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Recovering costs in the First-tier Tribunal (FtT)

A Practical Guide

This is a shortened version of the article by Nicola Burgess, Legal Director at JCWI, prepared for the ILPA Monthly. The full version can be found on the ILPA website.

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Introduction

Legal Aid is the much maligned but vitally important fifth pillar of the welfare state. In our sector it is needed now more than ever to mitigate against the hostile environment, prevent unlawful deportations and secure status for the undocumented. However, we all know that this work simply isn't profitable. It's challenging and rewarding but paying staff salaries, office overheads and the tax man is impossible when you are reliant on fixed fees, which could be as little as £869 for a complex asylum appeal or £691 for an immigration appeal (once you have overcome the hurdle of obtaining Exceptional Case Funding from the Legal Aid Agency). Such constraints deter young lawyers from pursuing a career in Legal Aid and the emotional toll of this area combined with comparatively low salaries can lead to experienced practitioners moving away from the area.

This article is not an answer to all of the above problems. However, it is designed to assist practitioners in maximising recoverability in controlled representation work before the FtT at the same time as holding the government to account for its poor decision making.

Legal framework

The power to make a costs award is set out at rule 9 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the 2014 rules").

For the purposes of this article we are only concerned with Rule 9 (2) (b) and unreasonable conduct.

9 (2) The Tribunal may otherwise make an order in respect of costs only —

. . .

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings.

A test for unreasonable conduct was set out by the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205 at §232 (quoted in *R (LR) v FtT (HESC) and Hertfordshire CC* (Costs) [2013] UKUT 0294 (AAC)):

"The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. ***The acid test is whether the conduct permits of a reasonable explanation****. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable."* (emphasis added)

This is a key phrase, as we know there is seldom a reasonable explanation for the Secretary of State's conduct (and rarely is one proffered).

The case of *Cancino (costs – First-tier Tribunal – new powers)* [2015] UKFTT 00059 (IAC) provides guidance as to the type of enquiry required when determining an application for costs under rule 9 (2) (b):

The scope of rule 9(2)(b) is identifiable by listing the several types of enquiry which, depending on the context, may be required of the Tribunal These are:

a. *Has the Appellant acted unreasonably in bringing an appeal?*
b. *Has the Appellant acted unreasonably in his conduct of the appeal?*
c. *Has the Respondent acted unreasonably in defending the appeal?*
d. *Has the Respondent acted unreasonably in conducting its defence of the appeal?*

The rule clearly embraces the whole of the "proceedings." Thus the period potentially under scrutiny begins on the date when an appeal comes into existence and ends when the appeal is finally determined in the Tribunal in question. It embraces all aspects of the Appellant's conduct in pursuing the appeal and all aspects of the Respondent's conduct in defending it. This, clearly, encompasses interlocutory applications and hearings and case management hearings. [24]

When considering whether the Secretary of State's conduct could be described as unreasonable, it's necessary to look at the underlying decision which gave rise to the right of appeal and her conduct throughout the defence of the appeal, including the decision to continue the defence rather than to withdraw.

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ILPA ACTIVITIES

Each month, the ILPA Activities section highlights what the Secretariat and members have been up to recently. It features meetings we have attended and work undertaken to advance the interests of members.

Response to our Members' Survey

Thank you to everyone who completed our annual members' survey. ILPA is always at its best when we have active engagement and input from our members, and so this is always a useful exercise for us. The overwhelming response from members on what they consider to be the biggest challenges over the year ahead were the new government and what a future immigration system would look like in the wake of Brexit. Details are starting to filter through, unfortunately often via press release to the Sunday papers rather than from the Home Office directly. ILPA are involved in the Simplification of the Rules Taskforce that has been set up by the Home Office following the Law Commission's report which members fed into, and we will continue to keep you all updated on that and ask for feedback where needed. In relation to the new immigration system as a whole, we have recently set up a Legislation Working Group, convened by our Chair, Adrian Berry. This group will be working on the new Immigration Bill, and we encourage members to get involved and to sign up to the mailing list once details of that are circulated.

The second biggest challenge identified by members is keeping up to date with changes. This is a perennial concern for immigration practitioners, given the amount of tinkering that the immigration system is subject to over the course of any year. As the changes are rolled out, ILPA will continue to provide updates and training. In particular, I recommend that anyone who is concerned about staying up to date comes to one of our working group meetings. These are organised by theme, and the meetings provide an opportunity for members to get together and discuss any recent changes to the law, any questions or problems that people may have encountered, and interesting cases that practitioners have, in particular those that were settled or withdrawn before a hearing could take place. The meetings are also a forum for sharing knowledge and experience of issues which ILPA can then monitor and raise with the Home Office. We also continue to encourage practitioners to write pieces of any length for publication in our monthly, and we are also moving towards publishing individual articles separately so that they can be shared more effectively on social media.

Unsurprisingly, the next most common challenge was in relation to front-end services. We continue to meet with both UKVI and the contractors themselves to raise issues identified by ILPA members. We are concerned about whether or not the providers are complying with their contractual obligations, in particular in relation to the availability of free appointments. The Home Office will not disclose the contract to us, on the grounds of commercial sensitivity, and so we need to consider alternative methods for scrutiny, for example the Home Affairs Committee or the National Audit Office. We are aware that this issue is already on the radar for many MPs as they are dealing with a high volume of complaints about the front end services from their constituents. As always, it is very useful to send clients to MPs so that they are aware of the issues and incentivised to help resolve them.

The quality of advice in the sector is another long running problem raised by members in their response to the survey. The new Information Services Commissioner, John Tuckett, also has this issue very much in his sights, which is good news. We have made it clear to him that ILPA supports a more joined up approach by the regulators, with consistent rules and information sharing, which we believe will help to tackle this issue. We encourage members to get in touch with either the relevant regulator or with ILPA to report any concerns about advice being given in the sector.

This is a challenging time for immigration practitioners, although that has been the case for some time. The level of engagement with our members is excellent at the moment, and I would encourage anyone who has always wanted to get more involved with ILPA to do so now.

Sonia Lenegan, Legal Director, ILPA

Points-based system update and the new ILPA legislation working group

As members will be aware, the government has produced a policy statement on its plans for the UK's points-based system. ILPA took part in a large conference call on this with the Home Office where we received some updates on the plan ahead. The Immigration Bill will be coming to Parliament very soon. It is unclear at this stage whether it will substantively different from the one tabled under Theresa May. ILPA's new legislation working group will be working on the Bill. The Home Office will soon begin a large engagement exercise which will involve ILPA, particularly around how changes will be made to the sponsorship system to make it more streamlined. It appears that many of those changes may not take place until around 2022, although the removal of the resident labour market test will begin with the introduction of the new system.

Simplification of the Immigration Rules Review Committee

ILPA was invited to take part in the new Review Committee set up on the Law Commission's recommendation to review the Home Office's implementation of the simplification project. At the moment, the Home Office is still preparing its full response to the Law Commission's report and so we await further details.

ILPA ACTIVITIES

Proposal for Scottish Visa

Scotland-based ILPA Trustee Grace McGill, whose practice is in Edinburgh and Glasgow, has been asked by the Scottish Government to be part of a specialist collective of stakeholders and representatives of various business sectors to assist in the development of the concept of the Scottish Visa for the Scottish Government. The proposals seek to address depopulation and cut skills gaps and were unveiled in January 2020 at an event led by First Minister Nicola Sturgeon at Bute House, Edinburgh. The policy paper Migration: Helping Scotland Prosper sets out how proposals for a Scottish Visa would work.

At the event, Grace highlighted ILPA's role within the immigration sector and urged the Scottish Government to draw on the expertise of ILPA members in Scotland to assist with its migration policy. While the proposals have so far not been accepted by the UK government, the Scottish Government and others are continuing to lobby for this. The proposals mirror ILPA's position, advocated in its response to the Migration Advisory Committee consultation in November 2019, that there should be greater regionalisation of the immigration system in the UK.

Source: Office of the First Minister of Scotland

ILPA visit to Sopra Steria in Croydon

Charles and Sonia from ILPA visited Sopra Steria's core site in Croydon. We were shown around the building and met with two senior staff including an individual who oversees their complaints service.

Sopra Steria is in the process of conducting a review of the "customer journey" with UKVI, which means they are reviewing the information given to applicants when they book appointments and at other stages of the process. They are keen to receive practitioner input so please email Charles at charles.bishop@ilpa.org.uk if you have any suggestions.

Sopra also revealed there had been some issues whereby the Sopra agent's mandatory document checklist did not mirror that of the applicant. They believe this is now resolved but if members have any issues with this please contact ILPA.

Agents are never supposed to refuse to scan documents even if they are not on the checklist. If this ever occurs, the best course of action is to raise a complaint to Sopra Steria as soon as possible.

Meeting with the Home Office on the ILPA response to the ICIBI investigation into Home Office Presenting Officers

Sonia, Nicole and Zoe Harper (Doughty Street Chambers) met with the Home Office to discuss ILPA's response to the Independent Chief Inspector of Borders and Immigration (ICIBI) investigation into Home Office Presenting Officers (HOPOs). The Home Office believes that improvements have been made, although we reported that this was not the experience of our members. They asked for issues with HOPOs to be reported to ILPA, so that we can monitor and feed this back to them.

Meeting on Quality of Legal Advice

Sonia also attended a round table hosted by the Bar Council on the Quality of Legal Advice, where she raised concerns about the Solicitors Regulation Authority's (SRA) regulation of solicitors who are supervising non-employees, following the recent case where nine firms were instructing a person who had been suspended and subsequently struck off by the Bar Council, and who had a criminal conviction and was on the Sex Offenders Register. We will be following this up with a letter to the SRA asking them to look into the supervisory arrangements that those firms had in place, including what safeguards there were.

ILPA ACTIVITIES

Meeting with Hatton Cross resident judge

Sonia Lenegan (Legal Director of ILPA), Barry O'Leary (Wesley Gryk Solicitors), and Joanna Sherman (Camden Community Law Centre) attended a meeting at the First-tier Tribunal in Hatton Cross to raise issues surrounding adjournment requests. Resident Judge Sutherland-Williams explained that the tribunal had a backlog last summer which was now cleared and they had put new processes in place to avoid it happening again.

In relation to the quality of decisions made, he reiterated the importance of adjournment requests being made as early as possible and with as much detail as possible. This contradicts their processes as explained to us, whereby decisions on adjournment requests are made by hearing date. We encourage members to report any ongoing problems to us so that we can raise them again.

Sonia has written to the First-tier Tribunal at Taylor House to express concerns about the use of a certificate of readiness, which they are sending out. She also raised this at the meeting at Hatton Cross, where they said that they were not currently using these certificates. If anyone has received one from Hatton Cross please let ILPA know.

Legal aid developments: HMCTS reform pilot and the Detained Duty Advice Scheme

Sonia attended a meeting with the Law Society, the Legal Aid Agency (LAA) and the Ministry of Justice (MOJ) to discuss proposals for changes to legal aid funding in light of the new HM Courts and Tribunals Service (HMCTS) pilot. We also continue to meet with the LAA, along with Bail for Immigration Detainees (BID) and Detention Action, to discuss the problems with the Detained Duty Advice Scheme and possible ways forward.

Meeting with Refugee, Asylum and Migration Policy (RAMP) project

Sonia met with parliamentary advisers to RAMP to discuss access to legal aid for those who are detained. Sonia also had a meeting with RAMP and Kalayaan, in which we raised issues surrounding the overseas domestic worker visa, as set out in Kalayaan's excellent report 'Dignity, not destitution'.

Consultation on No Recourse to Public Funds

ILPA has contributed to The Unity Project's response to the consultation on the No Recourse to Public Funds restriction, and responded to a draft form proposed by the Home Office to screen and identify vulnerable persons in order to prevent their detention. The consultation was circulated to members and can be found on the members area of the website. We will keep members updated.

Following a consultation process, we are delighted to announce that the Strategic Legal Fund will be expanding its remit this spring by dropping the age limit of beneficiaries, currently young people under 25.

Strategic Legal Fund

STRATEGIC LEGAL FUND FOR VULNERABLE YOUNG MIGRANTS — Managed by ILPA

The Strategic Legal Fund supports grantees to achieve successful strategic litigation and interventions with the aim to improve implementation and enforcement of policies for vulnerable young migrants in the UK.

By broadening the eligibility criteria we are hoping to more readily be able to support issues experienced by vulnerable migrant groups of all ages such as the EU Settlement Scheme, hostile environment policies and improved access to justice. More information will follow shortly.

We've recently awarded three grants:

Migrants' Law Project, hosted by Islington Law Centre, has been awarded £24,690 to carry out pre-litigation research and evidence-gathering in order to develop strategic litigation to enable young refugees and migrants in the UK to be reunited with young relatives trapped in terrible conditions in Greek camps, due to an apparent breakdown of the Dublin III and asylum systems in that country.

RAMFEL and **Bhatt Murphy** have been awarded £13,683 to carry out pre-litigation research to explore a legal challenge to systems underpinning the hostile environment policy. The research will focus on those who have significant vulnerabilities including migrant women who are sole carers and/or those fleeing domestic violence with their children.

Project 17 and **Matthew Gold & Co** have been awarded a top-up grant of £2,715 to complete pre-litigation research into the lawfulness of systems and practices employed by local authorities to purportedly assess the credibility of carers of destitute children with no recourse to public funds during section 17 Children Act 1989 assessments.

Migrants Organise recently published an SLF-funded evaluation on Home Office reporting conditions. This research reveals some of the ways in which the current immigration bail regime and reporting conditions could affect the welfare of vulnerable individuals, including young migrants, those who have suffered from past traumatic events, and those who have mental and/or physical health disabilities. This can be read on the Members Area of the website.

More information about SLF's new eligibility criteria and details of the next funding round will follow shortly. If you have any questions at this point, feel free to get in touch with our project manager Bella Kosmala at bella.kosmala@ilpa.org.uk.

www.strategiclegalfund.org.uk

Bella Kosmala, Project Manager – Strategic Legal Fund

Recovering Costs in the First Tier Tribunal (FtT)

A Practical Guide - Our cover article continues here...

Things to consider

Below is a quick guide as to the points to consider in order to show that the Secretary of State has acted unreasonably:

1. The underlying decision

There are bad decisions and there are truly shocking decisions. Do you have an unbeatable case? Can you say that the underlying decision is simply unsustainable? As with appeal grounds, it's not sufficient to simply disagree with the decision, but rather if your client's case had been considered properly by the decision maker could it have only rationally elicited one response?

This is a high threshold, but as practitioners sadly we do see these cases time and again. This is also reflected in the statistics (50% of appeals are allowed[1]). This is not just due to the late admission of crucial evidence; in many cases it was due to the poor quality decision making at first instance.

As cited in *Awuah and Others* at §37, the case of *Catana v HMRC* [2012] UKUT 172 (TCC) provides an example of where a party has acted unreasonably in defending proceedings, where *"a respondent resisted an obviously meritorious appeal"* at §14. You will all have these cases tucked away in your filing cabinets, the ones where you were genuinely angry that your client's case had been refused in such a way and where you were certain you were going to win on appeal.

2. Material evidence before the decision maker not considered

This happens all the time – you have prepared your case fully at the application stage and you have all necessary expert evidence, whether it be medical, country specific or an independent social worker's report. It corroborates your client's account in its entirety. Nevertheless, when you finally receive the decision, nowhere in the 36-page refusal is there reference to this material evidence. If it had been considered it is unlikely that a rational decision maker would have refused the application. This kind of public law error is clearly capable of rendering such a decision unlawful (per Lord Dyson in *R (Lumba) v SSHD* [2012] 1 AC 245 §66) and would strongly support an application for your reasonable costs if the Secretary of State defended such a decision on appeal.

In instances like this, it is a good tactic to request request reconsideration of the underlying decision decision using the specialist email address: appealsreconsiderationrequests@homeoffice.gov.uk and on occasion I have served a pre-action protocol (PAP) letter challenging such a failure. The appeal is your alternative remedy, but I have had a number of cases where, on receipt, the Secretary of State has withdrawn the decision. It is of course necessary to lodge the appeal simultaneously to protect your client's position. If the decision is withdrawn it would still be possible to apply for the reasonable costs associated with bringing the appeal (although see below).

3. Respondent's reliance on objective evidence

In my experience, it is quite common for the Secretary of State to cite negative extracts of objective evidence which when considered as a whole, rather than through cherry-picked snippets, is supportive of your client's claim. I have also seen numerous examples where there is very clear and repeated reference to evidence which is wholly supportive of your client's claim, but where an erroneous conclusion is reached. Clearly reliance on either such position is unreasonable.

4. Failure to review the decision/comply with directions

Regardless of any request by the representative, the Secretary of State is obliged to review the decision under challenge whilst preparing for the appeal. If Rule 24 of the 2014 Rules is complied with, and the Respondent's bundle provided, then the question as to whether the appeal can reasonably be defended should already have been addressed. If the bundle is not provided, this is a breach which is also likely to be of relevance in any application for costs.

It is also worth considering whether there have been any other failures to comply with directions, whether of a general nature following a pre-hearing review or specifically tailored to the case.

The Secretary of State's updated guidance[2] provides information as to the sustainability of decision making and builds in provision for review. On occasion last minute concessions or withdrawals are made. They can provide useful ammunition to show unreasonableness in the proceedings. When this is so late in the day that all preparation has been conducted then this is very supportive. If the concession or withdrawal has only occurred at this juncture due to a change of facts or admission of new evidence, any claim for costs may need to be limited from this date rather than for the whole of proceedings.

5. Presenting Officer's conduct/arguments raised

The conduct of the individual Presenting Officer (PO) during the hearing is also a relevant factor. This would encompass the making of further concessions, to all intents and purposes conceding but not formally withdrawing, to making unsubstantiated assertions/ legally incorrect submissions.

6. Withdrawal of an earlier decision

Frequently we see appeals which have been compromised due to a withdrawn decision and the promise of reconsideration, where the new decision is re-made in near identical terms. The guidance referenced above confirms that a decision should only be withdrawn with a view to granting leave. Such decision making is therefore arguably in breach of policy and a relevant factor when considering the reasonableness of conduct.

7. Impact on the Appellant

I have tried to argue that the impact on the Appellant can go to reasonableness, particularly where a vulnerable Appellant is forced to provide a witness statement and/or attend court, only for the decision to be withdrawn. This factor alone is unlikely to be a sufficient ground but can be raised.

This list is not exhaustive but hopefully a useful guide when reviewing your clients' cases.

Quantum and what can be recovered

Where the matter is legally aided, costs can be recovered at Inter-Partes rates (private commercial rates – you can check what your rate would be here: https://www.gov.uk/guidance/solicitors-guideline-hourly-rates – it's dependent on your location and experience).

This article is geared towards legal aid practitioners, which is not to say that private practitioners shouldn't seek their costs, however the indemnity principle would apply.

Conclusion

If a successful application is made your fixed fee of a few hundred pounds can in fact generate several thousand pounds. For a charity like JCWI such recovery enables us to conduct more pro bono work and for all providers this can make a challenging and poorly paid area of law cost-effective. In the IAC where there is an inequality of arms, with individuals challenging decisions of the state, which are frequently error strewn and defective such pecuniary sanctions should be pursued.

Get in touch at nicola.burgess@jcwi.org.uk

[1] https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864496/withdrawing-decisions-v3.0-gov-uk_PDF.pdf

Review of the Independent Chief Inspector of Borders and Immigration (ICIBI) report on the Home Office's network consolidation programme

A short summary of the ICIBI report and its findings on Decision-Making Centres (DMC) consolidation project, Home Office's application streaming tool and outsourcing of services to the private firms.

On 6 February 2020, the Independent Chief Inspector of Borders and Immigration (ICIBI), Mr Bolt released a report on "An Inspection of the Home Office's Network Consolidation Programme". The report sets out key findings and recommendations relating to the inspection of the Home Office's Network Consolidation programme and onshoring of visa processing and decision making to the UK.

DMC consolidation

Since January 2008 the Home Office have closed more than 100 overseas Decision-Making Centres, with only 13 remaining (including Croydon, Sheffield and Liverpool in the UK). This Programme of transformation was originally prompted by the Government's "Spending review and Autumn Statement 2015" that required the Home Office to increase resource saving by 5% by 2019-2020.

We have seen an evolution in the Home Office approach to onshoring the decision-making and visa processing - originally moving work over by centre location and now, since 2015, to onshoring work thematically i.e. by application category rather than by whether it is an entry clearance, further leave or indefinite leave application.

Sheffield now processes all PBS Tier 4 applications and is to be designated as the 'Work and Family' hub, processing applications under PBS (Tiers 1, 2 and 5) and Settlement Applications (Spouse and family members). Croydon processes visit visas and Liverpool all EEA applications. The ICIBI found that after some initial challenges both in recruiting and retaining staff and coping with the pace of onshoring that Sheffield and Croydon are now on track, with an appropriate level of oversight now being given to the onshoring process by way of an active Consolidation Board supporting and managing the transformation Programme. The ICIBI did however recommend that better records of the Board's meetings and decision making should be kept.

Regarding the problems experienced by users of the system, the ICIBI noted in particular the damage that had been done to the UKVI's reputation in the education sector in 2017, where Tier 4 applicants had been most adversely impacted by disruption caused by the onshoring process. The ICIBI did, however, recognise UKVI's concerted efforts throughout 2018 to rebuild that trust and noted that 98.5% of Tier 4 applications had thereafter been processed within the 15-day service standard which has been welcomed by the sector.

Phase 2 of the Programme will see the number of remaining overseas centres reduced from 11 to 6 (closing Bogota, Chennai, Manila, Riyadh, and Warsaw), bringing nearly all of decision-making back to the UK and the ICIBI report also urges UKVI to share the plans for phase 3 of the Programme by the end of 2019-2020. The ICIBI expressly noted that the UKVI need to be better in communicating both its short, medium and long-term plans for visa application processing.

The ICIBI also made recommendations for UKVI to do more to evidence the fact that the current ongoing Consolidation Programme is not only reducing costs but that the results lead to effective decision making and efficiency in the application processes (in terms of timeliness, but also of ease of access and use by applicants, accuracy and fairness). There must be a balance between cost-efficiency and quality of decision-making and without a clear long-term analysis, it is unclear whether the Programme is beneficial for the applicants as well as the Home Office. The ICIBI noted that UKVI have not been sufficiently gathering data to facilitate a detailed analysis to report on the changes being brought about by the Programme implementation to persuasively evidence these benefits.

Application streaming

As applications have moved to a digital online application process, the Home Office have been using a Streaming Tool which gives a RAG risk rating to applications. The Tool gives each application a rating - high risk are red, medium risk are amber and low risk are green. The rating is based on 'the nationality of the applicant, all immigration harm data collected globally by Immigration Enforcement over the preceding 12 months and attributable to particular cohorts of applicants, attributes from local risk profiles (for example, the applicant's occupation, sponsor), and any other relevant information (such as age, reason for travel, travel history)' (page 31 of the report). The mysterious tool has been a topic of discussion since 2017 when the ICIBI first reported it and drew a lot of media attention after MPs documented the particular difficulties faced by Africans in obtaining UK visit visas. However, the Home Office never revealed how the tool actually collects and analyses data or what countries are on the 'red list' and why.

The ICIBI noted it had had prior reservations about the use of this tool and concerns that it was being used as a decision-making tool, but in this report, found that they were satisfied that applications given a 'Red' rating were not being automatically refused. However, there was concern raised by the ICIBI that 'Green' rated, low risk applications, were perhaps not in fact being given full assessment on their individual merits. In light of this, Mr Bolt once again recommended that UKVI provide more details regarding the working of the 'Streaming Tool'. The ICIBI recommends that the Home Office should be more transparent with the technology they use to assess the applications in order to ensure that decisions are made fairly. Knowing more about the tool would allow both practitioners and the applicants to submit more useful evidence and be more risk-averse when submitting applications.

Outsourcing

The ICIBI was in favour of outsourcing administrative 'front end services' work to private firms (e.g. Sopra Steria, TLF and VFS) but made it clear that the responsibility to ensure effective implementation, efficiency and transparency still lies with the Home Office. As ILPA members will be all too aware, there have been many issues and a notable amount of complaints arising from the move to outsource the front-end functions, for example regarding appointment availability, waiting times and pricing that are yet to be resolved. The report recommends that the Home Office publishes performance data on gov.uk covering 'availability of appointments, average waiting times, and any other factors affecting 'customer experience', together with any agreed plans for particular VACs'. If this recommendation is followed, we will have greater visibility of the workings of the VACs.

Summary

Overall, Mr Bolt's report makes a number of interesting conclusions and recommendations that arguably should be followed to the letter to make visa application processes quick and painless for applicants. Whether this will be done is yet to be seen. It is worth noting that many of the ICIBI's recommendations accord with what ILPA has submitted to the UKVI in its various evidence gathering exercises concerning the Home Office's commercial partners.

As an immigration practitioner, the move to digital online applications for my corporate clients is something that I would largely welcome. The Access UK forms are more user-friendly and uploading e-documents is preferable. In my experience there is much to be resolved regarding technology and ability to upload and work with digital documents with each VFS/Teleperformance centre. UKVI report that their new internal case working tool 'Atlas' enables caseworkers to process a Tier 2 application in just 12 minutes which for my clients means a largely reliable, effective and efficient service. My feedback from personal experience and my clients is a call for more transparency in the application process. In a world where Amazon Prime rules, there is explicit demand for the ability to track an application from end to end, so improvements in user-experience would be welcome. An outstanding point to address is the use of e-processes and the impact of the consolidated decision-making transformation programme for more complex applications that I see for private clients, in collaboration with the Home Office roll out on document reduction pilots.

Article by Alisa Khozina

Alisa Khozina is a Solicitor and Manager for Immigration in People Advisory Services at Ernst & Young LLP.

Supporting migrants with mental capacity issues

How Migrants Organise is working to provide litigation friends for migrants who lack capacity.

In pre-litigation cases, where an application needs to be submitted, we encountered cases where vulnerable individuals lack the capacity to sign the retainer and provide instructions to a solicitor. In some cases, for example, the individuals mistakenly believe that they have British citizenship.

On Migrants Organise is a registered charity based in London. We run a Community Programme where we offer ongoing and holistic support for vulnerable migrants and asylum seekers, focusing on individuals with complex needs and ongoing mental health issues.

In October 2017 we started a strategic Migrants Mental Capacity Advocacy (MMCA) project due to concerns relating to the lack of safeguards for vulnerable individuals with mental health conditions who might have issues making immigration-related decisions. We created a small referral system supported by a panel of pro bono professionals, and for each referral we create a bespoke support plan. At the moment, we have 31 cases. 17 of them are appeal stage cases, in which the referrer requested assistance with a litigation friend, and 14 of them are pre-litigation cases.

In pre-litigation cases, where an application needs to be submitted, we encountered cases where vulnerable individuals lack the capacity to sign the retainer and provide instructions to a solicitor. In some cases, for example, the individuals mistakenly believe that they have British citizenship.

On the other hand, in cases at the appeal stage, we noticed that, in practice, there was a lack of provision of a litigation friend of last resort. In AM (Afghanistan) v SSHD [2017] EWCA Civ 1123, the Court of Appeal confirmed the tribunal's power to appoint a litigation friend. Despite this, vulnerable migrants who require the assistance of a litigation friend still face significant barriers.

First, immigration advisers and representatives are often unfamiliar with the concept of mental capacity. The Mental Capacity Act 2005 does not require formal capacity assessments in order for the court to determine that an individual is subject to its provisions. It requires those making a decision or doing something on behalf of someone who lacks capacity to make that decision or act in their best interests. The Act also makes clear that while someone may lack capacity to do one thing, they may have capacity to do other things. However, we have noticed a significant reliance on 'formal' capacity assessments done by a medical professional, which can be difficult to obtain particularly under the legal aid system. Immigration advisers and representatives are often not confident enough with the workings of the Mental Capacity Act 2005 to identify issues with mental capacity and advocate for the need of litigation friends when needed.

Secondly, there are also no effective litigation friends of last resort to act in the immigration tribunals. This is particularly significant for migrants and asylum seekers who often lack a reliable support network who can step in as a litigation friend. The Official Solicitor will still accept and consider referrals to act in the immigration tribunals, but she has very limited capacity to act and often refuses. We have met with representatives from the Official Solicitor's office in different occasions, and we understand that at present the Official Solicitor simply does not have the budget to act in tribunal appeals, even as a litigation friend of last resort.

In response to this, we have recruited 22 immigration and welfare professionals (solicitors, barrister, social workers and advisers) to act as professional litigation friends of last resort. It is not our intention to provide a long term solution to this issue; our aim is to gather expertise in cases involving litigation friends, raise awareness of the current issues, and push for long-term sustainable solution. We believe that the most straightforward solution would be to fund the Office of the Official Solicitor to act in tribunal cases. They are specialist and experienced. This is why we only accept cases when the Official Solicitor has refused to act.

Funding for our litigation friends is, however, an issue. We only recruit experienced professionals to ensure quality service given the vulnerabilities of the clients. All of them are full-time workers who would need to take annual leave or lose out on a working day in order to assist as litigation friends. We cannot afford to pay our group of litigation friends ourselves because most of the MMCA project is currently unfunded.

We therefore have to charge to cover our costs of paying for their time and reasonable expenses (predominantly travel expenses). We work with the representing solicitor to ask individual tribunal managers to cover these costs on an ex-gratia basis. We are aware of the very restricted budgets in this area and so we match the cost with the current legal aid rate for immigration work.

Initially there were significant delays and confusions over these requests. Many managers either ignore the requests or ask the representative to ask the Legal Aid Agency. The work of a litigation friend is simply not covered by legal aid and, regardless, there would be a significant conflict of interest if the funding of the litigation friend is tied to the representative. However, we continued to discuss this issue with the Ministry of Justice and, presently, our last nine requests have been approved.

We are a part of a working group looking into the issue of litigation friends in the unified tribunal system and this payment mechanism was acknowledged as providing a temporary solution to this issue. This of course is still unsatisfactory and inadequate. First, the availability of this payment mechanism is not well known. There is no formal mechanism to obtain the request or to challenge refusals. Importantly, our project is small and cannot possibly meet the need for litigation friends of last resort. We are aware of instances whereby other charities exceptionally act as litigation friend, but we do not know of any other service similar to our project.

Likewise, our model relies on professional litigation friends but, at the moment, there is very little guidance on who should be appointed as a litigation friend as well as their duties and responsibilities. For example, we know of a case where the judge wanted to appoint a solicitor from a firm representing the client to act as a litigation friend which would create a financial conflict of interest. In some cases, we have seen the role being muddled with that of a support worker, intermediary or interpreter, and unqualified McKenzie friends. If the solution lies in professional litigation friends then more guidance and a mechanism to oversee the work of the litigation friends would be crucial.

Article by Brian Dikoff, Legal Organiser, Migrants Organise

migrants organise

migrants and refugees acting for justice

ILPA LEGAL UPDATE

The Legal Update provides a regular snapshot of key legal developments over the past month.

The European Update is being published alongside this edition of the Monthly with case notes on:

- *AT v Pensionsversicherungsanstalt* C-32/19 (the right of permanent residence)
- *ND and NT v Spain* (Grand Chamber of the European Court of Human Rights, 13 February 2020 (concerning the prohibition on collective expulsion)
- Kaur & Ors v Secretary of State for the Home Department [2020] EWCA Civ 98 (the right of entry of Article 10 residence card holders)

Briefings

ILPA Briefing on Migration Advisory Committee report: "A Points-Based System and Salary Thresholds for Immigration"

The Migration Advisory Committee (MAC) is an expert non-departmental public body appointed to advise the government on migration issues and sponsored by the Home Office. In January, it published its report on a commission into a points-based system and salary thresholds for immigration. The Home Office has begun to implement some of the MAC's recommendations in its policy statement for a points-based statement.

ILPA provided a response to the MAC's consultation (before the publication of the Home Office policy statement) which can be found in the members section of the ILPA website.

ILPA Briefing on the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 were laid in Parliament on 30 January 2020 and provide for the right of appeal against decisions under the EU settlement scheme ("EUSS") as required by the Withdrawal Agreement. ILPA prepared a short briefing for practitioners on the Regulations which can be found in the members section of the ILPA website.

ILPA NOTE FOR MEMBERS

Currently we send you just one copy of the mailing addressed to the person listed as the key contact at the organisation. If you would like additional copies for your colleagues please email **info@ilpa.org.uk**

R (DN(Rwanda)) v SSHD [2020] UKSC 7: Supreme Court finds *Draga* to be wrongly decided – detention is unlawful if made on the basis of an unlawful deportation order

The headline point in this appeal is that a decision to detain is unlawful if it is taken on the basis of a deportation order which is itself unlawful due to a public law error, in this case because the deportation order was made on the basis of secondary legislation found to be ultra vires. However, the judgment will have much wider implications generally on the law of deprivation of liberty in its treatment of *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12.

Factual background

DN was recognised as a refugee in 2000. In 2007, following DN's commission of various offences, the Home Secretary decided to deport him pursuant to article 33(2) of the Refugee Convention which allows the expulsion of refugees "whom there are reasonable grounds for regarding as a danger to the security of the country". Under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) the Home Secretary had made the NIAA 2002 (Specification of Particularly Serious Crimes) Order 2004 (the 2004 Order), which specified several offences which were said to be particularly serious crimes, including one of which DN had been convicted. Under s. 72(4)(a) of the NIAA 2002 a person convicted of one of the specified offences was rebuttably presumed to have been guilty of a particularly serious crime and constituted a danger to the community.

DN was detained pursuant to paragraph 2(2) of Schedule 3 to the Immigration Act 1971, which permits the Home Secretary to detain someone where they have been given notice of a decision to make a deportation order against them pending the actual making of the order. DN appealed which was ultimately unsuccessful, and a statutory review by the High Court of the tribunal's decision (as was then the procedure) was dismissed on 7 December 2007. The Home Secretary made the deportation order pursuant to paragraph 2(3) of Schedule 3. After the deportation order was made, DN brought a claim for judicial review arguing the 2004 Order was unlawful. In separate proceedings in 2009, behind which DN's case was stayed, the Court of Appeal found the 2004 Order to be ultra vires. This had the effect of rendering the deportation order in DN's case unlawful. However, in 2010, the Home Secretary wrote to DN to inform him that article 33(2) of the refugee Convention was no longer relied on for his deportation, and instead relied on article 1C(5) (cessation).

DN's claim was stayed again behind *R (Draga) v SSHD* [2012] EWCA Civ 842, which found that a flaw in the decision to make a deportation order/ the making of the order did not impact upon the lawfulness of the decision to detain. As a result, DN's claim failed in the High Court and the Court of Appeal, both of which were bound by *Draga*.

The court's decision

The Home Secretary had argued that a legal error taken "two or more steps back" from the decision to detain, in this case in the 2004 Order, is too remote to satisfy the test in *Lumba*. The judgment in DN explores some of the various tests proposed in Lumba, but the basic point is that a decision to detain tainted by public law error is unlawful, the argument being about what connection is needed between the public law error and the decision for the decision to be unlawful.

The Supreme Court rejects this argument, finding that the case is squarely within *Lumba*. The question then turned to whether the case is "excluded by some specific rule of law, statutory or otherwise" (at [37] per Lord Carnwath and [19] *per* Lord Kerr).

The Home Secretary had argued that the statutory appeals regime against deportation orders, providing for a judicial decision on the deportation order, acted to exclude the *Lumba* principle. The argument was that a independent judicial decision in a statutory appeal against the deportation order breaks the chain of causation so that the decision to detain became independent of the decision to deport. This was resoundingly rejected by Lord Kerr in the lead judgment:

"The notice of a decision to deport/deportation order is a prerequisite to detention under paragraph 2(2)/2(3). The rubric 'chain of causation' is inapposite in this context. Where the deportation order is invalid, the unlawfulness of a paragraph 2(2)/2(3) detention which is founded upon it is inevitable. This is not an instance of a series of successive steps, each having, potentially, an independent existence, capable of surviving a break in the 'chain'. To the contrary, the lawfulness of the detention is always referable back to the legality of the decision to deport. If that is successfully challenged, the edifice on which the detention is founded crumbles." ([19])

Lord Kerr concluded that *Draga* was wrongly decided (at [21]), which Lord Carnwath also found in a separate judgment ([43]). Lord Kerr also expresses "doubt" as to whether *Ullah v Secretary of State for the Home Department* [1995] Imm AR 166 was correctly decided:

"If, and inasmuch as, Ullah suggests that paragraph 2(2) of Schedule 3 provides a stand-alone authority for lawful detention, no matter what has gone before, and irrespective of the fact that the decision to deport lacks a legal basis, I consider that the decision was wrong and should now be recognised as such. The giving of notice of the decision to make a deportation order, the making of the deportation order, and the detention on foot of it are essential steps in the same transaction. The detention depends for its legality on the lawfulness of the deportation itself. Absent a lawful basis for the making of a deportation order, it is not possible to breathe legal life into the decision to detain" ([25]). The precise boundaries of the types of unlawful deportation order to which *DN (Rwanda)* applies will no doubt be explored in future litigation, and so practitioners should wherever possible try to frame the illegality in terms of a traditional public law error to echo the rationale of the judgment.

Res judicata

Lord Carnwath made *obiter* remarks on the doctrine of res judicata or issue estoppel, which he believed "potentially" provides a "straightforward answer" to the questions raised by this case (at [44]). It is notable that neither party believed that the doctrine was applicable in this context or in judicial review more widely, and so this issue did not undergo oral argument. Lord Carnwath's argument is that this matter was conclusively determined in 2007 when the tribunal, and then the High Court, rejected DN's challenge: *"There is no unfairness in treating that decision as precluding a claim for damages based on the alleged illegality of the original deportation decision, given that DN had had the opportunity to challenge it by reference to the invalidity of the 2004 Order, and failed to take it"* (at [58]).

These remarks are, to put it mildly, controversial. It is therefore important to note that Lord Carnwath states this is not a "concluded view" (at [64]). It is doubtful they would be followed in later cases, and it is notable that the Home Office chose not to pursue this argument itself, although practitioners should be alert to the possibility that the Home Office may attempt to raise this issue in future litigation.

Charles Bishop, Legal and Parliamentary Officer, Immigration Law Practitioners' Association

MSU (S.104(4b) notices) Bangladesh [2019] UKUT 412 (IAC): if an appellant is granted leave when they have an appeal pending, the appeal will be deemed abandoned unless notice is given

This is an important case regarding the procedures that apply when an appellant with an appeal pending in the Tribunal has been granted leave to remain in the UK, yet wishes to continue with their appeal on particular grounds (which would otherwise be automatically deemed abandoned).

The headnote is:

1. *Where s.104(4A) applies to an appeal, neither the First-tier Tribunal nor the Upper Tribunal has any jurisdiction unless and until a notice is given in accordance with s.104(4B).*
2. *If such a notice is given, it has the effect of retrospectively causing the appeal to have been pending throughout, and validating any act by either Tribunal that was done without jurisdiction for the reason in (1) above.*
3. *As the matter stands at present, there are no 'relevant practice directions' governing the s.104(4B) notice in either Tribunal.*
4. *The Upper Tribunal has power to extend time for a s.104(4B) notice. Despite the provisions of Upper Tribunal rule 17A(4), such a power can be derived from s.25 of the Tribunals, Courts and Enforcement Act 2007.*

PS (Christianity – risk) Iran CG [2020] UKUT 46 (IAC)

The Upper Tribunal has issued new country guidance for Iranian converts to Christianity. The most important point is that those found to be genuine converts will face a real risk of persecution in Iran if seeking to openly practise that faith.

The headnote reads:

1. *This country guidance applies to protection claims from Iranians who claim to have converted from Islam to Christianity.*
2. *Insofar as they relate to non-ethnic Christians, this decision replaces the country guidance decisions in FS and Others (Iran – Christian Converts) Iran CG [2004] UKIAT 00303 and SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082 which are no longer to be followed.*
3. *Decision makers should begin by determining whether the claimant has demonstrated that it is reasonably likely that he or she is a Christian. If that burden is discharged the following considerations apply:*
   - i) *A convert to Christianity seeking to openly practice that faith in Iran would face a real risk of persecution.*
   - ii) *If the claimant would in fact conceal his faith, decision-makers should consider why. If any part of the claimant's motivation is a fear of such persecution, the appeal should be allowed.*
   - iii) *If the claimant would choose to conceal his faith purely for other reasons (family pressure, social constraints, personal preference etc) then protection should be refused. The evidence demonstrates that private and solitary worship, within the confines of the home, is possible and would not in general entail a real risk of persecution.*
4. *In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution 'in-country'. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the 'pinch point' of arrival:*
   - i) *All returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum;*
   - ii) *A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning;*
   - iii) *The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment;*
   - iv) *If there are any reasons why the detention becomes prolonged, the risk of ill-treatment will correspondingly rise. Factors that could result in prolonged detention must be determined on a case by case basis. They could include but are not limited to:*
     - a) *Previous adverse contact with the Iranian security services;*
     - b) *Connection to persons of interest to the Iranian authorities;*
     - c) *Attendance at a church with perceived connection to Iranian house churches;*
     - d) *Overt social media content indicating that the individual concerned has actively promoted Christianity.*

Abbasi (rule 43; para 322(5): accountants' evidence) [2020] UKUT 27 (IAC): Upper Tribunal can set aside its decision on its own motion; accountants in para 322(5) cases should give evidence in person

Rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008 permits the Upper Tribunal to set aside a decision in certain circumstances. In this case, the applicant's appeal against a refusal of indefinite leave to remain had been successful. This was on the basis that he had discharged his burden to demonstrate he had not acted with dishonesty in filing tax returns that were inconsistent. He had provided a letter from his accountant to demonstrate this.

Some time after that decision, the accountant in whose name the letter had been provided wrote to the Upper Tribunal to state that she had not drafted the letter and was not aware of it. The Upper Tribunal convened a hearing, but by this time the SSHD had granted the applicant indefinite leave to remain, and so the Upper Tribunal lacked jurisdiction to set aside the previous decision, the proceedings no longer being extant.

However, the Tribunal held that if it did have jurisdiction, it would have the power to aside its previous decision:

"54. …rule 43 enables the Upper Tribunal to set aside a decision and to re-make that decision where the Tribunal is satisfied that … there has been conscious and deliberate dishonesty in relation to evidence given to the Tribunal, which was material to the Tribunal's decision…

55. The Upper Tribunal must, however, consider whether it is in the interests of justice to set aside the decision. In that regard, each case will be fact and context-specific. Amongst the matters of potential relevance will be the existence and/or nature of the party's involvement in the malfeasance; whether the malfeasance is, or could be, the subject of an appeal; and whether it could result in action being taken by the Secretary of State to cancel or revoke any leave that might fall to be granted in the light of the decision"

The official headnote reads:

(1) The Upper Tribunal can apply rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008 of its own motion.

(2) The use of fraud before the Upper Tribunal constitutes an abuse of process such as to amount to a "procedural irregularity" for the purposes of rule 43(2)(d).

(3) In a case involving a decision under paragraph 322(5) of the immigration rules, where an individual relies upon an accountant's letter admitting fault in the submission of incorrect tax returns to Her Majesty's Revenue and Customs, the First-tier or Upper Tribunal is unlikely to place any material weight on that letter if the accountant does not attend the hearing to give evidence, by reference to a Statement of Truth, that explains in detail the circumstances in which the error came to be made; the basis and nature of any compensation; and whether the firm's insurers and/or any relevant regulatory body have been informed. This is particularly so where the letter is clearly perfunctory in nature.

ILPA GET IN TOUCH!

If you have an article, case note or observation you would like to share with your colleagues, please get in touch with **charles.bishop@ilpa.org.uk**

We are after content on any topic that interests you. Ideally, contributions should be 700-1200 words in length. Longer pieces will, however, be considered.

ILPA JOBS

Solicitor/Caseworker/Barrister

The Migrants Law Project, London

The Migrants' Law Project

Salary £34,986 - £44,373

The Migrants' Law Project is a dynamic public law and public legal education team at Islington Law Centre that works to protect the rights of asylum seekers, refugees, and migrants, seeking an experienced and committed caseworker, solicitor, or barrister to join our team. The successful applicant will be working in a supportive and collaborative environment to develop a strategic legal practice in order to secure justice for some of the most marginalised and vulnerable people in the UK and Europe today.

We are leaders in the field of strategic legal work for this vulnerable and marginalised group, having successfully taken some of the key cases in the field over the past ten years, such as the suspension of the Detained Fast Track. Our innovative model means that we both take on strategic legal work, and work closely with the wider sector to support them to develop their knowledge and practice. Most recently we have focussed on securing justice for families fleeing persecution, separated from their families and trapped across Europe, as well as wider issues in family reunion for asylum seekers, refugees, and migrants. We are part of the Islington Law Centre asylum and immigration team, which has been awarded a Category 1 independent Peer review from the Legal Aid Agency

This work will include providing advice and representation to organisations and individuals to develop legal solutions to issues of concern for them, as well as exploring other areas for strategic legal intervention. The role involves undertaking all aspects of casework, including litigation. The role also provides the opportunity to work collaboratively with a wide range of actors to ensure access to justice for asylum seekers, refugees, and migrants.

We are funded through a mixture of grants, donations and legal aid funding, which gives our team the flexibility to work creatively and proactively in strategic legal work to protect asylum seekers', refugees' and migrants' rights.

Candidates should be either:

1. practising solicitors with significant experience of litigation or
2. practising barristers with experience of conducting casework (including litigation) within a solicitor led agency
3. caseworker: accredited at Level 3 OISC and Level 2 IAAS with significant experience of litigation.

The role may involve occasional travel within and outside the UK.

If you would like to apply, please go to: https://themigrantslawproject.org/vacancies/. If you need any further information, please contact Katie Commons on katiec@islingtonlaw.org.uk.

Applications will be accepted through our application forms. The closing date for applications is 12pm on 23rd March 2020.

Interviews for this post will be held on 30th March 2020

Website: www.themigrantslawproject.org

ILPA TRAINING

For full details and booking go to: www.ilpa.org.uk/events.php

ILPA is a charity and any profits from ILPA training go towards supporting work to fulfil ILPA's objectives.

All who participate in ILPA training are working together to achieve ILPA's objectives: to perform to the highest standards and to challenge injustice. Our trainers' commitment to delivering these unique, collaborative courses is a source of inspiration to all members and attendees. Information from ILPA's influencing work and members' casework feeds into the training programme and information from those trained informs that work in its turn.

All our members receive a weekly update of our training and conference programme. You can find the full programme on our website here: http://ilpa.org.uk/events.php.

March 2020

DT 1869 Challenging Immigration Detention: a comprehensive toolkit (Sheffield)

Tuesday 17 Mar 2020, 10:00–17:00, Sheffield, 6 CPD Hours

Tutors: Jennine Walker, Safe Passage, Graham Denholm, Landmark Chambers and Helen MacIntyre, Wilson Solicitors LLP

This course will provide an overview of the law and practice relating to unlawful immigration detention, including statutory provisions, Home Office policies (including Adults at Risk and those relating to Unaccompanied Asylum Seeking Children), the Hardial Singh principles, and relevant case law. The course will have a focus on practice, enabling participants to confidently identify when detention is, was or might be unlawful, and how best to challenge it, either through bail applications or judicial review proceedings. The course will include consideration of the provisions in Schedule 10 of the Immigration Act 2016 relating to bail accommodation and how these interact in practice with securing a client's release.

Sign up to Direct Debit for membership fees and get 10% off a training session:

For our valued existing members: ILPA is running a promotional deal throughout 2020. For any members who switch to sign up to pay their annual membership fees by Direct Debit we will offer you 10% off the next training course that you book. Get in touch to arrange this or if you have any questions email

esme.kemp@ilpa.org.uk

*Terms and Conditions: Offer cannot be applied to conferences. Offer must be redeemed within six months from the date that GoCardless Direct Debit is set up. Offer is eligible for only one person per organisation and is for one training session only. It is non-transferrable and cannot be used more than once.

DT 1881 Appendix FM: Best Practice (Bristol) - UKVI Training

Thursday 26 Mar 2020, 14:00–17:00, Bristol, 3 CPD Hours

Tutors: Philip Wall and Emily Weston of UKVI

Chaired by Natasha Gya Williams of Gya Williams Immigration and Marie-Christine Allaire-Rousse of South West Law

A best practice guide which will cover the applicant journey for applications made under the FLR(M), SET(M) and Settlement Entry Clearance routes, with a focus on the requirements for supporting documentation submitted alongside applications.

DT 1880 Running a Deport Case

Tuesday 31 Mar 2020, 16:00–19:15, London, 3 CPD Hours

Tutors: Nick Nason, Principal and Founder of Edgewater Legal and David Sellwood, Barrister at Garden Court Chambers

A course for practitioners representing individuals facing criminal deportation, with a particular focus on evidence collection, and the current state of Article 8 case law. The aim of the course is to provide practitioners with some experience of working in the deportation law field an update on the current statutory framework, and the most important deportation cases to be aware of when representing those subject to deportation proceedings. Practitioners should also leave with an improved understanding - informed by a detailed consideration of the authorities - of the type and quality of evidence likely to make a difference in these types of cases.

April 2020

DT 1894 Asylum and International Protection Law Conference

Wednesday 22 Apr 2020, 10:00–17:00, London, 6 CPD Hours

Chair: Mark Symes, Garden Court Chambers

Keynote Speaker: Raza Husain QC, Matrix Chambers

Panel: Ali Bandegani and Peter Jorro of Garden Court Chambers, Vijay Jagadesham of Garden Court North Chambers, and Alasdair Mackenzie, Doughty Street Chambers – more TBC

Join us for ILPA's inaugural Asylum and International Protection Law conference. This conference features leading lawyers in the field. Attendance is a must for all immigration practitioners working in asylum and international protection law.

The programme includes:

- Six Moments in Refugee Law
- New Frontiers of Refugee Law
- Family Reunion
- Unaccompanied Asylum Seeking Children & Age Assessments
- Cessation and Revocation
- Dublin Regulations

DT 1883 Introduction to Immigration law: getting started

Thursday 23 Apr 2020, 10:00–17:00, London, 6 CPD Hours

Tutors: Julian Bild, ATLEU and Glyn Lloyd, Newfields Law

The first step to accreditation for those new to the field. We have extended our introductory course to a full day to give you a full overview of immigration law and practice. Working in small groups, you will discuss realistic case studies and understand how to apply your knowledge of the rules and policies when you are advising clients.

DT 1899 Sponsor Licences and Compliance - obtaining and keeping your licence

Wednesday 29 Apr 2020, 14:00–17:00, London, 3 CPD Hours

Tutors: Chetal Patel, Bates Wells, Sam Ingham, Laura Devine Immigration and Francesca Sciberras, Laura Devine Immigration

Practitioners and HR specialists will receive an in-depth look at sponsor licences. This will not only include practical advice on how to obtain a sponsor licence but also how to ensure effective compliance and retain the licence. We will advise upon the HR practices necessary to ensure sponsor duties are met and other factors that the Home Office would be looking for at a compliance visit. We will also discuss our experience with sponsor license refusals, downgrading and revocations - providing tips for avoiding these and challenging them where necessary.

DT 1898 Entitlement to NHS Health Care and Charging: Representing Migrant Clients in the Hostile Environment

Thursday 30 Apr 2020, 14:00–17:00, London, 3 CPD Hours

Tutors: Kamla Adiseshiah, Southwark Law Centre and Christine Benson, Maternity Action

Join us to learn about an emerging area of casework and legal challenge. Migrants face charges of thousands of pounds for essential treatment and the Home Office has a discretion to refuse immigration applications if an applicant has an NHS debt of £500 outstanding for two months. Immigration practitioners and other frontline support and advice workers can help people challenge decisions on charging status, negotiate repayment plans, request waivers and make complaints to the Parliamentary and Health Service Ombudsman and the Information Commissioner. Solicitors and barristers can challenge charging by way of judicial review.

ILPA MEMBERSHIP

Each edition, the ILPA Monthly focuses on one aspect of ILPA membership to make sure you're getting the most out of your ILPA membership!

Working Group Focus

The ILPA Immigration Professional Support Lawyers (PSL) Network

The ILPA Immigration Professional Support Lawyers (PSL) Network is an informal working group allowing members to meet and interact for the purpose of:

1. sharing UK immigration legal knowledge and updates
2. sharing tips and guidance on how to run a successful PSL team
3. attending PSL meetings and events.

It is aimed at professionals who work in UK immigration law at leading legal practices and organisations – particularly those who are responsible on a day-to-day basis for researching and disseminating UK immigration legal updates to their team.

Convenors

Shyam Dhir (LexisNexis), Tim Richards (Kingsley Napley LLP), Josh Hopkins (Laura Devine Immigration)

Members of group

The group is aimed at PSL professionals who work in UK immigration law at leading legal practices and organisations – particularly those who are responsible on a day-to-day basis for researching and disseminating UK immigration legal updates to their team.

Structure

Meetings

3 to 4 meetings a year. A loose agenda will be produced to set out dates, details and focus of each meeting – however these meetings will be informal/ social and the focus of each meeting is open to be amended if desired by the membership.

Email group

an email group will allow members to circulate UK immigration legal and policy updates, knowledge-sharing tips, details of events etc. The convenors will lead on this initially although it is hoped that the regular use of this group by all members will develop organically.

ILPA encourage members to join this working group by emailing info@ilpa.org.uk

Meet the convenors

Shyam Dhir

Shyam specialises in private and business immigration. His areas of expertise include advising on immigration options for both corporate and private clients in relation to the Points Based System, family-related immigration routes, long residence, applications for settlement, citizenship and questions of European Law. He has also frequentl advised students about their immigration options at the end of their studies. Shyam has also hosted immigration seminars at universities, and was involved in setting up, and subsequently leading, the Legal Clinic (immigration) at Kings College London, at which he assisted students, members of the public and professionals with their immigration queries.

Josh Hopkins

Josh is a paralegal and is part of Laura Devine Immigration's (LDI) PSL team. He assists with drafting articles and blogs, researching and liaising with the Home Office on policy queries and regularly disseminating and providing up-to-date legal knowledge to the rest of LDI's UK team. He has experience of providing support to UK solicitors for corporate, high net worth, personal and pro bono clients, and has successfully worked on a variety of UK immigration applications ranging from the PBS to private life matters.'

Tim Richards

Tim has over 15 years' experience in corporate and private client immigration matters. He trained and qualified at a top ranked UK immigration practice and then practised at an international law firm, most latterly as Legal Director. Tim is the PSL at Kingsley Napley.

ILPA KEY DOCUMENTS

Please find below a list of the key documents on immigration, asylum and nationality law published by ILPA over the past month. All documents below have been circulated to members previously.

General

Policy Statement: The UK Points-Based System
http://ilpa.org.uk/resources.php/35978/policy-statement-the-uk-points-based-system

UKVI: Coronavirus (COVID-19): immigration guidance (25 February 2020)
http://ilpa.org.uk/resources.php/35999/ukvi-coronavirus-covid-19-immigration-guidance-25-february-2020

UKVI: Coronavirus (COVID-19): immigration guidance (21 February 2020)
http://ilpa.org.uk/resources.php/35982/ukvi-coronavirus-covid-19-immigration-guidance-21-february-2020

UKVI: UK Visa Fees (20 February 2020)
http://ilpa.org.uk/resources.php/35984/ukvi-uk-visa-fees-20-february-2020

UKVI: Visa fees transparency data: (20 Feb 2020)
http://ilpa.org.uk/resources.php/35983/ukvi-visa-fees-transparency-data-20-feb-2020

UKVI: Coronavirus: immigration guidance if you're unable to return to China from the UK (17 February 2020)
http://ilpa.org.uk/resources.php/35977/ukvi-coronavirus-immigration-guidance-if-youre-unable-to-return-to-china-from-the-uk-17-february-202

ICIBI: An inspection of the Home Office's Network Consolidation Programme and the "onshoring" of visa processing and decision making to the UK (February 2020)
http://ilpa.org.uk/resources.php/35947/icibi-an-inspection-of-the-home-offices-network-consolidation-programme-and-the-onshoring-of-visa-pr

UKVI: Approved secure English language test centres (7 February 2020)
http://ilpa.org.uk/resources.php/35949/ukvi-approved-secure-english-language-test-centres-7-february-2020

Withdrawing decisions (06 February 2020)
http://ilpa.org.uk/resources.php/35958/withdrawing-decisions-06-february-2020

The Home Office response to the Independent Chief Inspector of Borders and Immigration's report: An Inspection of the Home Office's Network Consolidation Programme and the "onshoring" of visa processing and decision making to the UK (06 February 2020)
http://ilpa.org.uk/resources.php/35948/the-home-office-response-to-the-independent-chief-inspector-of-borders-and-immigrations-report-an-in

Statement of Changes to the Immigration Rules HC 56 (30 January 2020)
http://ilpa.org.uk/resources.php/35928/statement-of-changes-to-the-immigration-rules-hc-56-30-january-2020

UKVI Document Reduction Pilot - Appendix FM - UK Scanning hubs (28 January 2020)
http://ilpa.org.uk/resources.php/35920/ukvi-document-reduction-pilot-appendix-fm-uk-scanning-hubs-28-january-2020

UKVI Document reduction pilot - Appendix FM - India - automated email message (28 January 2020)
http://ilpa.org.uk/resources.php/35919/ukvi-document-reduction-pilot-appendix-fm-india-automated-email-message-28-january-2020

UKVI email to ILPA re document rationalisation pilot for Appendix FM applications (28 January 2020)
http://ilpa.org.uk/resources.php/35918/ukvi-email-to-ilpa-re-document-rationalisation-pilot-for-appendix-fm-applications-28-january-2020

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Children

Section 67 of the Immigration Act 2016 Policy statement (17 February 2020)
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Section 67 of the Immigration Act 2016 leave guidance (17 February 2020)
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Courts and Tribunals

UKVI update: Rights of appeal (31 January 2020)
http://ilpa.org.uk/resources.php/35940/ukvi-update-rights-of-appeal-31-january-2020

Economic Migration

Email from UKVI regarding reductions in salary for applicants who have been assigned a Restricted CoS (25 February 2020)
http://ilpa.org.uk/resources.php/36003/email-from-ukvi-regarding-reductions-in-salary-for-applicants-who-have-been-assigned-a-restricted-co

Points-based system: Tier 1 (Exceptional Talent) (20 February 2020)
http://ilpa.org.uk/resources.php/35988/points-based-system-tier-1-exceptional-talent-20-february-2020

Guidance on applications under Global Talent (20 Feb 2020)
http://ilpa.org.uk/resources.php/35987/guidance-on-applications-under-global-talent-20-feb-2020

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http://ilpa.org.uk/resources.php/35986/tier-2-and-5-of-the-points-based-system-guidance-for-sponsors-19-february-2020

Business applications under the Turkish EC Association Agreement (14 February 2020)
http://ilpa.org.uk/resources.php/35985/business-applications-under-the-turkish-ec-association-agreement-14-february-2020

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http://ilpa.org.uk/resources.php/35974/email-from-ukvi-re-rcos-and-salary-reduction-13-february-2020

Email from UKVI re ePassport gates and short term study/permitted paid engagement visitors (4 February 2020)
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EEA nationals qualified persons (21 Feb 2020)
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UKVI update: Free Movement Rights: direct family members of European Economic Area (EEA) nationals Version 8.0 (13 February 2020)
http://ilpa.org.uk/resources.php/35971/ukvi-update-free-movement-rights-direct-family-members-of-european-economic-area-eea-nationals-veris

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http://ilpa.org.uk/resources.php/35968/ukvi-update-eu-settlement-scheme-person-with-a-zambrano-right-to-reside-version-3.0-13-february-2020

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http://ilpa.org.uk/resources.php/35956/application-for-a-registration-certificate-or-residence-card-as-the-extended-family-member-of-a-euro

UKVI: EEA(EFM): guidance notes (11 February 2020)
http://ilpa.org.uk/resources.php/35957/ukvi-eeaefm-guidance-notes-11-february-2020

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http://ilpa.org.uk/resources.php/35951/ukvi-eeaqp-guidance-notes-10-february-2020

Application for a registration certificate or residence cardas the family member of a European Economic Area (EEA) or Swiss national (10 February 2020)
http://ilpa.org.uk/resources.php/35952/application-for-a-registration-certificate-or-residence-cardbr-as-the-family-member-of-a-european-ec

UKVI: EEA(FM): guidance notes (10 February 2020)
http://ilpa.org.uk/resources.php/35953/ukvi-eeafm-guidance-notes-10-february-2020

Application for a document certifying permanent residence or permanent residence card under the EEA Regulations (10 February 2020)
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Blank paper application forms under EUSS (30 January 2020)
http://ilpa.org.uk/resources.php/35925/blank-paper-application-forms-under-euss-30-january-2020

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ICIBI: A reinspection into failed right of abode applications and referral for consideration for enforcement action (11 February 2020)
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http://ilpa.org.uk/resources.php/35959/form-mn1-application-for-registration-of-a-child-under-18-as-a-british-citizen-10-february-2020

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http://ilpa.org.uk/resources.php/35941/ukvi-stakeholder-engagement-document-no-recourse-to-public-funds-change-of-conditions-applications-5

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Note on Withdrawal of Asylum Policy - Ali Bandegani
http://ilpa.org.uk/resources.php/35944/note-on-withdrawal-of-asylum-policy-ali-bandegani

CPIN: Afghanistan: country policy and information notes (21 February 2020)
http://ilpa.org.uk/resources.php/35998/cpin-afghanistan-country-policy-and-information-notes-21-february-2020

CPIN: Pakistan: Women fearing gender-based violence (17 February 2020)
http://ilpa.org.uk/resources.php/35995/cpin-pakistan-women-fearing-gender-based-violence-17-february-2020

CPIN: Turkey: Kurds (17 February 2020)
http://ilpa.org.uk/resources.php/35994/cpin-turkey-kurds-17-february-2020

CPIN: Turkey: Kurdistan Workers' Party (PKK) (17 February 2020)
http://ilpa.org.uk/resources.php/35993/cpin-turkey-kurdistan-workers-party-pkk-17-february-2020

CPIN: Iraq: Female Genital Mutilation (FGM) (17 February 2020)
http://ilpa.org.uk/resources.php/35992/cpin-iraq-female-genital-mutilation-fgm-17-february-2020

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CPIN: Albania: Blood feuds (13 February 2020)
http://ilpa.org.uk/resources.php/35967/cpin-albania-blood-feuds-13-february-2020

CPIN: China: Hong Kong protests (11 February 2020)
http://ilpa.org.uk/resources.php/35963/cpin-china-hong-kong-protests-11-february-2020

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http://ilpa.org.uk/resources.php/35931/ukvi-update-country-information-note-bangladesh-documentation-27-january-2020

Removals, Detention and Offences

Note on a recent Dublin III judicial review decision from Upper Tribunal - Mark Symes
http://ilpa.org.uk/resources.php/35981/note-on-a-recent-dublin-iii-judicial-review-decision-from-upper-tribunal-mark-symes

UKVI update: Country Returns guide: February 2020 (10 February 2020)
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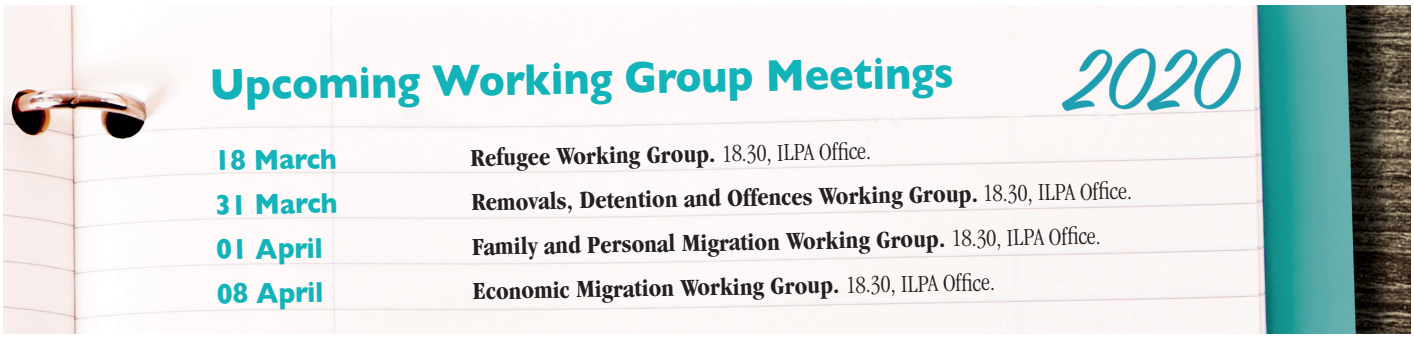
Detention Sub-Group - Minutes from October 2019 Meeting (31 January 2020)
http://ilpa.org.uk/resources.php/35935/detention-sub-group-minutes-from-october-2019-meeting-31-january-2020



ILPA WHO'S WHO

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ILPA organises its work into working groups which are shown below. To subscribe to a working group email list or to check your subscriptions/unsubscribe visit the working group page on the members' area of our website. Each working group has a page and subscription details are at the top.

All convenors are members of ILPA. To contact a working group convenor please get in touch with the ILPA Secretariat. ILPA also convenes ad hoc working groups around particular topics and staff can help you identify who would be the best person to speak to on a particular topic.

Children: Operates as an email group only

Courts and Tribunals: Nicola Burgess - JCWI, Rowena Moffatt - Doughty Street Chambers

Economic Migration: Tom Brett-Young - Veale Wasbrough Vizards LLP, James Perrott - Macfarlanes LLP, Anushka Sinha - Kemp Little

European: Elspeth Guild - Kingley Napley LLP, Alison Hunter - Wesley Gryk Solicitors LLP, Jonathan Kingham - LexisNexis

Family and Personal: Katie Dilger - Bates Wells LLP, Sue Shutter - volunteer with the Project for the Registration of Children as British Citizens and Slough Immigration Aid Unit

Legal Aid: Ayesha Mohsin - Kalayaan

Refugee: Ali Bandegani - Garden Court Chambers, Nicola Braganza - Garden Court Chambers, Annie Campbell - North Kensington Law Centre

Removals, Detention and Offences: Sairah Javed - JCWI, Helen MacIntyre - Wilson Solicitors LLP, Pierre Makhlouf - Bail for Immigration Detainees

Well-Being: Aisha Choudhry - Bates Wells LLP, Nath Gbikpi - Wesley Gryk Solicitors LLP, Emily Heinrich - Fragomen

Regional Working Groups

North West: Lucy Mair - Garden Court North Chambers, Denise McDowell - Greater Manchester Immigration Aid Unit, Emma Morgan - DAC Beachcroft LLP, Shara Pledger - Latitude Law

Northern Ireland: Ashleigh Garcia - Law Centre NI, Sinead Marmion - Phoenix Law/Step, Maria McCloskey - Napier Solicitors, Carolyn Rhodes - Law Centre NI

New York: Tanya Goldfarb - Clintons, Jenny Stevens - Laura Devine Solicitors

Scotland: Jamie Kerr - Burness Paull LLP, Kirsty Thomson - JustRight Scotland, Darren Stephenson - McGill and Co. Solicitors

Southern: Tamara Rundle - Redstart Law

South West: Sophie Humes - Avon and Bristol Law Centre, Luke Piper - South West Law, Marie Christine Allaire Rousse - South West Law

Yorkshire and North East: Ish Ahmed - Bankfield Heath Solicitors, Emma Brooksbank - Freeths LLP, Nichola Carter - Carter Thomas Solicitors, Christopher Cole - Parker Rhodes and Hickmott Solicitors, Bryony Rest - David Gray Solicitors

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How to Contact ILPA

Remember we have a general email address which is always checked and your email will be forwarded from there to the relevant person in ILPA, so if you don't know who to contact about your question please send it to **info@ilpa.org.uk**

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