK in order to maintain family unity) and/or that ‘modern means of communication’ are adequate for maintaining family life.¹⁴⁹ The Home Office appears to be trying to have it both ways: to justify removal and deportation using arguments of individual choice and maintaining transnational

¹⁴⁶ ‘71% of women "felt they had assumed most of the responsibility for childcare or home schooling" during the lockdowns’ (Nina Goswami, ‘We need to reflect on why women still do most of the childcare’ (*BBC*, 18 March 2021) <<https://www.bbc.co.uk/news/business-56414051>> 4 April 2022.

¹⁴⁷ *TD (Paragraph 297(i)(e): “sole responsibility”) Yemen* [2006] UKAIT 00049, [52].

¹⁴⁸ ‘If it is said that both are not involved in the child’s upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility.’ (*TD (Paragraph 297(i)(e): “sole responsibility”) Yemen* [2006] UKAIT 00049, [52]).

¹⁴⁹ Gary McIndoe, ‘Coronavirus has taught us the limitations of “modern means of communication”’ (*Free Movement*, 8 April 2020) <<https://www.freemovement.org.uk/coronavirus-has-taught-us-the-limitations-of-modern-means-of-communication/>> accessed 4 April 2022.

family relationships, but using the same arguments to exclude from entry the dependents of PBS migrants.

Although the ‘sole responsibility’ rule supports formal equalities discourse of equal male responsibility for childcare, the requirement for employment migrants to choose between their careers and their families disproportionately affects women. It is no coincidence that all the examples covered in the previous section were about a female PBS migrant and their children.

5(c) Economic policy impact

Beyond the impact on the individual, restrictions on the social dimension of employment migration potentially impact the UK’s competitiveness in attracting highly skilled migrants. The UK is in a global market for highly skilled workers¹⁵⁰ and the UK government has indicated that it is aware of this as its’ policies are said to be designed to:

ensure that a wide pool of skilled workers will be able to come to the UK from anywhere in the world and the process will be made simpler and quicker for employers. These are important changes signalling that the UK is open for business.¹⁵¹

The policy impact of immigration policies on global competitiveness for human capital through migration merits attention: ‘It has great policy import for countries and is a fundamental competitive issue for global firms.’¹⁵² In short, highly skilled migrants are more likely to migrate to countries where there are fewer barriers to their entry.

This applies to ‘hard’ factors such as visa fees¹⁵³ and formal aspects of the application process such as high qualifying criteria and evidential requirements:

¹⁵⁰ Gloria Agyemang and Cheryl R Lehman, ‘Adding Critical Accounting Voices to Migration Studies’ (2013) 24 *Critical Perspectives on Accounting* 261, 268.

¹⁵¹ HM Government, ‘The UK’s Points-Based Immigration System: Policy Statement’ (February 2020, CP 220) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866744/CCS_0120013106-001_The_UKs_Points-Based_Immigration_System_WEB_ACCESSIBLE.pdf> accessed 4 April 2022, [5].

¹⁵² Charles B. Keely, ‘Trade Barriers, Competitiveness, and International Migration’ (2002) 25 *In Defense of the Alien* 123, 125.

¹⁵³ ‘A family of five coming to the UK for five years will pay over £21,000.34. That is more than double what it would cost in Australia, around seven times as much as it would cost in France and around 30 times as much as

Dr Vicky Lewis, who runs a consultancy advising universities on international strategy, says: ‘I have heard numerous examples of institutions not being able to recruit the people they’d like because of [...] the hurdles people have to jump through. It can mean losing the best candidates.’¹⁵⁴

This issue also has potential to apply to ‘soft’ factors such as the social dimension to decisions as to where to migrate.

The issue of global competitiveness for human capital through migration is an issue that the MAC has only fleetingly referred to a number of times and has never made part of its recommendations. Most references by the MAC to global competitiveness issues take the form of reporting the responses of others.¹⁵⁵ However, two references in recent reports suggest that MAC is aware of the potential importance of factors affected global competitiveness for migrant numbers. The 2015 MAC report on the issue of PBS dependent’s right to work hedged its analysis in uncertainty:

it would cost in Canada’. (Joe Owen, Maddy Thimont Jack, Adela Iacobov, and Elliot Christensen, ‘Managing migration after Brexit’ (*Institute for Government*, March 2019) <https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG-Migration-After-Brexit_4.pdf> accessed 4 April 2022, 31).

¹⁵⁴ Anna Fazackerley, ‘Home Office reverses visa decision for second Oxford academic’ (*The Guardian*, 22 October 2019) <<https://www.theguardian.com/education/2019/oct/22/home-office-reverses-visa-decision-second-oxford-academic-leicester-no-help>> accessed 4 April 2022.

¹⁵⁵ See: ‘Stakeholders argued that there is a global marketplace for talent, and that employers have to compete in this market.’ (Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, [10]); ‘77 per cent of respondents said that they would have been unlikely to accept their current role if their partner did not have the right to work in the UK.’ (Migration Advisory Committee, ‘Review of Tier 2: Balancing migrant selectivity, investment in skills and impacts on UK productivity and competitiveness’ (December 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf> accessed 4 April 2022, [8.53]); ‘employers were particularly concerned about the attractiveness of the UK to potential skilled migrant workers’ (Migration Advisory Committee, ‘A Points-Based System and Salary Thresholds for Immigration’ (January 2020), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf> accessed 4 April 2022, [3.39]); ‘it was reported by respondents that the need to meet either or both [income] thresholds acted as a disincentive for migrants to consider the UK as a destination’ (Migration Advisory Committee, ‘A Points-Based System and Salary Thresholds for Immigration’ (January 2020), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf> accessed 4 April 2022, [4.26]).

It is clear that restricting dependent's work rights would reduce the potential supply of Tier 2 migrants willing to move to the UK, although we cannot be certain of the size of this impact. However, it is not clear that this would necessarily result in a fall in volumes of main applicants under Tier 2. Restricting work rights will have no impact on employer demand. [...] Employers will not necessarily recruit fewer migrants. They may just switch to recruiting migrants without dependants. [...] UK employers would, in some cases, perhaps only be able to employ the second-best alternatives because the size of the recruitment pool has been reduced.¹⁵⁶

In its 2020 report, the MAC is more open about discussing global competitiveness factors, but focussed only on the topic of settlement and remained equivocal as to their impact, finding that:

the UK does not currently offer a quicker path to settlement than five years for those on work routes. This makes the UK “offer” less competitive than the offer of other countries, something that might put the UK at a disadvantage in the competition for global talent.¹⁵⁷

The MAC has previously noted how often the issue of dependents was raised by industry respondents as a relevant factor to the decision of potential migrants to apply for UK based high skilled jobs,¹⁵⁸ although the subject of dependents or family has not arisen as part of more recent research into how employers responded to migration policy changes.¹⁵⁹

¹⁵⁶ Migration Advisory Committee, ‘Review of Tier 2: Balancing migrant selectivity, investment in skills and impacts on UK productivity and competitiveness’ (December 2015)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493039/Tier_2_Report_Review_Version_for_Publishing_FINAL.pdf> accessed 4 April 2022, [8.55].

¹⁵⁷ Migration Advisory Committee, ‘A Points-Based System and Salary Thresholds for Immigration’ (January 2020),
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf> accessed 4 April 2022, [3.50].

¹⁵⁸ Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, [10]

¹⁵⁹ Migration Advisory Committee, ‘Migration Advisory Committee Research Paper: Skills shortages and employers of migrant workers’ (March 2022)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058320/Employer_Research_paper_pre-publication.pdf> accessed 4 April 2022; Terence Hogarth and others, ‘Employer

It was again the Home Office Command Paper prior to the introduction of the PBS which identified most clearly the connection between the social dimension of how the PBS treats dependents and the decisions of PBS migrants to consider the UK as a destination:

Provisions around dependants [...] often differ substantially across similar categories. All this means that the system is not doing as well as it could in identifying and attracting the migrants who are of most benefit to the UK.¹⁶⁰

For the MAC, the attitude appears to be that these are parts of policy which are for government alone and that the MAC's role is to provide economics-based answers to economics-based questions:

The MAC view is that it is best to approach migration policy by first having a clear view of what that policy is designed to achieve. From that arises a question of how to design policy to best achieve those objectives.¹⁶¹

However, this attitude seems counter-productive. Firstly, the government has consistently adopted the MAC's policy proposals. To hope that global competitiveness factors will be incorporated at a later stage by Home Office policy-makers as part of an overview of migration policy seems optimistic. Secondly, the impact on inward migration flows of global competitiveness factors – including the social dimension of migration for work – is currently unknown and unexplored. One of the MAC's primary roles has been to attempt to predict the impact on migration flows – and the consequent impact on the UK economy – of the status quo and on future policy recommendations. However, it is unknown as to how much global competitiveness factors might affect the migration flows. It is one thing to model the impact

Responses to Migration Policy Changes: Employer recruitment of people from outside the EEA' (*Department for Business, Innovation and Skills*, September 2014)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/350492/bis-14-1066-employer-responses-to-migration-policy-changes.pdf> accessed 4 April 2022.

¹⁶⁰ Home Office, 'A Points-Based System: Making Migration Work for Britain' (Cm 6741, March 2006)
<<https://www.gov.uk/government/publications/a-points-based-system-making-migration-work-for-britain>> accessed 4 April 2022, [8].

¹⁶¹ Migration Advisory Committee, 'A Points-Based System and Salary Thresholds for Immigration' (January 2020),
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf> accessed 4 April 2022, [1.10].

of, for example, the number of prospective migrants who would qualify and would not qualify for entry to the UK on the basis of a certain income threshold. It is another to identify how many prospective migrants might instead choose to apply for entry to the UK's economic competitors if the UK's qualifying income threshold puts off qualifying migrants from making an application to the UK. Given that the MAC's 2020 report explicitly equates lower inward migration flows to lower employment and GDP,¹⁶² it is important that the MAC is able to account for all relevant factors in its predictions.

It may transpire that global competitiveness factors, including non-tangibles such as the social dimension to migrant's lives, have a negligible impact on the pool of prospective employment migrants to the UK. However, there is not yet the evidence that such factors have a non-negligible impact on applications, and thereby on UK employment and GDP.

6. Progressing the social dimension

This article has identified the missing social dimension as sources of personal hardship, and potential sources of gender imbalance and loss of global competitiveness for human capital. To address these, firstly a specific research agenda needs to be developed inside and outside the MAC to identify how widespread and significant are the issues identified in this article. Secondly, any policy recommendations arising from these issues ought to address the whole PBS system, rather than apply ad hoc, sector by sector solutions.

6(a) Research agenda

Since new terms of reference for the MAC were agreed with government in 2020, the MAC now has the power and opportunity to 'engage in work of its choosing and to comment on the operation of any aspect of the immigration system.'¹⁶³ The 2009 MAC analysis of the PBS directly recognised the lack of (and consequent need for) a proper evidence base for identifying the impact of the missing social dimension to the PBS. Asked directly by the government about the 'economic contribution made by the dependants of PBS migrants and their role in the labour

¹⁶² *ibid* 9.

¹⁶³ Gov.uk 'Framework Document between Migration Advisory Committee and the Home Office' (25 September 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924822/The_MAC_Framework_Document_signed.pdf> accessed 31 March 2022, [2.3].

market?’¹⁶⁴ the MAC noted the potential importance of the social dimension of dependents on the UK’s global competitiveness:

Stakeholders argued that there is a global marketplace for talent, and that employers have to compete in this market. For the UK to succeed against its closest competitors, it was argued that it makes economic sense to make best use of legal and policy structures to increase its attractiveness to the global talent pool. Although it is not possible to provide statistical proof that the UK’s relatively liberal policy on dependants helps to promote investment in the UK and helps the UK to attract the best and brightest workers, the frequency with which this argument was put to us is notable. Survey evidence also suggests that allowing dependants to work in the UK may increase the attractiveness of the UK as a destination for principal immigrants. Some countries award additional points to immigrants with skilled dependants.¹⁶⁵

However, the MAC acknowledged that, ‘Further research and, crucially, better data are needed for policy in this area to be fully evidence-based.’¹⁶⁶ Given its ability to develop its own research agenda, independent of government instruction, this article has argued for the importance of understanding the function of the social dimension of PBS migration.

Despite the freedom of the MAC to conduct its own research, its’ terms of reference may remain a barrier to it carrying out research which fully reflects the issues identified in this article. The terms of reference of the MAC still prioritises economic advice above all:

The MAC will advise the Government on how to control migration and ensure that the immigration system meets the needs of the UK economy and is designed to improve overall UK productivity.¹⁶⁷

¹⁶⁴ Migration Advisory Committee, ‘Analysis of the Points Based System: Tier 2 and dependents’ (August 2009) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257266/mac-august-09.pdf> accessed 4 April 2022, [15]

¹⁶⁵ *ibid* [10]

¹⁶⁶ *ibid*

¹⁶⁷ Gov.uk ‘Framework Document between Migration Advisory Committee and the Home Office’ (25 September 2020)

The welfare of migrants and their dependents and tackling gender disparities in effective access to the PBS, benefit the UK economy indirectly by making the UK a more attractive destination for high-skilled labour and so come within the MAC's terms of reference, if such terms are considered broadly. It is disappointing, then, that the social dimension of employment migration is not one of the research areas identified in the MAC's 2021 Annual Report.¹⁶⁸

In addition, the welfare of migrants and their dependents and tackling gender disparities are goods in and of themselves which should be pursued for their own sake. Developing research in this area is therefore something that academia, civil society, and the civil service should begin to engage with in order to help augment the MAC's economics focussed research.

6(b) Whole system changes

One notable feature of PBS policy making is that lobbying frequently occurs on a sector by sector basis. Even the most cursory search uncovers evidence of public lobbying on labour migration matters from a number of fields, including the fashion industry,¹⁶⁹ English language teachers,¹⁷⁰ and Universities.¹⁷¹ Even the Confederation of British Industry (CBI) highlights particular sector needs, rather than system-wide problems, for example by arguing that 'the government needed to immediately update its "shortage occupations list" to include several areas where employers are finding it difficult to recruit staff, including butchers, bricklayers and welders.'¹⁷²

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924822/The_MAC_Framework_Document_signed.pdf> accessed 4 April 2022, [2.3].

¹⁶⁸ MAC, 'Annual Report' (December 2021)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040877/2021_Annual_Report_combined_FINAL_v3.pdf> accessed 4 April 2022, 55.

¹⁶⁹ Barbara Santamaria, 'British fashion industry "lobbying the Government hard" about new immigration rules' (*Fashion Network*, 17 February 2017) <<https://in.fashionnetwork.com/news/British-fashion-industry-lobbying-the-government-hard-about-new-immigration-rules.794665.html>> accessed 4 April 2022.

¹⁷⁰ English UK, 'Campaigning and Lobbying' <<https://www.englishuk.com/campaigning>> accessed 4 April 2022.

¹⁷¹ Universities UK, 'Immigration Rules after Brexit' (20 August 2021)

<<https://www.universitiesuk.ac.uk/topics/international/immigration-rules-after-brexit>> accessed 4 April 2022.

¹⁷² Richard Partington, 'Combat staff shortages by relaxing Brexit Immigration rules, says CBI' (*The Guardian*, 28 June 2021) <<https://www.theguardian.com/business/2021/jun/28/combat-staff-shortages-by-relaxing-brexit-immigration-rules-says-cbi>> accessed 4 April 2022.

On the social dimension – albeit for settled migrants – the British Medical Association is campaigning to exempt those working as doctors in the UK from the adult dependent relative rules.¹⁷³ Organisations representing the medical profession have been particularly effective in carving out sector specific exemptions to immigration rules in the past. This is most obvious in the success of the BMJ’s campaign for the government to ‘scrap the cap’ on the numbers of doctors and nurses who could enter the UK under the old Tier 2 skilled worker visa regime.¹⁷⁴ The relative success of doctor’s campaigns when compared to other sectors is unsurprising: there is a chronic NHS labour shortage,¹⁷⁵ no one doubts the importance or necessity of doctors, and doctors groups are well-connected in politics and media. The importance of cultural capital for attracting media attention and government support is further highlighted by the fact that of the three women identified in the media as negatively affected by PBS dependent rules in section 5(a), above, two were Oxford University academics and one was an NHS doctor.

However, the issues identified with the missing social dimension are not unique to specific sectors. Chronic labour shortages in the UK are evident amongst other medical professions, such as radiologists¹⁷⁶ and anaesthetists.¹⁷⁷ And of course, the personal impact of familial separation is not specific to specific professional groups.

The argumentation of this article based on the economic impact of the missing social dimension might tempt policy makers to take a sectoral approach by providing sectoral exemptions to the PBS dependent rules where there is evidence that they have deleterious effects on recruitment or retention. However, there are distinct problems with providing sectorial solutions to the problems identified in this article. As was observed about the BMJ’s ‘scrap the cap’ campaign:

¹⁷³ Tim Tonkin, ‘Call to review rules on dependent relatives’ (*BMA*, 4 November 2021) <<https://www.bma.org.uk/news-and-opinion/call-to-review-rules-on-dependent-relatives>> accessed 4 April 2022.

¹⁷⁴ Abi Rimmer, ‘Home Office scraps cap on doctors’ visas’ (*BMJ*, 14 June 2018) <<https://www.bmj.com/content/361/bmj.k2648>> accessed 4 April 2022.

¹⁷⁵ BMA, ‘NHS medical staffing data analysis’ <<https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/workforce/nhs-medical-staffing-data-analysis>> accessed 4 April 2022.

¹⁷⁶ The Society of Radiographers, ‘Radiographer reporting grows as NHS struggles with radiology staff shortages’ (28 April 2021) <<https://www.sor.org/news/government-nhs/radiographer-reporting-grows-as-nhs-struggles-with>> accessed 4 April 2022.

¹⁷⁷ Royal College of Anaesthetists, ‘A shortage of 1,400 NHS anaesthetists already means that more than one million surgical procedures are delayed every year’ (30 September 2021) <<https://www.rcoa.ac.uk/news/shortage-1400-nhs-anaesthetists-already-means-more-one-million-surgical-procedures-are-delayed>> accessed 4 April 2022.

Which profession will be lucky enough to be exempted from the cap to solve the problem [next] time? Simply taking industries out of scope of the cap in response to a political and media backlash is not a sustainable way to manage a system of immigration controls.¹⁷⁸

Furthermore, to do so privileges those professions – such as doctors – which have strong collective representation and political support. However, the problem of the social dimension is systemic to the immigration rules themselves, which apply to all labour migrants covered by the PBS.

For these reasons, the final recommendation made here is that the solution to the missing social dimension must be found in systemic changes to the immigration rules of the PBS itself, rather than in sectoral solutions. The arguments raised by the BMA to support its campaign for a sectoral exemption to the adult dependent rules lean into the particular value of the medical profession.¹⁷⁹ However, the premise of the PBS is that it screens labour migrants by their value: the government argue that Post-Brexit redesign of the PBS ‘will attract the high-skilled workers we need to contribute to our economy, our communities and our public services.’¹⁸⁰ If the PBS operates as intended and indeed effectively screens out migrants to low value sectors, then all PBS migrants are of value to the UK: value that ought to be supported by recognising the social dimension to their decisions to migrate and their quality of life whilst in the UK.

Therefore, revisions to the PBS to reflect the social dimension of migrants’ lives ought to be done on a system wide basis, rather than on a sector by sector one. The inclusion of a best interests provision in the immigration rules for dependents, for example, would benefit all PBS migrants and their children whereas there is limited justification for sectoral exemptions benefitting only limited numbers in a particular form of employment.

¹⁷⁸ Joanna Hunt, quoted in Madeleine Gower, ‘The UK’s Points-Based System for Immigration’ (House of Commons Library, Briefing Paper 7662, 9 July 2018) <<http://researchbriefings.files.parliament.uk/documents/CBP-7662/CBP-7662.pdf>> accessed 4 April 2022.

¹⁷⁹ Tim Tonkin, ‘Call to review rules on dependent relatives’ (*BMA*, 4 November 2021) <<https://www.bma.org.uk/news-and-opinion/call-to-review-rules-on-dependent-relatives>> accessed 4 April 2022.

¹⁸⁰ HM Government, ‘The UK’s Points-Based Immigration System: Policy Statement’ (February 2020, CP 220) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866744/CCS_0120013106-001_The_UKs_Points-Based_Immigration_System_WEB_ACCESSIBLE.pdf> accessed 4 April 2022, p3.

7. Conclusion

This article has argued that policy and law-making with respect to the points based system (PBS) of employment migration to the UK is missing the social dimension: a recognition of the importance of family life to migrants and the importance of family life to their decisions about whether and where to migrate for employment. This article traces that absence in government and Migrant Advisory Committee (MAC) reports from the inception of the PBS.

This article has raised the particular hardships faced by families when PBS migrants are unable to obtain entry clearance for their children due to the transnational nature of their family structure. This article could equally have focussed on problems where PBS migrants seek family reunification later, once they have become settled migrants or naturalised citizens, but find that the UK's immigration rules are stacked against them. The media have covered the examples of two NHS doctors which illustrate this problem. Dr Nishchint Warikoo, he had arrived as a PBS migrant and later obtained British citizenship. Years later as family circumstances changed, he sought entry to the UK for his elderly mother as an adult dependent relative in order to care for her, but her application was refused.¹⁸¹ Dr Kamal Sindu found himself in similar circumstances with respect to his elderly parents.¹⁸² The adult dependent relative immigration rules are 'almost impossible to meet'¹⁸³ and the British Medical Association is campaigning to exempt those working as doctors in the UK from the adult dependent relative rules because this missing social dimension to the immigration rules is having an appreciable effect on the retention of doctors within the NHS.¹⁸⁴

¹⁸¹ Denis Campbell, 'NHS doctor may leave UK over refusal of permission to remain for mother' (*The Guardian*, 10 October 2019) <<https://www.theguardian.com/uk-news/2019/oct/10/nhs-doctor-leave-uk-refusal-of-visa-elderly-mother>> accessed 4 April 2022. The case was also reported by ITV: ITV, 'Don't force my family to leave the UK': NHS psychiatrist from Berkshire appeals to Home Office' <<https://www.itv.com/news/meridian/2019-11-15/don-t-force-my-family-to-leave-the-uk-nhs-psychiatrist-from-berkshire-appeals-to-home-office/>> accessed 4 April 2022.

¹⁸² Paul Gallagher, 'NHS GP could be forced to split up frail elderly parents thanks to 'hostile' Home Office visa rules' (*inews*, 4 January 2022) <<https://inews.co.uk/news/health/nhs-gp-could-be-forced-to-split-up-frail-elderly-parents-thanks-to-hostile-home-office-visa-rules-1366558>> accessed 4 April 2022.

¹⁸³ Colin Yeo, 'The immigration rules for adult dependent relatives: out with the old...' (*Free Movement*, 8 November 2017) <<https://freemovement.org.uk/out-with-the-old/>> accessed 4 April 2022.

¹⁸⁴ Tim Tonkin, 'Call to review rules on dependent relatives' (*BMA*, 4 November 2021) <<https://www.bma.org.uk/news-and-opinion/call-to-review-rules-on-dependent-relatives>> accessed 4 April 2022.

It is evident, then, that the failure of policy development and design to engage with the social dimension of employment migration and the family life of PBS migrants has a range of impacts well beyond the initial point of entry to the UK. It also gives lie to the consistent refrain that family reunion policies ‘are outside of the points-based system’.¹⁸⁵ although these visa categories are outside the legal regulation of the PBS, PBS migrants are impacted by the totality of the UK’s immigration system.

This article has argued that the social dimension to employment migration is important because of the impact on individual migrants and their families, because it contributes to the indirect gender discrimination of the PBS, and because it impacts the UK’s global competitiveness in attracting highly-skilled workers. The strength of these arguments as the foundation of specific policy changes are limited by the lack of evidence regarding the scale and prevalence of these effects. The evidence base supporting these conclusions is inherently anecdotal and/or drawn from adjacent issues. As such, there is an acute need for a specific research agenda to investigate the social dimension to employment migration in order to better inform system-wide policy making.

¹⁸⁵ HM Government, ‘The UK’s Points-Based Immigration System: Policy Statement’ (February 2020, CP 220) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866744/CCS_0120013106-001_The_UKs_Points-Based_Immigration_System_WEB_ACCESSIBLE.pdf> accessed 4 April 2022, [22]. See also, Home Office, ‘A Points-Based System: Making Migration Work for Britain’ (Cm 6741, March 2006) <<https://www.gov.uk/government/publications/a-points-based-system-making-migration-work-for-britain>> accessed 4 April 2022. [16].