ILPA MONTHLY

APRIL 2020

COVID-19: Home Office Policy

Too little too late?

With travel bans and lockdowns witnessed globally in response to the coronavirus outbreak, the impact on migrants is significant and growing. Yet the Home Office policy response to this mounting crisis has been disappointingly slow and incomplete.

IN THIS ISSUE

Despite engaging with practitioners and ILPA since January 2020, the initial Home Office policy response to the crisis, published on 17 February 2020, made surprisingly limited provision. The establishment of the Home Office's Coronavirus Immigration Team (CIT) facilitated the receipt of many more questions but provided few answers, often with no response or simply directing enquires back to the website. And whilst the revised policy, first published on 24 March 2020, goes much further than the last, it leaves many of the original questions unanswered and raises many new ones.

As we enter April, Sopra Steria biometric centres across the UK are now closed (and expected to remain so for 6 weeks), as are VACs internationally, and migrants, and their employers, are desperate for answers.

Lack of clarity

The Home Office's initial Covid policy automatically extended leave to remain in the UK until 31 March 2020 for certain migrants whose leave was expiring between 24 January and 31 March 2020 (although the legal basis for this remains far from clear, in the absence of written notice or a statutory instrument). In contrast, under the new policy, an extension is no longer automatic. Migrants whose leave is due to expire between 24 January and 31 May 2020, and who cannot leave the UK, may obtain an extension of leave until 31 May 2020, by contacting the Coronavirus Immigration Team. They have been asked to provide not only their personal details but reasons why they can't go back to their home country (for example if the border has closed), following which the CIT is to respond to confirm receipt and when leave has been extended.

The published guidance introduces uncertainty for applicants, with the spectre that their reasons may not be accepted. ILPA was told that the process was supposed to be straightforward and that in reality reasons were not going to be routinely rejected. But this just raises the question why the guidance was ambiguously worded in the first place.

The current Home Office guidance notably states that *"No individual who is in the UK legally, but whose visa is due to, or has already expired, and who cannot leave because of travel restrictions related to COVID-19,* ***will be regarded as an overstayer****, or suffer any detriment in the future"*. This may not necessarily provide assurance that such a person is not in fact an overstayer, rather that they will not be treated as such.

The announcement of 31 March 2020, that certain NHS workers whose leave is due to expire by 1 October 2020 will have their leave automatically extended for 12 months, is undoubtedly most welcome, but again the legal basis for this arrangement is not yet clear.

Switching

Switching to a long-term immigration category within the UK (in circumstances where the Rules would normally require the applicant to depart and apply for entry clearance) will now be permitted. But here again the opportunity for much needed clarity has been missed. No definition has been provided of what constitutes a 'long-term' category and, despite no such limitation expressed in the policy document, the Home Office has since clarified in correspondence that the switching policy applies only to migrants whose leave is expiring between 24 January and 31 May 2020. This overlooks that the need to change immigration status in not occasioned only by leave expiry, but by unavoidable changes in circumstances (such as relationship breakdown, business changes or job loss – all prevalent outcomes in the current crisis). Those migrants experiencing these issues are no more able to travel abroad and apply for entry clearance than those whose leave is expiring. Given the proposed widespread switching under the new immigration system in 2021, this narrow approach at a time of crisis in the interim would seem to serve little benefit.

Migrants outside the UK

With many migrants stranded outside the UK, another of the key issues yet to be addressed is the exercise of discretion to waive excess absences for ILR and naturalisation applications. Although existing policies provide some scope for discretion, more explicit provisions, specifically addressing the Covid-19 circumstances, would provide clarity and consistency.

Many other scenarios arise for families separated by the crisis: for example, PBS dependent children who have attained the age of 18 may only apply for further leave to remain as a PBS dependant from within the UK, not leave to enter, placing them in danger if abroad at the time of expiry. A PBS dependent spouse unable to travel back to the UK at the time the main migrant is applying for ILR cannot (under the current Rules) apply for ILE from abroad, but nor can they apply for further leave

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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.

Celina Kin-Armbrust

30th October 1982 to 23rd February 2020

Dear Members

ILPA is very sad to have to announce that Celina Kin-Armbrust our Training and Communications Officer passed away on the 23rd February 2020. Celina died of breast cancer having been ill since 2017, straight after the birth of her first child Ellie.

Celina joined ILPA in January 2014 and took on the role of Training Officer. She brought an energy and enthusiasm to the role which was most welcome and during her time at ILPA she developed a number of our very successful one day conferences. She then also took on the role of communications for ILPA and she was the person that completely redesigned our annual report.

She was a much loved and respected member of the ILPA staff team who will be sorely missed. She was always able to find the humour in the most challenging of situations and she had a fantastic 'can do' attitude.

Celina asked that her family set up a fundraising page for Breast Cancer Care and the link is shown below for any members that would like to donate:

https://inmemory.breastcancernow.org/celina-kin-armbrust

With kind regards

Nicole

Message from Adrian Berry (Chair of Trustees) and Nicole Francis (Chief Executive)

Dear Members

We hope that you all keeping safe and well in these challenging times.

ILPA is working hard to ensure that as many of our resources and activities can be accessed online by our members during this period.

Working Group meetings

The key change so far has been to ensure that all of our thematic and regional working groups go ahead as planned using the online meeting tool Zoom. Working group meetings will be vital to all of us over the coming weeks and months and so we would also like to remind members of the need for all attendees at a working group to be mindful of the need to ensure that as well as contributing at meetings we also make sure that we listen to others and allow all those present to have their say. ILPA is there to represent the interests of all of our members and so it is very important that we hear as wide a range of views as possible. We then all need to work together to build a consensus so that any position ILPA takes truly represents our membership.

Training

ILPA is moving as much of our training as possible online for the coming months and so we will be delivering a series of webinars on a range of different topics. We will also continue to plan face to face trainings and conferences for later in the year.

With many thanks for your ongoing support.

Adrian Berry (Chair of Trustees) and Nicole Francis (Chief Executive)

ILPA ACTIVITIES

Coronavirus Legal Activities

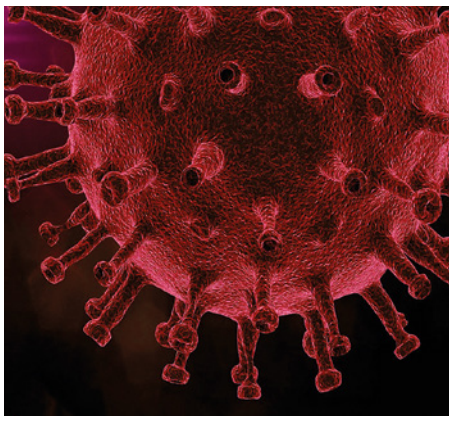
ILPA has been actively engaging with the Home Office, HMCTS, the Tribunals and the Legal Aid Agency to provide critical feedback on how each organisation is responding to the coronavirus outbreak.

Since the coronavirus outbreak began to have an effect on the immigration system in January, ILPA has been constantly feeding back issues to the Home Office. We published a comprehensive list of our recommendations on 21 March, which we have been keeping under review. We have particularly pushed the Home Office to clarify the legal basis of their policy and to significantly improve their communications. In particular, we have asked that they ensure that all documents are located on one page, which we are pleased has now started to happen. We have also kept in close contact and provided support to other NGOs in the sector in relation to issues such as immigration detention, asylum processes, immigration reporting and so on.

Before the coronavirus outbreak, we had already been raising concerns with the Ministry of Justice (HMCTS and LAA) in relation to the fact that there is no funding available in the First-tier Tribunal digital reform pilot for the Appeal Skeleton Argument (ASA) in circumstances where, following the provision of the ASA, the Home Office then withdraws the decision such that a hearing does not take place. Both HMCTS and the Ministry of Justice accepted that the existing legal aid structure for appeals needed to be changed. As a result we were able to quickly raise this issue again when the FTTIAC directions for future hearings in light of the Covid-19 pandemic effectively compelled parties to follow the Digital Reform Pilot Directions without any necessary changes to legal aid being implemented. It has now been confirmed that changes will be made to the legal aid arrangements in light of our representations, and we will continue to scrutinise these.

We still have many concerns about the procedures in the FTTIAC, and the UTIAC, and are continuing to raise these at the highest levels. We have been in regular contact with the tribunals and the Ministry of Justice, both by setting out our detailed concerns by writing and in meetings. We have secured a meeting with senior members of the FTTIAC and are pushing for one with UTIAC as soon as possible.

We have been keeping members updated constantly throughout this period, often providing daily updates



of the various changes affecting the system, and we have been very grateful for members' feedback and cooperation throughout this period as we try to handle the extremely large number of issues in a strategic and efficient manner. We are pleased that many members have joined our ILPA Coronavirus Google Group and have made good use of it.

Please continue to look out for updates from us as to the various issues we are seeking member input on.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

A legal overview of the Bill can be found in the legal update section later on in the Monthly.

ILPA is coordinating activity in the sector in relation to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. We held a conference call with key NGOs the day after the Bill was published to understand what amendments people are tabling.

On 17 March, we held the first meeting of our Legislation Working Group via Zoom, with about 30 attendees. ILPA's position on the Bill is going to be focusing on technical issues. There is significantly less scope for politically-charged amendments to the Bill in light of the parliamentary arithmetic. The group discussed various issues with the Bill and will be working on research and amendments in time for the second reading of the Bill on 21 April.

Parliamentary activity on the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

These Regulations were laid on 30 January 2020. They provide a right of appeal against EU settlement scheme decisions. Our briefing to members on the Regulations can be found here.

The Regulations were debated in the Sixth Delegated Legislation Committee of the House of Commons on 3 March 2020. We briefed some of the MPs who spoke in the Committee beforehand, raising the following issues:

- At that point, renewed funding hadn't been announced for those organisations supporting vulnerable individuals under the EU settlement scheme. We briefed on the importance of this being announced urgently. We were pleased this was raised in the hearing and the minister indicated at that point funding would be continued (which was announced subsequently).
- The regulations do not provide a right of appeal against a decision to reject the application as invalid. We were pleased that this was raised by the MPs but, unfortunately, these questions were not answered by the minister, Kevin Foster MP, responding in the Committee.
- The regulations do not provide a right of appeal against a refusal of an application submitted before 11pm 31 January 2020. This creates various practical difficulties which were also highlighted effectively by MPs. The minister said the Home Office had made a decision that it would be preferable for those who applied before the implementation date to simply re-apply to the scheme rather than appeal.

ILPA ACTIVITIES

Meeting with UNHCR and Home Office regarding forthcoming UNHCR report on Preliminary Information Questionnaires (PIQs)

ILPA joined the UNHCR and the Home Office to discuss the UNHCR's forthcoming report following their investigation into the use of Preliminary Information Questionnaires (PIQs) in the asylum process (after the screening interview but before the substantive interview). ILPA members fed into the report last year, including through a meeting with UNCHR in August at which we raised various concerns about the purpose behind the PIQs. When the report is published it will be disseminated to members.

Sopra Steria business conference

In early March, Sopra Steria, in conjunction with UKVI, held a business conference to announce various services available for practitioners to take up to improve the handling of appointments where these are undertaken on a larger scale, as well as to provide a general overview of where things stand in delivering the UKVCAS centres.

Many ILPA members attended and raised lots of serious issues with Sopra Steria about the absence of free appointments. ILPA spoke to various members there and agreed next steps to build a good evidence base to continue to monitor this issue, once normal service resumes after the coronavirus outbreak.

Brexit Civil Society Alliance Settled Status Group Meeting

ILPA attended the recent meeting of organisations working on the EU settlement scheme, at which various issues relating to coronavirus and settled status were raised. We also discussed the recent increase in refusals under the scheme for eligibility reasons and discussed with the sector how we can ensure these cases are monitored effectively to ensure we have an accurate picture of how the Home Office is approaching these cases.

Simplification of the Immigration Rules Review Committee

ILPA has been invited to join the Home Office's new Simplification of the Immigration Rules Review Committee, set up on the Law Commission's recommendation to review the implementation of the simplification project. Sonia attended the first two meetings of this Committee at the Home Office and fed back initial member reflections on the Home Office's response to the report.

The Home Office have said it is an ongoing project for now and no decisions have been taken. As a result, members are encouraged to feed back any comments on the Home Office's response to ILPA as we can continue to feed these back.

Enhanced screening tool

ILPA recently coordinated a letter from the sector raising various serious concerns with a proposed new enhanced screening tool for assessing detainees. This was in conjunction with various NGOs in the detention sub-group of the National Asylum Stakeholder Forum. The Home Office has provided a very inadequate response and so we are continuing to push on this. Sonia recently raised it at the Asylum Strategic Engagement Group.

continued from page 1...

to enter as a PBS dependant if the main migrant is granted ILR (despite the Rules permitting this on an in-country basis). Discretion should be exercised to allow children to be granted ILR in line with the main applicant parent where the other parent is unable to apply due to Covid-related absence.

Migrants who have been issued a 30-day travel vignette, but who will be unable to travel to the UK in that time may potentially be faced with the cost of applications for replacement vignettes (as well as the delay of awaiting the reopening of VACs).

Guidance for employers

Guidance has been issued for sponsors and employers, on 27 and 30 March and 3 April 2020, providing some assistance but again leaving concerning gaps. Beneficial provisions include that sponsors will not be required to cease to sponsor Tier 2 migrants taking unpaid leave for more than 4 weeks, however no corresponding provision is stated for workers unable to travel to the UK to commence employment within the maximum 28 days after the start date on the COS. Whilst the most recent update confirms that sponsors can temporarily reduce the pay of sponsored employees, it does not explicitly confirm that reductions below the relevant thresholds are permitted. Right to work checks may be conducted via video link with an electronic copy document – however a full check will still be required within 8 weeks of the Covid-19 policy arrangements ending.

Undoubtedly, at this time of unprecedented crisis, the Home Office itself is under significant pressure and many of its staff are working hard to continue to process applications and create solutions. The future is uncertain in many ways; clearer policy guidance would serve applicants and the Home Office well. It is hoped that by the time of publication some of the much-needed clarity may have been received. The crisis has exposed that communications processes behind the scenes at the Home Office desperately need improving and speeding up to be able to provide the urgent clarifications that are needed.

This article is accurate as of 3 April 2020. It is likely that more changes will have occurred by the time of publication.

Sophie Barret-Brown, Laura Devine Immigration and ILPA Trustee

ILPA ACTIVITIES

HMCTS digital reform pilot for unrepresented appellants

The pilot for unrepresented appellants is a modified version of the pilot for represented appellants, with an increased role for Tribunal Caseworkers (TCWs) who provide support to the appellant. The main differentiation from the represented appellants system is that the individual does not need to provide a "skeleton" but rather provides "reasons for appeal" which is reviewed by the TCW who may then ask clarification questions afterwards.

Charles attended a simulation of the new digital appeals system for unrepresented appellants, joined by Zoe Harper of Doughty Street and Maria Wardale of the Helen Bamber Foundation. At that point, it was intended that the new service would go live for a private beta on 1 April. The pilot will be opt-in and only available for those over 18, in England and Wales, not in detention and not part of a group appeal. Such appellants will be identified with support from various migrant support charities. The aim is for the pilot to go live for all appeal types in October. There will be a paper-route available at all times, however, including once the pilot becomes the norm.

We tested the service up to the point where the individual submits their reasons for appeal. We raised the following issues:

- Based on the experience of practitioners using the EU settlement scheme, we asked the design team to ensure there are processes in place to ensure emails to appellants do not end up in spam folders and to ensure there are sufficient processes where someone loses access to their email address used to start the appeal. We also asked questions about the security of this process.
- We raised that there was no option for the appellant to choose stateless nationality in a drop-down box.
- HMCTS had a guidance page on different evidence you might want to provide, but we stressed it should be made clear this isn't a mandatory checklist.
- We raised other issues to ensure greater clarity around the guidance on webpages and to explain how appellants would approach various stages.

Home Office Visas and Citizenship Leadership Conference 26 February 2020 – a note from John Vassiliou

I was invited by ILPA to join Nicole Masri (Senior Legal Officer at Rights of Women) in delivering a presentation to approximately 90 UKVI Visas and Citizenship Operations staff ranging from Grade 7 through to Director. Visas and Citizenship covers the majority of non-asylum, non-human rights work undertaken by UKVI. We were asked to "hold the mirror up" and provide feedback on the customer experience.

I thanked UKVI for three aspects of the new digitised application process which had improved the journey for many of my clients: 1) the online application submission and payment process, 2) the acceptance of digital document uploads and relaxation of the previously rigid policy on original documentation, and 3) the capture of photographs via biometric enrolment eliminating the requirement to provide passport-sized photographs with applications.

I discussed a perceived missed opportunity in the digital process, which is the failure of the online forms to intercept obviously problematic answers and inform applicants that a certain answer is likely to lead to refusal. I used the example of a visitor making an in-country spouse visa application during the currency of their visit visa. I also used the example of the issuance of certificate of sponsorship which do not meet the requirements for issuance of a Tier 2 visa.

I concluded by discussing four areas of service that require improvement:

1) The move to digital forms has resulted in the loss of full PDFs of all application questions. I encouraged transparency by allowing applicants and their representatives to see what questions they will need to answer when they complete their application form. This is important to ensure that applicants have all of the necessary information to hand.

2) Almost every client on behalf of whom I have applied for a visa has, at some stage, asked me how they can track the progress of their application. I expressed my hope that progress tracking can soon be implemented on the back of the unique application numbers generated through online applications.

3 I discussed the lack of human contact during the application process which, in my opinion, has been detrimental to effective communication with UKVI. My comments on this were greatly amplified by Nicole Masri who discussed some of the successes of the EUSS Resolution Centre approach and the importance of being able to get an actual decision-maker on the other end of a telephone, as opposed to the dreadful call centre that people are currently directed to.

4) I concluded with remarks about the difficulties caused by Sopra Steria and other external organisations. In relation to Sopra Steria I mentioned the scarcity of free appointments, the cynical removal of the button to filter out only free appointments on the Sopra Steria website, and the small number of "core" centres.

John Vassiliou, Partner, McGill & Co Solicitors

Independent Advisory Group on Country Information

ILPA attended the recent meeting of the IAGCI, which advises the Independent Chief Inspector of Borders and Immigration by commissioning and quality assuring reviews of the Home Office's country policy and information notes. The most recent review concerned country of origin information relating to sexual orientation and gender identity and expression.

ILPA Well-being Ambassadors

ILPA is excited to announce that we have recruited 12 Well-being Ambassadors to champion the aims of the ILPA Well-being working group.

The ILPA Well-being working group aims to:

(1) raise awareness of the importance of well-being in the professional and personal lives of immigration practitioners;

(2) cultivate a culture amongst immigration practitioners where well-being is discussed openly and not stigmatised;

(3) ensure that all immigration practitioners know where to access help if needed. We aim to do so by providing training, seminars and workshops addressing a variety of topics around the theme of well-being; and by providing a list of resources available to practitioners within and outside the immigration law sector.

It is with great pleasure that we can announce that the ILPA Well-being Ambassadors are; **Victoria Bovill-Lamb** of the Office of Immigration Services Commissioner (OISC), **Gabriella Bettiga** of MGBe Legal, **Deepa Chadha** of UKCISA, **Damian Hanley** of Wilson Solicitors LLP, **Brendan Beder** of Beder-Harrison & Co., **Mala Savjani** of Wesley Gryk Solicitors, **Philip McNally** of KPMG Ireland, **Sunitha Rossel-Milner** of Central England Law Centre, **Julianna Barker** of Stone King LLP, **Gerard Stubbs** of Deloitte LLP, **Deirdre Sheahan** of Paragon Law and **Simon Cox** of Doughty Street Chambers.

ILPA Well-being Working Group Meetings

Tuesday 28 Apr 2020 - dial-in details

Tuesday 07 Jul 2020 - dial-in details

Tuesday 22 Sep 2020 - dial-in details

Tuesday 10 Nov 2020 - dial-in details

*Please note that until further notice all working group meetings will be hosted remotely via Zoom. Dial in-facilities will be sent to members in due course.

Here are some resources from Mental Health England, MIND, the Mental Health Foundation, and Good Thinking to help support mental health during these challenging and unique circumstances. At a time when we are transitioning to increasingly remote working its ever more important to stay connected and to ensure our peers have the tools and resources at their fingertips should they need them, so please do share these around if you think they would be beneficial with your team and the wider legal community.

The ILPA Well-being Ambassadors are committed to our cause and to raising awareness of well-being issues within their own firm and the immigration community as a whole:

"For over 25 years as an immigration law practitioner and for 15 years as a well-being coach I have both witnessed and experienced the stresses, frustrations and challenges associated with working within this sector. Immigration lawyers are uniquely affected by an incredibly fast changing legal landscape which brings with it uncertainty, lack of consistent decision making and vulnerable clients affected by these issues and often their own backgrounds. I care passionately about this initiative and feel well-placed to help make a difference."

Brendan Beder

"Mental health is just as important as physical health. Allocating time, space and resources to people's mental health and wellbeing in the work place has to be encouraged. I want to champion wellbeing in the legal profession because cultivating an inclusive, supportive working environment means acknowledging that an individual's mental health is very important; and that it needs to be looked after."

Mala Savjani

"As we work in a profession that is innately stressful, I think it is hugely important for there to be a space for wellbeing to be discussed openly and freely and for support and signposting to be available. I am excited to be involved in promoting ILPA's wellbeing strategy and the importance of finding ways to be happy and healthy, to help improve wellbeing within the sector."

Julianna Barker

"These are critical times for the sector in which migrants need more support than ever before with less support available to those who assist them. There is a growing and urgent need to promote and encourage the wellbeing of those dealing with these increasing pressures. ILPA's well-being working group has acknowledged and responded to this need, and I have valued and appreciated being a part of this. I hope to be able to continue to support the group in doing this and champion well-being in the sector as a well-being ambassador."

Deepa Chadha

BRPs expiring on 31 December 2024 where leave has been granted for a longer period

Back in January, ILPA raised concerns about BRPs expiring on 31 December 2024 where leave was granted for a longer period. The Home Office has responded to our concerns and you can read the response here.

The Home Office has said, following our letter, that:

- The Home Office will introduce a new UK format BRP next year which will not have restricted validity, and will therefore reflect the period of leave granted, or be valid for 10 years (five years for children) where indefinite leave is granted.
- For those who have a limited validity BRP they are revising the notification of grant of leave and the BRP carrier letter to explain the difference in the date of expiry of leave and date of validity of the BRP card.
- They will update right to work and right to rent guidance to ensure that employers and landlords are also aware of this issue.
- They will provide advice on GOV.UK to reassure anyone with a short-dated BRP that it does not affect their immigration status and they do not need to do anything now. By early 2024, before these BRPs start to expire, they will publish details of what needs to be done to obtain a free replacement BRP or to use digital status.

APPG: 'I have the right to feel safe' Children in the Hostile Environment

Hosted by: No Recourse to Public Funds, Liberty and Latin American Women's Rights Service
Location: Palace of Westminster

Attendees

- Kate Osamor MP for Edmonton
- Naz Shah MP for Bradford west
- Lloyd Russell-Moyle MP for Brighton and Kemptown
- Gracie Bradley - Liberty
- Dami Makinde - We Belong
- Brighter Futures
- Sin Fronteras Youth Group

ILPA attended the recent APPG on Children in the Hostile Environment on Wednesday 26th February at the Palace of Westminster. The event was chaired by Kate Osamor, MP for Edmonton, and attended by Naz Shah, MP for Bradford West and Lloyd Russell-Moyle, the MP for Brighton and Kemptown.

The APPG welcomed speeches from two different youth groups: Brighter Futures and Sin Fronteras. The aim was to provide a space whereby the voices of young people directly affected by a hostile immigration system could be heard by those scripting and re-writing legislation.

There was initial reference to Liberty's campaign 'Care Don't Share' that highlights how data sharing between local authorities and institutions is used for immigration enforcement and puts children of migrants at greater risk. The report found that children's addresses were being collected by the Home Office and used for immigration purposes despite the Department of Education withdrawing from the data sharing service. Between 2015 and 2019 data was shared to the Home Office 1500 times. Liberty published the Care Don't Share pledge and urges all to sign.

Dami Makinde, of We Belong, highlighted the reality of being on the 10-year route for young people saying "It feels like a never ending probation. Every step that we take is over-analysed," which leads to increase in mental health problems, heightened stress and anxiety and financial difficulties. We Belong are fighting for a shorter route to settlement akin to the EU Settlement Scheme, and are asking the government to make it more affordable.

The youth group from Brighter Futures gave the APPG an insight into what their own lives had looked like within the immigration system, telling the room stories from their own lived experience. We heard how having no recourse to public funds meant they were not granted the same safety net that is afforded to their peers. This includes a lack of tangible benefits such as free school meals or financial assistance, but also can lead to increased isolation or mental health issues through stigmatisation and a lack of physical security. They highlighted the isolation they have all felt within the immigration system, the lack of financial support and their increased vulnerability to abuse because of this. The young women from Sin Fronteras echoed these sentiments and added mention of the increased abuse they have suffered on public transport or in the street for speaking Spanish. One woman said she says she is from Spain instead of Mexico to avoid backlash.

The floor was open to questions; there were representatives from ECPAT UK, Bernardos, Project 17, Coram Children's Legal Centre, the Children's Society and UNHCR among others in the audience. This offered a chance for discussion and collective thinking on how to overcome issues raised and work more cohesively across grassroots organisations to make impactful change.

The young people attending gave us insight into the daily challenges they face as a result of being migrants or the child of migrants. They demonstrated that there is a lack of support and a lack of opportunities offered to them and it is having a damaging effect on their mental health.

The resounding theme was unity, both between the organisations supporting young migrants, and between the organisations themselves to ensure the voices of young vulnerable people do not go unheard. One of the young women from Brighter Futures asked the panel, "When will you start treating young migrants as an individual instead of a statistic?" To which Kate Osamor replied, "Parliamentarians need to be braver. Because if we don't do that we don't change the course of the conversation. We need your voices to be heard."

Amira Rady and Esme Kemp, ILPA

ILPA ACTIVITIES

Strategic Legal Fund

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.

We recently awarded two grants:

Coram Children's Legal Centre was awarded funds for pre-litigation research in order to bring strategic legal action on EU settlement scheme applications made by children and young people with criminal convictions, including especially looked-after children and care leavers.

Detention Action and Public Law Project were awarded funds to undertake pre-litigation investigations in relation to the LAA's failure to make adequate arrangements for the provision of legal services to detainees in IRCs under the Detained Duty Advice Scheme.

As a result of the Covid-19 outbreak, the SLF is currently not running regular funding rounds. Please note that we still accept out-of-rounds funding proposals where the urgency can be demonstrated.

We expect the SLF to be back up and running from September onwards when it will also be expanding its eligibility criteria. Please bear with us in the meantime. All current grants are being managed in-house by ILPA. If you have any questions, please email info@ilpa.org.uk.

www.strategiclegalfund.org.uk

After over two years of running the Strategic Legal Fund, the time has come to move on. I am very grateful for the opportunity I've been given to work with and learn from inspiring and passionate grantees, expert panel members and colleagues. The SLF truly is an invaluable source of funding and it has been an absolute pleasure to support the amazing work that is taking place defending young migrants' rights in the UK.

Bella Kosmala, project manager SLF

Briefing on the EU Settlement Scheme:

suitability requirements guidance version 2.0

The "EU Settlement Scheme: suitability requirements" guidance was published on 11 December 2019 and provides guidance to caseworkers on how to assess whether an applicant meets the suitability requirements of the EU Settlement Scheme (EUSS). This briefing is intended to provide some insight into the key points of this guidance and point out areas of potential controversy.

Paragraphs *EU15* and *EU16 of Part 1 of Appendix EU to the Immigration Rules* set out the basis on which an application under Appendix EU will or may be refused on suitability grounds. According to the guidance, the assessment of suitability must be conducted on a case by case basis and be based on the applicant's personal conduct and circumstances in the UK and overseas (page 14), including whether they have any relevant prior criminal convictions, and whether they have been open and honest in their application (page 19).

Rights under the EUSS do not accrue automatically but are granted following an application, and as such criminality becomes crucial. Applicants are requested to disclose past criminal offending, but the application is also run against police databases. The guidance is unclear on the threshold by which failure to declare a conviction would lead to a refusal, thereby creating a potential trap for those who have failed to disclose past convictions with such non-disclosure being relied upon as to refuse an application on suitability (honesty) grounds. Caseworkers are directed to consider evidence of criminality that they encounter on the Police National Computer ('PNC') and Warnings Index ('WI'), even if that evidence was not declared by the applicant. The caseworkers should then determine whether the application is to be referred to Immigration Enforcement ('IE'), who will consider whether the individual in question ought to be deported or excluded. The guidance suggests that a final decision on whether to pursue deportation or exclusion will be subject to a proportionality assessment (page 22).

The position on children is seemingly slightly different. Children under the age of 18 are not required to disclose any criminal activity. However, an application for any child over the age of 10 will still be subject to the same automatic checks, including PNC and WI checks. The guidance directs caseworkers to, where appropriate, consider evidence of criminality that they encounter on the PNC and WI, even if that evidence was not declared. On that basis, it appears that children under the age of 18 can still be refused on suitability grounds and their cases can be referred to IE. This aspect of the scheme is of concern.

The guidance lists in detail situations that warrant a referral to IE for consideration as to whether the applicant ought to be deported or excluded. In summary, amongst other things, a case should be referred to IE if the applicant has convictions that have resulted in their imprisonment (page 13). According to the guidance, a sentence of imprisonment does not include a suspended sentence that has not been activated.

A case should also be referred to IE if it is awaiting deportation consideration or the applicant is subject to an existing UK deportation decision or exclusion order. Where a deportation order has been made by virtue of the EEA Regulations 2016 but the applicant has not been removed under that order during the two-year period beginning on the date on which the order was made, IE must consider whether there has been a material change of circumstances since the deportation order was made.

A case should not to be referred to IE where a recorded decision has been made not to pursue deportation, to revoke a deportation or exclusion order, or a previous decision to deport the applicant has been overturned on appeal and the Home Office is not appealing the decision.

Where the applicant has a pending prosecution which could lead to a conviction and a refusal on suitability grounds and does not otherwise meet the criteria for referral to IE in respect of any other offence, caseworkers are directed to consider whether it is reasonable and proportionate to pause the application until the outcome of the prosecution is known (page 25). The guidance clarifies that it will not be appropriate to pause the application in all such cases, by citing an example of when the offence in question would not be material to whether or not the application ought to be refused or if the proceedings are likely to take a significant period of time. However, it appears that, in ILPA members' experience, these cases are being paused as a matter of routine.

Under paragraph EU15, an EUSS application will be refused on grounds of suitability where, at the date of decision, the applicant is subject to a deportation or exclusion order, or a decision to make a deportation or exclusion order. Existing EU law on deportation applies to criminal convictions until the end of the transition period. i.e. 31 December 2020. Convictions after that date are set to be subject to the UK's domestic law on deportation in the UK Borders Act 2007, i.e. where the individual's presence is not conducive to the public good. For a discussion of the problems in the current implementation of the deportation arrangements, see pp 27-29 of the ILPA Report on EU Residence Rights After Brexit (January 2020).

Paragraph EU16, unlike paragraph EU15, is a discretionary provision. This means that decisions under paragraph EU16 are subject to a proportionality assessment. Under paragraph EU16(a) an application may be refused if the decision-maker is satisfied that, whether or not to the applicant's knowledge, the application has been submitted based on false or misleading information, representations or documents that are material to the decision whether or not to grant the applicant status.

Any false or misleading information, representation or documentation is material to the decision whether or not to grant the applicant settled status or pre-settled status if it affects the applicant's ability to meet the requirements of Part 1 of Appendix EU, which is essentially the applicant's eligibility or suitability. This means that a caseworker is directed to refuse an application if, for example, the applicant fails to disclose past criminal offending. It is therefore unclear why applicants are required to be self-declaring any criminal convictions, if their applications will be subsequently checked against the relevant police databases anyway. This issue has been raised many times by ILPA and others, although without a satisfactory answer.

When considering whether to refuse an application on the basis of rule EU16, caseworkers are directed to also consider whether that refusal would be proportionate, in light of all the known circumstances of the case.

In relation to paragraph EU16(a), caseworkers are given guidance as to which factors they should be considering when assessing proportionality, such as the seriousness of the dishonesty or deception, whether the applicant knew about the dishonesty or deception, the impact on the applicant and their family member(s) and the applicant's response to the notification in writing given to them regarding the alleged dishonesty or deception. Caseworkers are directed not to refuse an application under paragraph EU16(a) where there has been a genuine error by the applicant or a third party.

Under paragraph EU16(b), an application may also be refused where the applicant is subject to a removal decision under the EEA Regulations 2016 on the grounds of their non-exercise or misuse of rights under Directive 2004/38/EC. If the applicant is already being considered for removal in accordance with the EEA Regulations 2016 on grounds of their non-exercise or misuse of rights, that consideration must be concluded before any decision is made on their application under the EU Settlement Scheme. If it is not a live removal it cannot be subject to a decision to refuse on the basis of suitability.

The guidance importantly notes that a person will not meet the threshold of removal on the basis of non-exercise of treaty rights solely because they are a student or self-sufficient person with no Comprehensive Sickness Insurance.

Past removal decisions that are no longer live raise questions around eligibility and more specifically around the break in continuity of residence for applicants that have consequently returned to the UK and are applying under the EU Settlement Scheme. This would be particularly relevant to applicants that were removed under the Home Office rough sleeper removal policy which was found to have been unlawful in *R (Gureckis) v Secretary of State for the Home Department* [2017] EWHC 3298 (Admin).

Ralitsa Peykova, Paralegal, Deighton Pierce Glynn

Attracting the Brightest and the Best with the New Global Talent Visa

More than just a slogan?

It seems that the new Global Talent route was more a publicity stunt than a first step towards a wholly new system and vision. Nevertheless, the new category may reveal that the Home Office is eyeing another more profound change: it may allow for amalgamating time spent in other categories for the purpose of ILR.

The Johnson government in February delivered on its promise to use Brexit as an opportunity to attract the most talented workers from all over the world. At least, this is how the new Global Talent route was branded. In reality, it is remarkably similar to its predecessor, the Tier 1 (Exceptional Talent) category. We set out in detail what has (not) changed.

Expanded endorsement

Consistent with Prime Minister Johnson's emphasis on "science and research", the principal changes appear to apply to those who are applying for an endorsement within the fields of science, engineering humanities and medicine. An additional accelerated path to obtaining an endorsement has been opened for individuals hosted or employed in a UK Research & Innovation (UKRI) approved organisation. Individuals who fall within this sphere can be endorsed via a simplified procedure (not via an automatic endorsement as the government had originally suggested would be the case) provided that they will provide critical contributions to work supported by a research grant or award worth £30,000 or more covering a minimum period of two years.

The two other fast-track routes from the old Tier 1 (Exceptional Talent) category have also been maintained: applicants offered an approved research fellowship award or appointed to an eligible senior academic or research position at an approved UK Higher Education Institution or research institute will still be automatically endorsed.

However, the question remains regarding how many applicants will actually meet the criteria to be endorsed as globally talented. Will this new route to an accelerated endorsement through UKVI really cause a major surge in successful applications? We believe this is to be unlikely. As the cap of 2000 Tier 1 (Exceptional Talent) status grants has never been hit before (2019 saw a mere 821 entry clearance applications), Johnson's move to abolish it appears to be merely symbolic.

A faster route to ILR

To further add to the benefits gained by individuals endorsed with the science sectors, applicants endorsed within the fields of science, engineering, humanities and medicine will now qualify for indefinite leave to remain in the UK (ILR) after only three years, whereas previously they had to wait for five years to apply. On the other hand, those who are endorsed under the 'exceptional promise' route within the fields of culture and arts still need to wait for five years before being able to apply for ILR. Note that as with the old Tier 1 (Exceptional Talent) category, individuals who are endorsed as having 'exceptional talent' will be able to apply for ILR after three years, regardless as to who their endorsing body is.

The route to ILR has become even more accessible, now that changes have been made to allow for absences linked to the applicant's grant of leave, for instance, to undertake research in their field. Again, this benefit has been restricted to those practising in the fields of science, engineering, humanities and medicine; only their endorsement-related absences will not count towards the limit for ILR.

Transitional provisions

Individuals who currently hold leave under Tier 1 (Exceptional Talent) maintain their status. At the end of their leave, they can either apply to ILR (without having to switch to the Global Talent category first) or extend their leave under the Global Talent category. Those who have already secured endorsement but did not submit their Tier 1 (Exceptional Talent) application yet, can apply under the Global Talent route with the same endorsement letter.

Switching and amalgamating time: to a more flexible approach?

On the whole, the changes were limited: a moderate expansion of the category for fellowship grantees and slightly more favourable conditions to obtain ILR. It seems that the new Global Talent route was more a publicity stunt than a first step towards a wholly new system and vision. Nevertheless, the new category may reveal that the Home Office is eyeing another more profound change: it may allow for amalgamating time spent in other categories for the purpose of ILR.

When creating Appendix W with the Innovator and Start-Up categories, the Home Office restricted the ability to amalgamate the time spent in a category in the points-based system with time in an Appendix W category for the purpose of ILR. This trend has now been broken with the Global Talent category. Time spent as a Tier 1 migrant (excluding Tier 1 (Graduate Entrepreneur) migrants or Tier 1 (Post-Study Work) migrants) or as a Tier 2 (General) migrant or as an Innovator will now count towards ILR under the Global Talent route. This welcome change may indicate that the Home Office is willing to take a more flexible stance towards switching between different categories and remove arbitrary barriers to ILR.

Points-based system promise

The Home Office's expansion of the Appendix W category and further integration with older categories raises questions about its vision on the future immigration system. Will it move away from the points-based system and move old categories under a new name to the Appendix W, which stands outside Part 6A of the Immigration Rules (the part ironically labelled 'points-based system')? The logic behind this move seems obscure, as the government's flagship proposal was to introduce a points-based system. Notably, as the MAC stated in its latest report about the new immigration system, the Global Talent category seems the most suitable of all routes to operate by awarding points for skills, instead of having a job offer as the central element. The choice to move it to Appendix W without points seems to indicate that the government envisages a points-based system in name only; for instance, to denominate exceptions as under the proposed skilled worker category, rather than truly allowing leave to depend on a migrant's different valuable characteristics.

In conclusion, whilst opening the door slightly further for a small elite group of highly exceptional people and academics, the government's creation of the Global Talent route and its incorporation in the current system indicates no major overhauls or changes of vision. Unsurprisingly, "attracting the brightest and best" remains a slogan at best to justify the narrowing of all other routes rather than a visionary plan to tackle the unavoidable workforce shortages post-Brexit with a diverse and more flexible selection of highly skilled professionals.

Article by Francesca Sciberras (below left) and Louise Willocx (below right).

Francesca Sciberras is a Senior Solicitor and Louise Willocx is a Paralegal at Laura Devine Immigration in London, a firm which specialises in immigration services.

The Lonesome Death of Prince Fosu

They saw him but they did not see him.

Prince Kwabena Fosu was a 31-year old Ghanaian who dealt in used car parts. He had a wife, and a one-year old daughter. "A quiet guy", his father said. He had never been out of Ghana before. But an opportunity to buy parts came up and so he sought and obtained a business visitor visa. He arrived in the UK on 8 April 2012.

At port, however, he made a mistake about the name of the person he was meeting. He was refused leave to enter. Prince did not understand; he was here to do what he said he was here to do. He sought advice. That advice was to appeal. So he did.

That took five months, and the appeal was dismissed. It is not clear why because the Tribunal determination could not be found. Prince, however, found the process very stressful. His mental health suffered. Shortly after his appeal was dismissed he missed a reporting appointment. Less than three weeks after that, on 21 October 2012, he was encountered by the police, running naked down the streets of Kettering.

It is now obvious that Prince was suffering the sudden onset of psychosis, and probably mania. However a Mental Health Act assessment conducted in police custody concluded that he did not, at least at that time, require admission to hospital. On 24 October 2012, therefore, he was transferred to Harmondsworth. When the escorts arrived for him they found him still naked, with his breakfast in his hair, and smelling strongly of urine. The police had not called back the doctors, because that is how he had been throughout and so far as they were concerned, he had been declared fit for detention.

The urine meant that Prince had also now been labelled a dirty protestor by the Home Office. That label would stick, and would have profound consequences. From now on there was no enquiry about Prince's mental health. It was assumed that he was on a protest. This was despite no-one ever asking him what he was protesting about. When asked later, staff said that immigration detainees often protested about being removed. However that was not Prince. When still able to communicate Prince had told the police, and the Home Office, that he wanted to return to Ghana. His father had told them the same thing. He had a valid ticket and passport. One of the many tragedies of this case is that his father, who had travelled from Amsterdam to see his son in police custody, asked why he could not just take him back to the airport himself. He was told that was not how things worked.

On arrival at Harmondsworth the searching officer thought Prince was obviously unwell, to the extent that he did not have the capacity to submit to the searching process. That officer alerted the reception nurse. However in an assessment that started at 11:30 am and concluded at 11:35 the nurse also passed Prince as fit. She saw no need for a mental health referral. Although the nurse ticked a box to confirm that she had seen medical records, she later said she had not.

Those medical records had come from the police, and so referred to the mental health assessment which had been conducted there. They had been sent to the centre in at least two different ways. They had been faxed to the Home Office staff in the centre, who had sent them on to ensure Prince was managed appropriately. They had also been sent with the person escort record. Witnesses would later say that clinical record keeping at Harmondsworth was "chaotic".

Around four hours after the nurse finished her reception assessment, Prince was found ranting into a mirror in his room on the induction wing. The search officer happened to be one of those called, and because he had already met him, he now volunteered to try to speak to him. Prince responded by punching him. Prince was now taken to the ground. A control and restraint team removed him, by force, to the segregation unit.

That control and restraint carried a requirement that he be assessed again by a nurse. The nurse called was the same reception nurse. Although there was evidence that she later expressed concern to her manager about Prince's apparently sudden change in demeanour since she had initially seen him, neither she nor her manager took any steps to investigate. Still no mental health referral took place. No entry was made in the clinical records. No search of the system was made (which might have turned up the police medical records). This time the nursing assessment had taken just 15 seconds.

On arrival in segregation, Prince's bedding was removed. That included his duvet, his pillow, and his mattress. There was no written authority for such action, and the centre manager later told the inquest that it "absolutely should not have happened". Other officers, however, said that the same centre manager had been responsible for that policy. The rationale for it appears to have been that Prince was a dirty protestor. As has been seen, however, Prince was not dirty protesting, in any real sense. He had previously taken off his clothes, and smelled of urine. That was all. Still less had he expressed anything approaching a protest. Nevertheless the result was that Prince had nothing soft to sit or lie on. That remained the position for the next six days. No-one seems to have wondered why, or carried out any kind of review.

Harmondsworth was then operated by a security contractor called GEO. It was GEO policy to check someone in segregation every 15 minutes. Save for right at the end, those checks were recorded. Segregation is authorised by Rule 42 of the Detention Centre Rules 2001, and staff completed two key documents: a Rule 42 daily routine checklist, and a record of actions and observations. Those documents would come to plot Prince's death, in slow motion, and in plain sight, every 15 minutes for nearly a week.

The checks revealed that Prince had stripped naked again, just a few hours after arriving in segregation. They recorded that he had stopped communicating with anyone. He began smearing his faeces and urine. He was offered food, but there was no sign that he ate or drank anything, save for a little tea on 25 October. The records also showed that Prince did not sleep, at all, save for about 45 minutes a few hours before he died.

Yet no-one did anything. During his time at Harmondsworth Prince was seen by four GPs, two nurses, at least two Home Office monitors including the one who had passed on the police mental health records in the first place (and so knew the background), three members of the Independent Monitoring Board (IMB), and countless detention custody officers (DCOs) and DCO managers. The most that happened was one member of the IMB, on the very last night of Prince's life, sent an email asking about a mental health assessment. That IMB member began to see Prince. But she only began, and by then it was too late.

All these individuals, all of whom were seized of the need to monitor Prince's welfare, either saw him directly (usually through the wicket in the door) or at least wrote on the documents that recorded his deterioration. It was one of the IMB members who used the phrase "he died in plain sight". He used it in a tone of sadness, bewilderment and defeat. Not all were quite so candid.

The pathology evidence was that Prince died as a result of a cardiovascular collapse brought about by psychosis, malnutrition, dehydration, and hypothermia. The hypothermia was despite evidence that the cell was averagely warm. Prince, however, was naked, wet, and lying on a concrete floor. That is how he was found, around midday on 30 October 2012, almost exactly six days after he had arrived. Again, he was seen by the same reception nurse. She had previously worked as an oncology nurse. She was familiar with death. She said Prince was clearly dead. His body was cold and stiff.

The pathology evidence was also that Prince now weighed less than 47kg. The reception nurse had weighed him at 55kg, just six days earlier. He had therefore lost more than 1 kg of weight a day. A senior Home Office manager who later saw the body said he was obviously emaciated.

The inquest was delayed because the CPS originally decided to bring criminal proceedings, only to abandon them four years later. The inquest jury returned a conclusion which found gross failures across all agencies. The General Medical Council is reviewing three of the four doctors. Nothing else is

happening. The two nurses face no action, and are still working. The Home Office decided to take no action against its staff because it felt the problems were systemic, and its staff had not been put in a position properly to discharge their duties. No action has been taken in respect of the discipline of staff.

The Prison and Probation Ombudsman concluded that Prince's treatment had been inhuman and degrading. It therefore expressly used the language of Article 3 of the ECHR. It is thought that this is the first time the Ombudsman has expressed itself in such terms.

Arguably, however, even that language is not enough. Prince's death was shocking. It raises profound questions about the immigration detention system and the way it operates. Some of those are questions of detail. They include questions about information sharing, and about how doctors are trained to work in the immigration detention environment. The inquest heard that none of the doctors had read the Detention Centre Rules. None knew that Rule 42 imposed an obligation to conduct, directly, a welfare check on Prince. None knew that they, as GPs, were the only individuals who could conduct those checks, nor that the Rules imposed other key obligations on them, and only on them. Two of the GPs had heard about Rule 35, which imposes very specific reporting obligations, and those two knew something about that. Even then, however, their knowledge was limited, they had not seen the Rule itself, and their knowledge had been obtained some months after starting at the centre.

There were, in other words, long periods of time when the GPs in Harmondsworth, who were the only people capable of operating fundamental safeguards against unlawful and inappropriate detention, did not know they were supposed to be operating those safeguards. It is an open question how long that had gone on, but it seems to have spanned a period from an earlier death in mid 2011, where a locum GP was found to be in the same position, to at least past Prince's death. It may or may not be the case now.

There are however more fundamental questions still. The most important is why there was such a profound failure of professional responsibility. As the independent GP expert put it, there was no "professional curiosity". However that failure extended well beyond the GPs. All the people, from all the different disciplines, walked away. Prince's presentation was obviously a mental health presentation. He was a naked, uncommunicative man, ranting at mirrors, talking to his food, smearing his faeces and at times lying under the shelf which served as a bed. All in an empty, hard-surfaced cell.

The only explanation ever attempted for how this could have occurred was found in unguarded responses in some of the early interviews. Some of those interviews recorded staff suggesting that the behaviour might look bizarre to an outsider, but that is what "they" did. A GEO manager put it this way, when asked whether Prince's behaviour had concerned him. This was on the first day, when Prince had been found ranting into the mirror:

"[F]rom what I have seen from being in this job the chanting and things like that I've seen it before. Obviously it's concerning and it's not your normal day at work but we do see that quite a bit and especially certain nationals will take to chanting whether it be when they're in that situation because that's how they release their tension. So the chanting didn't necessarily flag up any concerns and again I go back to we've been advised it's behavioural".

The racial connotations of this statement will be obvious. However it goes further, and to the heart of the matter. When staff say that this is what "they" do, and so the staff are less concerned than they might otherwise be, those staff are saying that immigration detainees should not be judged by the same standards that apply to others. They are saying that immigration detainees are different, and somehow less, than anyone else.

That, we suggest, is what really happened here. Bury the rag deep in your face, for now is the time for your tears: Prince Fosu was seen but not seen because he was seen as less. That is the matter which further investigations, including the Brook House inquiry, must examine.

It may also be noted that the manager quoted above still works in immigration detention.

Nick Armstrong is a barrister at Matrix Chambers. Kate Maynard is a partner at Hickman & Rose. They represented Prince Obeng, Prince Fosu's father, at the inquest, and they act in related proceedings.

ILPA LEGAL UPDATE

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

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

The Bill was introduced in the House of Commons on 5 March 2020. Its second reading is set for 21 April.

The Bill is almost entirely the same as the Bill of the same name introduced in Parliament in December 2018, with some minor drafting amendments.

Part 1 of the Bill provides for measures relating to the ending of free movement.

Clause 1 repeals the retained EU law (as defined by the EU (Withdrawal) Act 2018, s 6(7)) contained in Schedule 1, including principally the Immigration Act 1988, s 7 (exemption from requirement for leave to enter to remain for persons exercising EU rights) and the Immigration (European Economic Area) Regulations 2016. This has the effect of bringing EEA nationals within the scope of the Immigration Act 1971.

Clause 2 inserts a new section 3ZA in the Immigration Act 1971 to provide that an Irish citizen does not require leave to enter or remain unless made subject to a deportation order, or directions that exclusion is conducive to the public good, or is an excluded person under the 1971 Act, s 8B.

Clause 3 includes Part 1 of the Bill in the definition of Immigration Act in the UK Borders Act 2007, s 61.

Clause 4 confers a power on the Secretary of State to make regulations which s/he 'considers appropriate in consequence of, or in connection with, any provision of this part'. This power can be used to amend primary legislation, i.e. it is a Henry VIII power.

Part 2 of the Bill confers a power on an 'appropriate authority' to make regulations modifying retained direct EU legislation (as defined by the EU (Withdrawal) Act 2018, s 20(1)) relating to social-security co-ordination.

Coronavirus Act 2020

The main areas of this Act relating to immigration are:

1. A new power for immigration officers to detain potentially infectious persons.
2. A new power for the Secretary of State to suspend port operations.
3. A new power for tribunals to broadcast remote hearings.

Powers of detention

Section 51 refers to Schedule 21, which confers powers relating to potentially infectious persons. In relation to England, by paragraph 7 of Schedule 21, an immigration officer may direct or remove a person they suspect is potentially infectious to go immediately to a place for screening and assessment. This is subject to a proportionality assessment. By paragraph 13, the immigration officer may also keep that person at a screening and assessment place pending screening or assessment up to a maximum of three hours, which can be extended by nine hours. The Schedule also provides for ancillary powers.

Powers of suspension of port operations

Section 50 refers to Schedule 20, which confers power on the Secretary of State in relation to the suspension of port operations. By paragraph 1(2) of Schedule 20, the Secretary of State may only suspend a specific port's operations if:

a) she considers that there is a real and significant risk that, as a direct or indirect result of the incidence or transmission of coronavirus, there are or will be insufficient border force officers to maintain adequate border security; and

b) the Secretary of State has taken such other measures as are reasonably practicable to mitigate that risk.

The port may only be suspended for an initial period of six hours, but this can be continually extended.

Open justice and the tribunals

Schedule 26 provides for the broadcast and recording of video and audio proceedings in the Court of Appeal, High Court, UT and First-tier Tribunal (FTT). This will allow for public participation in remote hearings as these take place throughout the duration of the coronavirus physical distancing measures.

Draft Immigration (Health Charge) (Amendment) Order 2020

This will come into force on 1 October 2020 provided the Order is approved by both Houses of Parliament. The Order provides for an increase in the immigration health surcharge announced in the Chancellor's Budget on 11 March 2020. The immigration health surcharge will increase from £400 per year to £624 per year for adults and £470 for children under the age of 18. The discounted rate for students, their dependants and those on the Youth Mobility Scheme will increase from £300 to £470.

MS (Pakistan) v SSHD [2020] UKSC 9: Tribunal not bound by NRM decisions

The National Referral Mechanism (NRM) gave a negative reasonable grounds decision that MS was a victim of trafficking. His asylum claim was also refused. On appeal, the FTT found that he had been under compulsion and control, but dismissed his appeal. The UT re-made the decision finding in his favour, observing that the NRM's decision could only be challenged by judicial review proceedings, not through a statutory appeal. However, the UT also held that if an NRM decision was perverse or otherwise contrary to some public law ground, the UT could make its own decision as to whether an individual was a victim of trafficking. The Court of Appeal allowed the SSHD's appeal finding that, in accordance with *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469 the UT could only go behind the NRM's decision and re-determine the factual issues as to trafficking if the decision was perverse or irrational or one which was not open to the NRM

The two issues in the Supreme Court were:

1. Where the National Referral Mechanism (NRM) has determined that a person is not a victim of trafficking, does the tribunal have jurisdiction to decide that the person is a victim of trafficking?
2. Where a tribunal decides that a person is a victim of trafficking, what impact does this have on the lawfulness of the decision to remove the person by reference to Article 4 ECHR and applicably policy?

In relation to the first issue, the SSHD conceded that the tribunal does have jurisdiction prior to the hearing. The court stated:

'it is now common ground that the tribunal is in no way bound by the decision reached under the NRM, nor does it have to look for public law reasons why that decision was flawed. This is an important matter. As the AIRE Centre and ECPAT UK point out, had the tribunal been bound by such decisions, it could have had a profoundly chilling effect upon the willingness of victims to engage with the NRM mechanism for fear that it would prejudice their prospects of a successful immigration appeal.'

As for the second issue, the court said:

'it is clear that there has not yet been an effective investigation of the breach of article 4. The police took no further action after passing him on to the social services department. It is not the task of the NRM to investigate possible criminal offences, although the competent authority may notify the police if it considers that offences have been committed: Secretary of State for the Home Department v Hoang Anh Minh [2016] EWCA Civ 565; [2016] Imm AR 1272. The authorities are under a positive obligation to rectify that failure. And it is clear that an effective investigation cannot take place if the appellant is removed to Pakistan: the UT rightly held that "it is inconceivable that an effective police investigation and any ensuing prosecution could be conducted without the full assistance and co-operation of the appellant. Realistically this will not be feasible if he is removed to Pakistan" (para 64).

Accordingly, the appeal should be allowed and the decision of the UT restored on this ground.'

First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) Order 2020

This aligns the current remissions and exemptions scheme in the FTT with the scheme applying in other HMCTS jurisdictions (for in-county appeals only). This comes into force on 20 April 2020. Eligibility for remission or reduction of a fee will be based on two tests - a disposable capital test and a gross monthly income test. Appellants who satisfy the disposable capital test will receive a full fee remission, pay a contribution to the fee or have to pay the fee in full, as determined by the gross monthly income test. The gross monthly income test applies a series of thresholds to single people or couples, with an allowance for the number of dependent children they have. Appellants with a gross monthly income below a certain threshold will receive a full fee remission. Appellants will be required to pay a contribution of £5 towards their fee for every £10 of gross monthly income they earn over the relevant threshold.

R (Hafeez) v SSHD [2020] EWHC 437 (Admin): certified EEA deport appeals must include proportionality assessment

The High Court ruled that decisions under the Immigration (European Economic Area) Regulations 2016, reg 33 regarding whether an individual can remain in the UK pending the hearing of an appeal under the Regulations, must have regard to personalised proportionality protected by Article 27 of the Citizens Rights Directive 2004/38/EC.

Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2020

These Regulations came into force on 6 April 2020.

Two important changes to nationality law are made.

First, the Regulations remove the fee that would have been payable for repeat applications to be registered as a British citizen under British Nationality Act 1981, s 4F where the applicant had previously been refused on grounds of good character before that requirement was abolished by the British Nationality Act 1981 (Remedial) Order 2019.

Second, the Regulations provide a work-around solution for children whose biological father is not the same as their father for the purposes of nationality law because the mother was married at the time of birth. Where the biological father is British but the legal father is not, the child cannot be registered as British. In *R (K (A Child)) v Secretary of State for the Home Department* [2018] EWHC 1834 (Admin) the High Court found that s50(9A) of the 1981 Act incompatible with Article 14 of the European Convention of Human Rights when read in conjunction with Article 8 in this context. Following these Regulations, a child in these circumstances can apply to be registered as a British Citizen at the Home Secretary's discretion under section 3(1) of the 1981 Act without paying a fee. The explanatory memorandum says this is 'whilst the government considers what appropriate action to take in light of the declaration of incompatibility' (paragraph 7.8).

Hafeez v SSHD [2020] EWCA Civ 406: time in prison does not count towards the ten year threshold for enhanced protection against expulsion

This appeal concerned Hafeez's substantive appeal against deportation (as opposed to the procedural appoint in the case in the Administrative Court).

Under Article 28(3) of the Citizens Rights Directive, where an EEA national has resided in the UK for the previous ten years, they may only be expelled on imperative grounds of public security (i.e. enhanced protection). At the date of decision, Mr Hafeez had spent three and a half years in prison out of his ten or eleven years residence in the UK (depending on a disputed arrival date). The Court of Appeal concluded that periods of imprisonment do not count positively towards establishing ten years' residence for these purposes.

R *(Elan-Cane)* v SSHD [2020] EWCA Civ 363: no positive obligation to issue 'X' gender passports.

The Court of Appeal has dismissed an appeal which rejected a challenge to the government's policy not to issue non gender-specific 'X' passports to non-binary and other trans persons who do not identify as, or exclusively as, male or female.

Although the court found that Article 8 ECHR was engaged, it found there was no positive obligation under Article 8 to provide X passports. King LJ stated:

'whilst this case is limited to passports, the driver for change is the broad notion of respect for gender identity. I accept, as did the judge, that the passport issue cannot reasonably be considered in isolation… if there is no requirement for an individual to specify their gender on their passport application, it "begs the question as to the utility of requesting gender information" at all. This in turn raises the question as to the purpose of requesting gender information across all official records. The work now embarked upon by the Government will address these questions as part of their wider consideration of gender identity issues, and in my judgment this work strongly supports the judge's finding that the Government was entitled to take the view that it was inappropriate to consider the issue of passports in isolation.'

However, he also noted:

'If, as here, Article 8 is engaged, there is a respectable argument that we are approaching a time when the consensus within the Council of Europe's Member States will be such that there will be a positive obligation on the State to recognise the position of non-binary including intersex individuals if and when that time comes. It follows that when the time comes, notwithstanding that there is a wide margin of appreciation as to how such a positive obligation is effected, the State will then have to take steps towards implementing that obligation.'

ILPA TRAINING

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

ILPA is excited to announce a brand new e-learning programme. As we're transitioning into home and lone working, the delivery of live webinars to ensure practitioners stay informed of the latest developments in immigration, asylum and nationality law is ever more important.

ILPA is dedicated to providing the highest quality training to our members and the wider legal community, and will continue to deliver this throughout this testing time.

Our tutors are known for their experience, for keeping up to date with the continuing developments in immigration legislation and case law, and for their involvement in landmark cases. With the support of our tutors we hope to make our webinars interactive, engaging and a vital tool for practitioners to remain connected with their peers.

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

You can find the full training programme on our brand new website here.

ILPA TRAINING PROGRAMME

April 2020

WEB 1008 How to challenge certified asylum and human rights decisions successfully

Tuesday 21 Apr 2020, 15:00-18:15, 3 CPD Hours

Tutor: Priya Solanki, One Pump Court Chambers

In this webinar, we will have a detailed look at the law on certified asylum and human rights claims. We will consider how practitioners can best use the current authorities and policy guidance to challenge decisions with success.

This webinar will cover:

- Clearly unfounded certifications under s.94 of the Nationality Immigration and Asylum Act 2002 ('the 2002 Act')
- A detailed consideration of case law regarding s.94 of the 2002 Act, with practical tips of how this can be used in individual cases
- Discussion on the UKVI Policy Guidance on s.94 certifications, including how this is useful on Article 8 ECHR claims
- An update on the case law regarding certifications under s.94B
- Delay certifications under s.96 of the 2002 Act, with consideration of the applicable policy guidance and authorities
- A brief look at certifications under EEA law
- Practical tips and examples on challenging adverse decisions by judicial review

WEB 1004 Introduction to Immigration Law: getting started

Thursday 23 Apr 2020, 10:00-17:00, 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. This course is designed for Lawyers preparing for the IAAS probationer level 1 multiple choice test, immigration advisers preparing for the OISC level 1 exam, and anyone else new to this area of the law or looking for a refresher course.

WEB 1001 Nationality Law in the Age of Brexit

Monday 27 Apr 2020, 15:00-18:15, 3 CPD Hours

Tutors: Alison Harvey, No.5 Barristers' Chambers

A course for practitioners representing individuals facing criminal deportation, Explore how to ascertain whether your client is a British citizen already and, if not, the range of options for acquisition of British citizenship. To help us cut a swath through this vast topic, there will be a particular focus on matters arising when EU nationals apply for citizenship, although many of these are relevant to a wider range of cases. This course is designed for experienced immigration practitioners who have done at least straightforward naturalisation applications and registered children when their parents settle and who are open to being persuaded that more complex nationality law is fun.

May 2020

WEB 1007 Domestic Violence in Immigration Law

Tuesday 05 May 2020, 15:00-18:15, 3 CPD Hours

Tutor: Priya Solanki, One Pump Court Chambers

In this webinar, we will consider the difficulties that can arise with the requirements for indefinite leave to remain for victims of domestic violence, how clients who do not meet the Appendix FM DV immigration rules can be assisted. We will discuss challenging adverse decisions for these Applicants and also making applications for victims under the EEA Regulations.

In this webinar, the following topics will be covered:

- The destitution domestic violence concession application process, the authorities on this and how this concession might be used to assist credibility
- Appendix FM DV-ILR, including the finer requirements on the relevant date of violence, domestic violence being the causative force of the breakdown, the evidential requirement and the suitability requirements
- Challenging adverse decisions by appeal (with a detailed look at the case law on rights of appeals against these decisions), administrative review and judicial review
- Detailed consideration of UKVI Policy Guidance on Domestic Violence
- Assisting Applicants who do not meet the requirements of DV-ILR
- Applications for victims under EEA law, with a consideration of case law and making applications for unmarried partners
- Funding in domestic violence cases

WEB 1002 Tier 4 and Study Routes

Monday 11 May 2020, 15:00-18:15, 3 CPD Hours

Tutors: Glyn Lloyd and Abbie Lacey of Newfields Law

Navigating the Tier 4 visa routes can present a number of challenges to those practitioners who are either unfamiliar with the UK education system or who have relatively few clients applying under this part of the immigration rules. This training provides an overview of the Tier 4 route, taking into account both express and nuanced requirements that are placed on both the visa applicant and the Tier 4 sponsor. This session is delivered by former international student immigration advisers at a large Russell Group university and will seek to demystify the more complex aspects of the Tier 4 general policy. This course will provide practical examples to assist practitioners in having a better understanding of the study immigration routes and to support in their delivery of comprehensive, holistic advice to clients.

WEB 1003 Applications and appeals under paragraph 276ADE(1) (iv) of the Immigration Rules ('7 Year Applications')

Thursday 14 May 2020, 14:00-18:15, 4 CPD Hours

Tutors: Lucy Mair, Garden Court North Chambers and Sumita Gupta, Islington Law Centre

This course is a practical guide to preparing successful applications for leave to remain for children (and their families) who have lived in the UK for 7 years or more, and challenging negative decisions on these applications.

The course will provide an overview of law and practice in relation to these applications, and will also address fee waivers and No Recourse to Public Funds Conditions and their relevance in applications. The course will also address the benefits of taking a Child Rights based approach to evidence and legal argument when preparing applications and appeals. Access to legal aid for these applications will also be addressed in brief.

WEB 1012 Mental Health in Immigration and Asylum Law

Wednesday 20 May 2020, 14:00-18:15, 4 CPD Hours

Tutor: Priya Solanki, One Pump Court Chambers

This course marks mental health awareness week. It will assist practitioners who wish to have more knowledge of best practice and procedural issues that often arise with vulnerable clients including, for example, the complexities in the appointment of litigation friends.

With reference to authorities and policy guidance, we will examine how a client's mental health is relevant to credibility and risk on return, as well looking at how we can successfully argue health grounds under Articles 3 and 8 ECHR and Paragraph 276ADE(vi).

WEB 1013 Deportation of EEA nationals and their dependants

Tuesday 26 May 2020, 15:00-18:15, 3 CPD Hours

Tutor: Alison Harvey, No.5 Barristers' Chambers

There is scope to challenge the deportation of EEA nationals and their family members, but you need to get your evidence right. Many of these cases will go to appeal and you may face attempts to deport your client before the appeal is heard. This course will give you the tools you need to represent your EEA national clients and their family members threatened with deportation. By the end of the course participants will understand the legal tests for deportation of EEA nationals and the effect of time spent in prison on the application of these thresholds, what evidence to gather and how to present it, and rights of appeal.

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!

The New ILPA Website

We hope you are enjoying your new ILPA website. It is still very much a work in progress so we would really value your feedback in the early days so that we can build on and improve it.

Some highlights

We are now uploading our resources as either documents that ILPA have produced: ILPA Documents

Or that UKVI have produced: UKVI documents

We are also curating a resources section on Coronavirus related resources

It is now also much easier to search our resources here, which provides all the latest resources so you can check if you've missed anything.

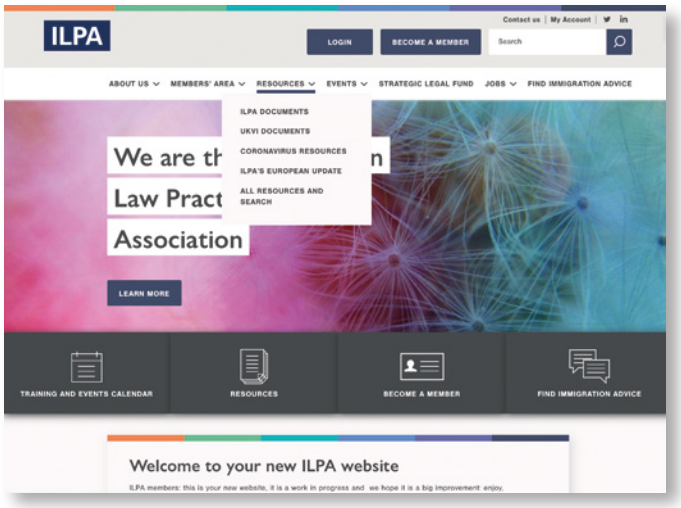
We'd also like to encourage you to explore our new working group pages where each working group has its own page to keep you informed. The latest resources relevant to that group are now uploaded there, along with details of upcoming meetings and minutes of previous meetings. You can also see on these pages if you are subscribed or not to their email lists.

You can update some of your details at My Account.

And if you are the primary contact for your organisation's membership (or if you are an individual member) you can create and edit your entry in our directory of members.

When you are logged in as a member, you will also now be able to see if you have any upcoming training sessions booked.

Remember: for GDPR reasons we do not automatically list all members in the directory; you have to create your own entry.



All our resources are now in one place.

These are just a few of the highlights and new features.

Thank you for your help in shaping the website - your feedback is very valuable:

helen.williams@ilpa.org.uk

ILPA WHO'S WHO

ILPA's Board of the Directors is its Committee of Trustees which is elected annually by the membership. All members of the Committee of Trustees are members of ILPA. All aspects of ILPA's work are supported by its Secretariat of paid staff. ILPA's work is organised into working groups.

The Committee of Trustees of ILPA

To get in touch with members of the Committee of Trustees, please get in touch with the ILPA Secretariat.

Chair: Adrian Berry, Barrister, Garden Court Chambers

Secretary: Ayesha Mohsin, Solicitor, Kalayaan

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Members

Andrea Als - Solicitor, PricewaterhouseCoopers

David Ball - Barrister, The 36 Group

Simon Barr - OISC Advisor, Simon Barr Immigraton Law

Sophie Barrett-Brown - Solicitor and Senior Partner, Laura Devine Immigration

Hazar El Chamaa - Solicitor and Partner, Penningtons Manches Cooper LLP

Natasha Gya Williams - Solicitor, Gya Williams Immigration

Helen Johnson - Head of Children's Services, British Refugee Council

Grace McGill - Solicitor, McGill and Co. Solicitors

Julie Moktadir - Solicitor, Stone King

Daniel Rourke - Solicitor, Migrants Law Project

ILPA Working Groups

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: Polly Brandon - Freedom from Torture, Laura Smith - JCWI, Ayesha Mohsin - Kalayaan

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

Removals, Detention and Offences: Convener: Bahar Ata - Duncan Lewis. 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

Immigration Professional Support Lawyers Network: Shyam Dhir - LexisNexis, Tim Richards - Kingsley Napley LLP, Josh Hopkins - Laura Devine Immigration

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

ILPA THE SECRETARIAT

All aspects of ILPA's work are supported by its Secretariat of paid staff who are here listed. ILPA's work is organised into working groups and all ILPA's work is carried out by its members, supported by the Secretariat.

Nicole Francis
Chief Executive

Lana Norris
Finance and Office Manager

Helen Williams
Membership Manager and Website Project Manager

Sonia Lenegan
Legal Director

Charles Bishop
Legal and Parliamentary Officer

Emmanuel Benedetti
Finance Assistant, Strategic Legal Fund

Esme Kemp
Administrative Assistant

Amira Rady
Training Officer

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**

ILPA MEMBER
IMMIGRATION LAW PRACTITIONERS' ASSOCIATION

This is the monthly publication of the Immigration Law Practitioners' Association Ltd. It is FREE for members. **Membership starts from just £90 per year.**

If you are interested in joining ILPA or finding out more about our work see **www.ilpa.org.uk** or contact **helen.williams@ilpa.org.uk**

ILPA

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