

## ILPA's response to the Home Affairs Committee's inquiry into Home Office preparedness for Covid-19

### Background

ILPA is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official enquiries.

### Introduction

This note collates evidence and perspectives from ILPA members. ILPA has previously submitted a series of policy recommendations to the Home Office, and these were sent to the Committee on 22 March 2020 (Appendix 1). We have focussed our submission on Home Office communications, as well as looking at some of the policy responses to date.

### Effectiveness of Home Office communications to its partners, responders and the wider public about its preparations

The overwhelming theme of the responses from ILPA members has been that the Home Office public communication on these issues has been lacking. In addition, what guidance there is should be publicly accessible and easy to find, this has unfortunately not been the case so far

We have set out below a chronology of the Home Office communications and response to the pandemic.

ILPA members report that just after Christmas 2019 they first started to encounter Covid-19 related issues and raise queries with the Home Office. On 31 January 2020 the Home Office contacted ILPA to say that they were preparing some short term interim guidance on the implications of the coronavirus outbreak. They said that the aim was to issue guidance by 7 February 2020. They advised that any Chinese nationals whose leave ran out on 31 January 2020 and could not return to China because of Covid-19 did not need to take any action and should instead wait for the interim guidance to be published. They said that all VACs and test

centres in China were now closed. The Home Office said that they were working on the following scenarios:

- people in the UK whose leave was expiring but they were unable to return to China due to Covid-19
- sponsors with people in China who were unable to return to the UK. They said that the guidance would look to reassure sponsors of the pragmatic approach that would be taken by UKVI in the current circumstances.
- whether those from other countries where travel bans applied could apply exceptionally to come to the UK from those countries
- given that all the VACs were closed in China, how would “in-flight” applications be dealt with

The Home Office said that they would be very grateful for feedback from ILPA members on whether there are other scenarios that they should consider covering in the guidance, as they were keen to ensure that the guidance issued covers all the possible scenarios. They reiterated that the guidance would be short term interim measures. Reaching out to immigration practitioners in this way was a really positive, productive step which ILPA would very much encourage. However it is important that when such feedback is provided, that it is used by the Home Office in a meaningful way to inform their subsequent policies and guidance.

On 31 January 2020, ILPA emailed the first practitioner feedback document to the Home Office (see Appendix 2), and thanked them for engaging with ILPA in this way, stating that it had been well received by members. On 4 February 2020, ILPA emailed the second practitioner feedback document to the Home Office (see Appendix 3). On 5 February 2020, ILPA emailed the third practitioner feedback document to the Home Office (see Appendix 4).

On 17 February 2020 the Home Office produced their first guidance “UKVI: Coronavirus: immigration guidance if you’re unable to return to China from the UK” (see Appendix 5) and also emailed ILPA to advise that it had been published.

On 12 March 2020, ILPA emailed the fourth practitioner feedback document to the Home Office (see Appendix 6). In this email, ILPA stated that *“the application of the coronavirus policy exclusively to Chinese nationals was not tenable in light of the now global nature of the covid-19 pandemic, especially given that nationals of Iran, Italy and South Korea are particularly affected. The refusal to extend the policy to nationals of these countries risks unfair discrimination at this point. We would urge the Home Office to revisit this aspect of its policy as a matter of urgency and certainly before the policy is due to be revised at the end of the month.”*

On 21 March 2020, ILPA sent the Home Office a list of broad issues and recommendations, in order to assist them in updating their guidance, given the delays in this being updated (see Appendix 1).

Lockdown in the UK started on 23 March 2020. Following this, members reported on 24 March 2020 that the Home Office was advising them that biometric/document appointments were classed as “essential appointments” and so clients must still travel to Croydon to attend.

On 24 March 2020, practitioners contacting the EUSS Resolution Centre started reporting that there was an automated message saying that the centre was unable to keep their telephone lines open due to the COVID-19 outbreak and that they would open again once they are able to do so safely. On 25 March 2020 the recorded message said that the helpline was closed, and it referred people to the website and said that they will continue to respond to queries made via their online contact form. The website that day did not reflect the fact that the phonelines were closed (see Appendix 7).

On 24 March 2020, the Home Office published the first substantive guidance since 17 February 2020, in what amounted to two pages of guidance, “Coronavirus (COVID-19): advice for UK visa applicants and temporary UK residents” on GOV.UK (see Appendix 8, version dated 25 March 2020)<sup>1</sup>. The new guidance covers a much larger group of people, yet introduced more onerous procedures at a time when Home Office resource is inevitably impacted by the pandemic. ILPA is concerned about the current capacity of the Home Office to process and grant these requests in a timely manner, particularly given the backlogs which already existed in the system prior to the pandemic.

The Home Office has advised ILPA that it is not possible to carry out a blanket extension for all of those whose leave is due to expire before 31 May 2020. ILPA has raised concerns that, as with the EUSS scheme, this creates a risk that not all of those who are eligible for the extension, particularly those who may be more vulnerable, will be reached. We understand from the Home Office that there is some technological reason for a blanket extension of leave being possible, this may be something that the Committee is able to investigate further.

#### Use of web pages for policy changes

ILPA is concerned about the use of web pages to publish important information, and the fact that when these pages are updated, previous versions are not being retained anywhere that is easily accessible to users. The guidance of 17 February 2020 no longer exists at all on GOV.UK, as the link to the February guidance now redirects to the guidance of 24 March 2020. The most recent version of the February guidance can be found at Appendix 9, as saved by ILPA, it had been amended on 21 February, 25 February and 27 February.

The guidance of 24 March 2020 has been updated as follows (note that there is no reference to the February guidance or its updates)<sup>2</sup>:

*“17 April 2020*

*Added link to Tier 2 worker guidance to explain that some NHS workers and their families will get their visas automatically extended because of coronavirus.*

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<sup>1</sup> <https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents>

<sup>2</sup> <https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents#history>

*14 April 2020*

*Information added about applicants who can start work or study in the UK before their visa application has been decided.*

*6 April 2020*

*Added link to form for visa holders to update their information with the Coronavirus Immigration Team.*

*3 April 2020*

*Guidance added for NHS staff, holders of Tier 1 Entrepreneur visas and those applying for a Global Talent, Start-up or Innovator visa.*

*27 March 2020*

*UK Visa and Citizenship Application Centres (UKVCAS), Post Office enrolment services and Service and Support Centres (SSCs) are temporarily closed because of coronavirus (COVID-19).*

*25 March 2020*

*Updated to add information on the 5 working day response time for helpline emails.*

*24 March 2020*

*First published.”*

It is important to be able to clearly identify what policies were in place on any given date. For example, extensions of leave were automatic in the February 2020 version of the guidance, which stated as follows:

*“If you are a Chinese national in the UK and have been compliant with the conditions of your visa prior to the coronavirus outbreak, your leave will be automatically extended to 31 March 2020 if your visa has an expiry date between 24 January 2020 and 30 March 2020.*

*You don’t need to do anything to get this extension.*

*You will be subject to the same immigration conditions as your last visa during the extension period.*

*You will not automatically receive a new visa or Biometric Residence Permit card.*

*Your new expiry date (31 March 2020) will be added to UK Visa Immigration’s systems.”*

Therefore people who fall within that guidance will not have overstayed their leave during the relevant period, however this is not the case for those to whom the policy did not apply. Nor is it the case with the current policy, which requires contact with the Home Office in order to obtain the extension.

Another example of this problem is in relation to the suspension of reporting requirements, again this is on a web page, with no indication of the date that it was published (see Appendix 10).

All information and guidance (not just that relating to coronavirus) should be provided in a format that can easily be accessed, including archive versions, and the date of publication should be clear. All changes relating to Covid-19 made by the Home Office should be available in a single location. After this was raised by ILPA, the Home Office did set up a page which has some of the policies, however it does not have all of the information, for example there is nothing on asylum available on that page<sup>3</sup>.

Information provided by VFS and TLS<sup>4</sup>, the outsourced providers used by the Home Office, has also been difficult to navigate easily, neither initially had an easily locatable list of all the countries affected and what the alternative arrangements are, if any. Instead, you had to click through various pages and could only look at a single country at a time. VFS has subsequently made improvements<sup>5</sup>.

### Dissemination of information via “Factsheets”

The importance of having guidance that is accessible to the applicant and in one place was highlighted in the Law Commission’s report on Simplifying the Immigration Rules, in particular at recommendation 31: *the aim of the exercise to simplify guidance should be to rationalise the number of guidance documents with a view to reducing the guidance on any topic into a single document incorporating guidance for both caseworkers and applicants*<sup>6</sup>.

The Home Office only partially accepted that recommendation, but did appear to accept the premise<sup>7</sup>:

***“Our priority is to ensure that guidance is accurate and clear and describes how the Rules work. We will continue to rationalise guidance and remove duplicate and out of date guidance. We will consider the Law Commission’s suggestions to provide an index of guidance linked to the Rules. We agree that each document should be given a clear and informative title. We already have an established process where we illustrate in guidance where changes from the last version are set out. We will consider the Law Commission’s suggestions to improve the way we archive our guidance and make sure that is accessible online in the future.”***

In addition to a number of policy decisions that are being sent out in response to emails only, rather than published, these ‘stakeholder’ factsheets (Appendices 11 to 15) are not accessible online, seem to often contain key information which are not elsewhere (e.g. that if you have already emailed under the previous system you do not need to also send a form); and not only that, there is sometimes information which is in the email attaching them which is then

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<sup>3</sup> <https://www.gov.uk/government/collections/coronavirus-covid-19-immigration-and-borders>

<sup>4</sup> <https://uk.tlscontact.com/>

<sup>5</sup> <https://www.vfsglobal.com/en/individuals/covid-19-customer-advisories.html>

<sup>6</sup> [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/01/6.6136\\_LC\\_Immigration-Rules-Report\\_FINAL\\_311219\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/01/6.6136_LC_Immigration-Rules-Report_FINAL_311219_WEB.pdf)

<sup>7</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875205/24-03-2020\\_-\\_Response\\_to\\_Law\\_Commission\\_for\\_publication.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875205/24-03-2020_-_Response_to_Law_Commission_for_publication.pdf)

not published anywhere else. There is also in some cases apparent discrepancies between the stakeholder factsheets and the published guidance.

While it is of course extremely useful for the Home Office to contact stakeholders directly with updates, care must be taken to ensure that information is publicly available, and is not solely distributed by email to stakeholders, as this will never have the reach of information that is published on GOV.UK. Good communications practice during the pandemic can be seen in other government departments, for example HMCTS and the Ministry of Justice have been sending out daily emails with updates, marking information that is new each day. A similar service from the Home Office, covering both asylum and immigration, would be useful, although we would still suggest that the daily emails are also published online in order to maximise accessibility and transparency.

While there are areas that can be improved upon, we have also seen positive examples of communication by the Home Office, such as reaching out to ILPA to ask about the service of asylum decisions electronically, and the Home Office appeals team contacting us in relation to the service of judicial review applications electronically, and to discuss arrangements for the provision of documents relating to appeals electronically. While we are still awaiting a formal response to our recommendations document of 21 March, we have had informal conversations with the Home Office about these and we understand that certain changes are in process, our concern is with the amount of time that this is taking in a situation that so urgently requires action.

### NASF Stakeholder meetings

ILPA attends stakeholder meetings with the Home Office and other organisations in the sector. These meetings cover a wide range of areas, including detention, children, decision making and equalities. This is the main way that the Home Office engages with the sector on a regular, constructive basis. It is therefore of concern that ILPA has received communications in relation to three of those groups where meetings have been cancelled or the Home Office are seeking to limit the total number of attendees to ten (to comprise five Home Office staff and five NGO members). We do not consider this to be justified, and it is particularly of concern that this is being done at a time when the Home Office needs to provide answers to many questions, especially as regards detention.

### NHS concession

In relation to NHS workers, on 3 April 2020 the update to the “Coronavirus (COVID-19): advice for UK visa applicants and temporary UK residents” webpage provided for the following (Appendix 16, version dated 6 April 2020):

***“If you’re a doctor, nurse or paramedic working for the NHS***

*Your visa will be automatically extended by one year if it is due to expire before 1 October 2020. Family members with a visa due to expire before 1 October 2020 will also have their visa extended.*

*The extension is free and you will not have to pay the immigration health surcharge.*

*You do not need to apply. We will contact NHS employers to identify staff eligible for this extension.*

*We will tell you and your employer if you have received an automatic extension.”*

On 17 April 2020, the page was updated again, and it now states:

***“If you’re working for the NHS***

*Some NHS workers and their families will get their visas automatically extended because of coronavirus.”*

This then links to the General work visa (Tier 2) guidance (again contained only on a web page)<sup>8</sup> which states:

*“Visa extensions for NHS workers*

*Because of coronavirus (COVID-19), some NHS workers and their families will have their visas automatically extended for 1 year. To get the extension, you must:*

- *work for the NHS as a doctor, nurse or paramedic*
- *have a work visa that’s due to expire before 1 October 2020*

*The extension will apply from the date your visa is due to expire. UK Visas and Immigration (UKVI) will contact your employer to confirm your visa has been extended.”*

This appears to be a change in policy, and that the extension now only applies to those on Tier 2 visas, however the position is unclear and the change was not accompanied by any announcement. If the policy has been changed to exclude anyone who is not on a Tier 2 visa, then this is clearly unfair to anyone covered by the earlier announcement but not under these changes. It is an entirely unsatisfactory manner in which to make such policy changes, not least because the earlier version is not easily accessible.

There are three groups of health workers who are excluded from the NHS concession:

1. The first group are those who would have fairly assumed that they were in fact covered by the extension when it was announced on 3 April 2020, namely, doctors/nurses/paramedics who are not on Tier 2 visas. For (hypothetical) example, consider a single mother of a nine year old child born in the UK, both granted limited leave to remain in the UK on the basis of their family life, the mother is employed by the NHS as a nurse. If her leave is due to expire in August this year, she will be expected

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<sup>8</sup> <https://www.gov.uk/tier-2-general/extend-your-visa#visa-extensions-for-NHS-workers>

to pay an application fee of £1,033, plus the Immigration Health Surcharge of £1,000, and will need to pay the same again for her daughter, totalling £4,066. Her colleague who is here on a Tier 2 visa will have a free extension to October 2021.

2. The second group of people affected are those who are not directly employed by the NHS, for example agency (or “bank”) staff, and those who are employed by private hospitals but who are also working to support the NHS and the public during the pandemic. This group are not covered by the concession.
3. The third group of people are those who are directly employed by the NHS, but who work not as doctors, nurses or paramedics, but instead work in other vital roles such as hospital porters, health care assistants or cleaners. We do not understand the NHS to place less value on these staff, it is unclear why the Home Office appears to have done so.

The committee may wish to ask the Home Office to what extent the NHS was consulted about this concession.

The problem of the Immigration Health Surcharge also cannot be ignored. This is due to increase to £624 per year of leave on 1 October 2020<sup>9</sup>. A doctor whose leave is due to expire on 30 September 2020 will have her leave extended for one year, automatically and free of charge, whereas her colleague whose leave expires the following day would need to pay the application fee as well as the Immigration Health Surcharge. ILPA’s position is that the Immigration Health Surcharge amounts to double taxation, and it should be scrapped. To increase it at this time is particularly inappropriate and due to the financial pressures people are experiencing at present, it is likely to have the effect of driving some people out of immigration status for affordability reasons. While a fee waiver procedure does exist, it is onerous, and difficult to challenge negative decisions.

### Home Office Policy Response to Covid-19

Our recommendations were sent to the Home Office on 21 March 2020. Of those recommendations, some have since been addressed or partially addressed, however many are yet to be formally addressed, for example in relation to the minimum income requirement, no recourse to public funds, victims of trafficking, English language tests, and expiry of vignettes.

It is difficult to understand why there has been such a lengthy delay. ILPA is concerned that the Home Office continues to prioritise immigration controls above all other considerations, including those of the public health. The issue of priorities highlighted in Wendy Williams’ review<sup>10</sup>. We understand from our dealings with the Home Office that they take this report seriously and are seeking to make changes with the department, however from the response to this pandemic it is difficult to see that there has been much of a change in attitude. We

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<sup>9</sup> <https://www.legislation.gov.uk/ukdsi/2020/9780111194584/contents>

<sup>10</sup> See, for example, page 53

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876336/6.5577\\_HO\\_Windrush\\_Lessons\\_Learned\\_Review\\_LoResFinal.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876336/6.5577_HO_Windrush_Lessons_Learned_Review_LoResFinal.pdf)



have been in contact with people within the Home Office who certainly do seem keen to resolve the problems highlighted in our recommendations document, however it is unclear what is happening within the department that is delaying or preventing the urgent implementation of the required changes.

As is detailed below, in areas such as No Recourse to Public Funds and immigration detention, there has been very little if any movement to resolve the issues prior to the Home Office being litigated.

## No Recourse to Public Funds

There have been certain areas where the Home Office appears to have taken little action prior to being litigated. One of these areas is in relation to the No Recourse to Public Funds restriction, a condition placed on most people's leave. An urgent application was made to the court and as detailed on the lawyers Deighton Pierce Glynn's website:

***"At and just before the hearing, the Home Office made a series of important concessions, including accepting for the first time that the legal challenge to the NRPF policy raises 'serious issues', which should be looked at by the court urgently. It has also issued revised guidance to staff instructing them to 'provide sympathetic and expeditious decision making' during the pandemic when dealing with applicants seeking to have their NRPF condition lifted."***<sup>11</sup> (our emphasis)

It is of concern that decision makers need to be explicitly told to provide sympathetic and expeditious decision making. In our view this should be the baseline for caseworkers, and during the pandemic a greater level of response than this is required. To illustrate, the claimant in the case referred to above is a single mother with young children<sup>12</sup>, it is difficult to see how withholding public funds from people in her situation or indeed anyone is the correct course of action during this crisis. The point is obvious and trite, but people should not be put in a situation where they feel forced to work in order to avoid destitution and homelessness, doing so is a public health risk.

The impact of the Home Office's delay in implementing and communicating changes is illustrated by the situation of one organisation, The Unity Project ("TUP"), who also supported the above litigation. In March TUP reported that 13 of their service users are currently awaiting the outcome of a pending change of conditions application, to have the No Recourse to Public Funds restriction lifted from their leave. In every case, the Covid-19 pandemic has exacerbated the applicant's destitution. Their destitution is also exacerbating the Covid-19 pandemic, as their inability to access the support that they need directly impacts their ability

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<sup>11</sup> <https://dpglaw.co.uk/home-office-agrees-a-rethink-of-no-recourse-to-public-funds-policy-in-light-of-coronavirus-following-todays-high-court-legal-challenge/>

<sup>12</sup> <https://dpglaw.co.uk/the-unity-project-backs-urgent-call-for-no-recourse-to-public-funds-policy-to-be-lifted-during-pandemic/>

to take public health precautions, thus increasing their exposure to the virus and their potential to spread it.

Of the 13 people referred to above, their circumstances were as follows:

- Eight of them were on 'zero hours' contracts and will therefore not be paid if they do not work.
- Ten were living in shared accommodation with at least one other family (this includes six who were being temporarily accommodated by friends due to homelessness). They were therefore unable to completely self-isolate.
- Ten were sharing a single room with their children.
- One of them was self-isolating in a single room with her two children, ages five and six, who are both autistic and extremely active.
- One applicant was six months pregnant and ten have underlying health conditions or dependants with underlying health conditions which could make them particularly at risk from the virus.
- Seven are 'key workers' and therefore required to continue to work and be in contact with vulnerable people, but unable to take the necessary precautions to protect themselves and those they live with due to shared, crowded housing.
- One of these key workers was forced to leave her 15-year-old daughter alone at home in shared accommodation with five strangers, mostly adult men.
- 11 out of the 13 are single mothers who will have to pay for/provide childcare while their children are off school.
- One applicant was travelling by public transport for 40 minutes each day before/after work to leave her children in the care of her sister while she works.

Financial or accommodation support from friends/relatives has reduced generally as a knock-on effect of the nationwide loss of income. For example, one applicant was previously reliant on some minimal support from the estranged father of her children, but he has lost income due to the pandemic, and can no longer provide even this. Half the people referred to above estimated that they had less than one week's food supplies, mainly comprising basics such as rice and potatoes. The pandemic is compounding and highlighting the already desperate circumstances of those who are subject to the No Recourse to Public Funds restriction.

## Detention

We are aware that many detainees have been released, however immigration detention can only be lawfully used in order to effect removal, and this is not currently possible to most, if not all countries. ILPA's position remains as set out in our recommendations document, namely that all detainees should be released and provided with safe accommodation.

It is unclear how many people still remain in immigration detention. The Home Office should provide these figures on a weekly basis during the pandemic, broken down by Immigration Removal Centre/Prison and by country of intended removal. It appears that bail applications are being granted almost as a matter of routine, BID reporting on 15 April that since 20 March

they had 33 clients granted bail, and only one refused<sup>13</sup>. This again raises questions about why people remain in immigration detention.

As with NRPF, in an area requiring urgent action, it is unclear what steps were being taken to ensure the safety of detainees, and that their detention was lawful, prior to litigation being initiated by Detention Action, whose website states the following in relation to the case they brought that was heard on 25 March 2020<sup>14</sup>:

*“Guidance issued by the Home Office **following the initiation of legal proceedings** include the following protective measures:*

- *Enhanced screening, identification and monitoring of those at risk or showing symptoms of Covid-19, particularly for this with underlying health conditions.*
- *Ensuring that persons at increased risk from Covid-19, and persons who are symptomatic, are provided with facilities to self-isolate in single-occupancy rooms and are provided with individualised care plans*
- *A review of cleaning practices within detention centres to ensure compliance with Public Health England guidance*
- *Provision of anti-bacterial cleaning materials to detainees, upon request*
- *The introduction of social spacing measures in communal areas*
- *The production of specific guidance to explain in clear terms how to reduce the risk of an outbreak of Covid-19”*

Detention is only lawful to pursue removal from the UK, which is not possible at the moment, in the course of the litigation the Home Office disclosed a list of countries to which removal was not possible, but it is unclear what action had been taken by the Home Office to review and release those who were no longer removable prior to Detention Action’s case.

## English Language Tests

The Home Office position on these has still not been confirmed. The implications of this for those who need these in order to make an application cannot be overstated. For example, a person whose leave is to expire imminently and who is eligible to apply for indefinite leave to remain would be required to pass the test in order to make a successful application. The test centres are currently closed. This means that they are unable to fulfil the requirements for the indefinite leave application. Their options are therefore:

- To allow their leave to expire, as they know that they are unable to meet the requirements for an indefinite leave to remain application
- To pay thousands of pounds for a limited leave to remain application, where they are actually eligible for indefinite leave to remain if able to take the test

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<sup>13</sup> <https://twitter.com/BIDdetention/status/1250359079874318338?s=09>

<sup>14</sup> <https://detentionaction.org.uk/2020/03/26/press-release-over-350-released-from-immigration-detention-and-all-cases-to-be-urgently-reviewed/>

- To make an application for indefinite leave to remain at a cost of £2,389, with no guarantee or knowledge of how it will be dealt with by the Home Office given it does not meet the requirements.

The Home Office must urgently confirm the position for these people and publish guidance on GOV.UK which should make provision for refunds for anyone who has applied for further limited leave in order to protect their position, as well as confirming that those who may have overstayed due to the lack of guidance will not be in any way penalised.

## Students

Again, communications from the Home Office were reported to be an issue in this sector. For example, the guidance for China nationals of February 2020 came in late, and subsequent to that members reported being unable to advise students from other countries, who seemed to be stranded and suddenly at risk of overstaying.

Sopra Steria centres were closed at short notice, and this is in the context of them already having a history of cancelling students' appointments at very short notice, the day before or even on the day itself.

There were also concerns about help for vulnerable students and those with disabilities who do not have health concerns but would find it harder to travel to appointments (if they were to remain open).

There was a prolonged period of time in which there was no guidance for sponsors in relation to sponsor guidance issues such as the prohibition on distance learning, attendance monitoring, switching in country, and what will happen to those who cannot meet academic progression requirements.

A manager of a Premium Customer Support Team for Tier 4 sponsors was asked to confirm what would happen to those whose leave was going to expire but were unable to leave the UK, the member was told that it was with Ministers for discussion and that probably nothing would happen for a while and that the member should take a pragmatic approach. This did not assist in alleviating the enormous amount of anxiety felt by students.

On 27 March 2020 the Home Office published its guidance "Coronavirus (COVID-19): advice for Tier 2, 4 and 5 sponsors" UKCISA has published a useful summary of the current position in relation to student visas, including a list of issues that have been resolved, and those that remain outstanding<sup>15</sup>.

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<sup>15</sup> <https://www.ukcisa.org.uk/Information--Advice/Studying--living-in-the-UK/Coronavirus-Covid-19-info-for-international-students>

## Coronavirus helpline

Members widely report that their experience of the Covid-19 telephone helpline has been very poor, and that despite their questions being very specifically Covid-19 related, they are directed to the general enquiry line, who in turn of course direct them back to the Covid-19 helpline.

One member reports that she has an 80 year old Ukrainian national client, with lung cancer, whose leave was due to expire on Thursday 19 March 2020<sup>16</sup>. However there were no flights available as Ukraine had suspended all air traffic in and out of the country for at least two weeks. Ukraine had also banned foreign nationals from entering the country for two weeks.

They emailed the Covid-19 team on Monday 16 March 2020 to ask them to extend her leave while she works out what to do. They didn't receive a reply from the Home Office email address so they spent an hour unsuccessfully trying to get through on Tuesday 17 March 2020.

On Wednesday 18 March 2020 the lawyer managed to get through after 40 minutes. When they explained the situation, they were told that Ukraine only banned foreign nationals from entering the country. When the lawyer explained that this doesn't help our client because there are no flights there, the person on the helpline initially tried to argue that there were flights because they could see some on sale. The lawyer explained that these were price comparison websites and that the airlines' websites stated that there are no flights.

They seemed to accept this, however they then said that because Ukraine has only suspended air traffic but is still allowing Ukrainian nationals to return home, that the 80 year old client was not prohibited from returning to Ukraine because she can return to Ukraine by other means of transport, for example by car. The lawyer explained that the client is 80 and unable to travel across Europe by car in the middle of a pandemic, particularly with the advice for over 70s to self-isolate. The helpline advisor said that the government's policy on self isolation only applied to British nationals, not foreign nationals.

The person on the helpline did repeat that, provided the client made every effort to return home she would not be penalised, but they had also indicated the belief that "every effort" included travelling by car or coach.

## Asylum screening

ILPA and other NGOs have been asking for confirmation of the position on asylum screening for weeks, however this remains unclear. The official position appears to be that those who wish to make an asylum claim must still go and do this in person, however we have had members report to us that screening interviews are being cancelled at short notice. This needs urgent clarification as it is likely to impact on the ability to claim asylum support.

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<sup>16</sup> This story was also covered by May Bulman in the Independent:

<https://www.independent.co.uk/news/uk/home-news/coronavirus-woman-cancer-home-office-ukraine-a9417171.html>

## Trafficking

Members have also raised concerns about the ability to progress casework for victims of trafficking, which is specialised and complex, and involves highly vulnerable individuals. For example, obtaining medico legal reports can be essential to a trafficking victim's case and it is not currently possible to obtain this if the victim has no smart phone with access to a video call for a video assessment with a doctor (which is necessary in MLR assessments to observe body language and reactions), or the difficulties in taking instructions from individuals remotely when the client may struggle to open up when relationships with representatives are new, may be illiterate and does not speak English, especially when there is no smart phone video access.

If the Home Office cannot make a properly informed decision on a case then victims should be granted leave to remain on an exceptional basis with the right to work and access public funds rather than having cases extended or consideration deferred. In the alternative, if they have no leave and the Home Office is unwilling to grant leave on an exceptional basis then they should be granted the right to work and access public funds and those conditions be lifted from bail conditions in the future if this becomes necessary when an application is decided after it can be properly informed and considered (if leave is not granted as a result of the application).

Similarly, for people who have first time applications for discretionary leave as a victim of trafficking made on an application form (which could be many as so many are refused discretionary leave at the conclusion of the NRM), if there is no way to enable biometrics and their application is put on hold, they should be granted leave to remain on an exceptional basis as it is not reasonable that their cases are placed on hold when the knock on effect is to leave them in limbo and often destitution.

The alternative would be to provide them with accommodation and support by the Home Office under the Victim Care Contract or leaving them destitute and facing the healthcare and other support service implications for the individual remaining in need and unable to move into independent living, even on a temporary basis. Understanding will be needed and dissemination of this understanding to those making decisions on support, so that reinstatement of support is permitted quickly if exceptional leave cannot be granted. There is no guidance on what will happen for people needing reinstatement of support (see support comments below).

For those who have leave and are seeking to extend it - an exceptional grant of leave would be the preference for the security it brings, rather than keeping applications on hold. Putting cases on hold can bring problems even for those who want to extend leave.

On Friday 20 March one member was told by the Home Office service and support centre that if someone cannot lodge their biometrics for a fee free application (where they also give documents to be scanned) then their application will simply be put on hold. We do not believe that there has been formal confirmation of this position yet. From experience, the member has concerns that this will cause problems with the DWP as they have previously had a client

who was extending her discretionary leave to remain and her benefits were stopped twice, despite the lawyer providing a letter explaining that the client continued to have leave under s3C of the Immigration Act 1971 with supporting evidence. For them, this was not enough, and information about eligibility had to come from the Home Office and internal bureaucracy held up common sense and compassionate decision making. There was no enquiry made from the DWP to the Home Office proactively before benefits were stopped. This meant that the client, who was unwell at the time, almost went without heating or food over Christmas when services were shut and relied on her lawyer and her independent NGO support worker to provide her with money for these essentials.

The House of Commons Work and Pensions Committee has previously made recommendations about DWP sensitisation to victim of trafficking needs in 2015<sup>17</sup> and this is all the more important if applications will now be put on hold for an unknown period, and victims may struggle to access advice and support workers to undertake advocacy to resolve problems.

#### Disclosure by Home Office

On 23 March 2020 the Subject Access Request Unit emailed ILPA stating that the Home Office will only provide electronic SARs from now i.e. just the GCID (database) notes.

Members are concerned that it will be impossible to properly prepare many cases without sight of all of the background documents. This has been an ongoing issue for years prior to the pandemic, with the Home Office being reluctant to provide full copies of files and instead insisting on providing electronic copies only. Members experience is that key information and documents for their cases are only found in the full background documents and not in the electronic SARs. Therefore this step is likely to have long term implications for ongoing cases.

#### **20 April 2020**

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<sup>17</sup> [https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/80308.htm#\\_idTextAnchor063](https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/80308.htm#_idTextAnchor063)