



## ILPA's response to the ICIBI's Call for Evidence on Asylum Casework

### Background

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

### Introduction

This note collates evidence and perspectives from ILPA members. We note that the initial grant rate for asylum applications of 53% as published last week, and this progress is to be welcomed.<sup>1</sup> We believe that the Home Office is committed to continuing to improve the quality of decision making, and to work with stakeholders on this important issue. The recommendations that we have made below are with a view to assisting in that process. It is important that they are given the proper resources to be able to achieve this.

## The accessibility, clarity and adequacy of Home Office policies and guidance in relation to the asylum process, including country of origin information

### Clarity of guidance re: Covid-19

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<sup>1</sup> <https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2020/how-many-people-do-we-grant-asylum-or-protection-to>

We refer to our evidence to the Home Affairs Committee, about issues in relation to communication with the public during the pandemic.<sup>2</sup> Communications with ILPA have been good, however we reiterate our request for all pandemic related policy changes for asylum to be put on a single webpage. Refugee Council have made a webpage<sup>3</sup> however this should not have been necessary.

**Recommendation: all changes to the asylum process due to Covid-19 should be accessible to the public on a GOV.UK webpage.**

### Lack of understanding of the status of CPINs

Some Home Office decision makers do not seem to realise that the CPINs are a mix of Home Office policy and selected country information, they consider CPINs to be the definitive source of information.<sup>4</sup> For example, we are aware of decision makers querying why Albanian appeals have been allowed by the First-tier Tribunal, given the CPIN indicates that there was sufficiency of protection and internal relocation would be a reasonable option. For detailed criticism of the Home Office CPIN in relation to Albanian claims, this note by David Neale of Garden Court Chambers is very useful: <https://www.gardencourtchambers.co.uk/news/albanian-blood-feuds-and-certification-a-critical-view>. He has also produced another useful note highlighting problems with the CPIN on Vietnam: <https://www.gardencourtchambers.co.uk/news/vietnam-risks-of-re-trafficking-on-return>.

### Report of a Home Office fact-finding mission to Sri Lanka, 20 January 2020<sup>5</sup>

Concerns have been raised around this report, and the fact that it relies on evidence from the Sri Lankan government to help assess the risk to Tamil political activists from the Sri Lankan government.<sup>6</sup>

The key issues are as follows:

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<sup>2</sup> <https://ilpa.org.uk/wp-content/uploads/2020/04/200420-HASC-coronavirus-inquiry-ILPA-response-FINAL.pdf>

<sup>3</sup> <https://www.refugeecouncil.org.uk/latest/news/changes-to-home-office-asylum-resettlement-policy-and-practice-in-response-to-covid-19/>

<sup>4</sup> We are aware of the Upper Tribunal's decision in *BH (policies/information: SoS's duties) Iraq* [2020] UKUT 189 (IAC) and we refer to this detailed rebuttal of the position in relation to CPINs:

<https://www.freemovement.org.uk/kerrouche-duty/>

<sup>5</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/859277/Sri\\_Lanka\\_FFM\\_report\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859277/Sri_Lanka_FFM_report_2020.pdf)

<sup>6</sup> <https://twitter.com/AlasdairMack66/status/1220413096193331201?s=09>

- 1) The fact finding mission took place in October 2019, in the knowledge that a presidential election was around the corner and likely to elect Gotabaya Rajapaksa who had been Defence Secretary during the civil war and brother of the final-war President Mahinda Rajapaksa (as of August 2020 the Prime Minister). Therefore, the report would become instantly out of date, though this is not clear from the document. Freedoms were already being curtailed and yet fears of what was to come, as expressed by many in the FFM as well as incidents recorded by the time of the May 2020 CPIN, are referred to as “speculation”.
- 2) Seventeen people/institutions are interviewed and notes are taken but only 11 sets of notes were approved and you cannot tell which were approved; effectively you have to assume that each bit of information you get is from a set of unapproved notes.
- 3) Sources are anonymous and when they are not government sources not even their institution is named.
- 4) Seven sources of 18 are from the security forces and therefore are writing their own report card, two more – Human Rights Commission and Mental Health Institute – are part of the state.
- 5) Quotes from the notes are misquoted in the FFM summary and then the FFM summary is misquoted in the CPIN.
- 6) Most of the FFM consists of two summaries – a summary and then a summary of the summary. The notes are only available as an annex but as the authors of the reports and their expertise is unknown and they are more often than not inaccurate, these summaries have no evidential value. This misleading presentation of the report gives the impression that the summaries are the key component.
- 7) Re the CPIN: the DFAT report’s finding that post 2016 allegations of torture are “unverified” is criticised by FFT and ITJP (the report’s methodology was also critiqued by ARC in a special report on their website<sup>7</sup>). Several UN agencies have reported torture since 2016, and as ITJP say the SSHD have accepted a large number of post 2016 torture claims: what is “verified” if that is not?

We have attached with this response Appendix 3 to the Appellants’ skeleton argument in the Country Guidance case of *KK & RS (Sri Lanka)* which is due to be heard shortly and which sets out the issues in further detail.

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<sup>7</sup> [https://asylumresearchcentre.org/wp-content/uploads/2020/07/ARC-Comments-on-DFAT-SL-report\\_July-2020.pdf](https://asylumresearchcentre.org/wp-content/uploads/2020/07/ARC-Comments-on-DFAT-SL-report_July-2020.pdf)

**Recommendation 1: Home Office decision makers receive training on COI standards and methodology.**

**Recommendation 2: the decision to reject<sup>8</sup> the recommendations made by the ICIBI previously in relation to CPINs should be revisited and the recommendations accepted and implemented.**

## The availability, costs and quality of advice and support for asylum seekers

The availability of legal aid lawyers is still a cause for concern, the position remains as in Dr Jo Wilding's report.<sup>9</sup> There are recommendations for the Home Office in that report and we continue to endorse these. The Home Office should acknowledge that it is useful for all concerned if applicants have access to comprehensive and quality legal advice at an early stage.

**Recommendation 3: the recommendations in Dr Wilding's Droughts and Deserts report should be implemented.**

The handling of support for victims of trafficking during the pandemic has been problematic, one member reports the following:

*In regards to support, on 13<sup>th</sup> July 2020 a client told me that her Hestia payments were being stopped by immediate effect. After speaking to Hestia I was informed that the Home Office had informed them that they had to stop all their payments for clients who were in HO emergency accommodation. My client does not currently have HO subsistence payments and so was entirely reliant on the Hestia payments. The HO have 'justified' this action by stating that all clients' needs are available in the emergency accommodation- i.e. roof over the head and food. However, they have failed to realise that my client is effectively stuck with no travel money or money for toiletries.*

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/677540/Use\\_of\\_COI\\_Home\\_Office\\_Response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/677540/Use_of_COI_Home_Office_Response.pdf)

<sup>9</sup> <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>

It appears that the Home Office has now conceded that this action was unlawful.<sup>10</sup> However it also appears that although financial support is being reinstated and backdated, that this is being done at a lower rate.<sup>11</sup>

**Recommendation 4: financial support must be reinstated in full for all those affected, with no reduction, to be paid automatically to those affected.**

## The quality of screening interviews, substantive interviews and asylum decisions, including for asylum seekers who have protected characteristics

Members are unfortunately still<sup>12</sup> reporting concerns about the quality of interviewing with LGBTQI+ people in respect of their asylum claims. Members report what is described as decision makers: “exploiting small mistakes clearly relating to language barriers or simple memory issues when recalling events from childhood. They are exploiting little inconsistencies between first kiss and first ‘sexual experience’ for example”. Concerns are also reported about the questioning around “how it is possible that they knew they were attracted to the same sex ‘at such a young age,’ and regarding their first sexual experience, e.g. ‘how is it possible that you both would have taken that risk to kiss each other knowing the risk involved if you were caught?’.

We note that the API on ‘Sexual orientation in asylum claims’ is version 6.0 dated 3 August 2016<sup>13</sup> and it therefore does not appear that the recommendations in UKLGIG’s report have been implemented, as the latter contains several recommendations for the API.

**Recommendation 5: the recommendations in UKLGIG’s report ‘Still Falling Short’ should be implemented.**

Concerns have also been raised around what has been described as ‘purposeful misunderstanding’ by interviewers and caseworkers in relation to the terms ‘aunty’, ‘uncle’ in reference to older people in

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<sup>10</sup> <https://www.independent.co.uk/news/uk/home-news/home-office-u-turn-financial-support-modern-slavery-trafficking-coronavirus-a9695266.html>

<sup>11</sup> [https://twitter.com/ahmed\\_aydeed/status/1300025017917415424](https://twitter.com/ahmed_aydeed/status/1300025017917415424)

<sup>12</sup> This report, highlighting the same issues, is from 2018 <https://uklgig.org.uk/wp-content/uploads/2018/07/Still-Falling-Short.pdf>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf)

African countries. Members report that an applicant will talk about their 'aunty' and the interviewer will say 'oh so you do have family there? you said all your family were dead.' Members report this happening often, for example where an applicant was raised by foster parents, and the decision maker will latch onto this as an alleged inconsistency.

**Recommendation 6: training and further guidance needs to be given on communicating with different cultures.**

Members also report that when reading asylum interviews with victims of trafficking, it is clear that the interviewers are not trained adequately in interviewing vulnerable asylum seekers, they really fail to get the best out of the asylum seeker, they are very poor in asking follow up questions to ensure the asylum seeker is understanding the questions, and seem very unwilling to explore important issues that would aid good decision making. It is important that all interviewers and decision makers are trained in trauma informed methods of working as it will often not be apparent at an early stage that a person has had a traumatic experience.

**Recommendation 7: training should be given on the Trauma-informed Code of Conduct.<sup>14</sup>**

### Timescales, including the reasons for delays

Members report that, even before the pandemic they were getting letters through routinely for all clients stating 'we will not be able to make a decision re your claim in 6 months.' No explanation is given as to why a decision cannot be made within six months in a particular case.

Delays between claim and decision are reported as regularly being in excess of two years, with a wait for the substantive interview of 18 months being described as "the norm". Some cases are decided very quickly, however there does not appear to be any discernible pattern to this.

Members raised concerns in particular about the lack of consideration that is given to the vulnerabilities of clients and how these may be exacerbated by the uncertainty that accompanies a delay in a determination on their refugee status. They report that providing evidence of vulnerability and how the ongoing delay is prejudicing particular individuals does not seem to make much difference or provoke a response which properly engages with the points made. One example given is that of a trans client who is unable to access her hormone therapy, which is understandably causing her a great deal of distress and depression as her body changes (the Home Office has been provided

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<sup>14</sup> <http://www.helenbamber.org/wp-content/uploads/2019/01/Trauma-Informed-Code-of-Conduct.pdf>

with a copy of a letter from her therapist). The response from Home Office caseworkers is 'sorry, but we can't provide a timescale because it will probably be wrong.'

In another case, a member reports having a client from Tanzania with a very strong case who claimed in October 2019 and is still waiting for their substantive interview, despite their lawyer asking for expedition given that family is in a very difficult situation and are in hiding.

Prior to the pandemic, when pre action letters were sent challenging delays in decision making, the response from the Home Office will be to agree that a decision will be made within six months, but members report receiving requests for further evidence just prior to this deadline, thereby creating further delay.

Below is a typical PAP response during the pandemic:

Furthermore, due to the current circumstances out of our control regarding COVID-19, unfortunately, they are unable to provide you with a specific timeframe for when it will be possible for this to be arranged, however you will hear from the case work team in due course.

We kindly ask you and your client's patience during this period and would like to apologise in advance for any inconvenience or distress this may cause.

We trust you and your client understand the exceptional circumstances in which we are currently operating, and we appreciate your co-operation currently.

It is important that the impact of the pandemic on decision making times is communicated and updated on a regular basis, along with an explanation of what is being done to mitigate it. Members are concerned that the pandemic will be used as an excuse for the already lengthy delays being experienced. The anxiety of those waiting in limbo at the moment should not be underestimated, particularly in circumstances where they are not permitted to work and are instead forced into the asylum support system for extended periods due to the delays in decision making.

Members have reported Home Office staff trying to be helpful, for example in arranging an interview for a very sensitive and high profile case from Iran, however when it came to the interview, the interviewer had no background knowledge to the claim.

**Recommendation 8: clear and regular communications about timescales in interviews and decision making.**

**Recommendation 9: more robust processes put in place for those who require expedition, judicial review or even just pre action correspondence should not be necessary.**

Case study on delay

26 August 2019	Applicant arrived in the UK and claimed asylum at the airport.
25 September 2019	Applicant sent a wealth of documentation relating to his asylum claim to the Home Office by Special Delivery. On both occasions, the applicant informed the Home Office that he had family (pregnant wife and 5 children). The applicant travelled alone because he had a valid visa to the UK, but his family members didn't. He was hopeful that his claim would be processed expeditiously so that they would be able to join him under the family reunion procedures. He was fearful for his family as (1) their right of residence in their country of residence was due to expire in December 2019, and could not be renewed as it depended on his own residence there; and (2) they could be targeted due to their affiliation to him.
December 2019	Applicant's eldest daughter, a 17-year old, was charged with "blasphemy" and "insulting religious feelings" relating to her social media posts. Amnesty International issued a statement calling for the authorities to drop the charges against her, deeming her subsequent trial unfair and a violation of her right to freedom of expression.
March 2020	Increasingly concerned about the safety of his family, the applicant instructed a solicitor.
20 March 2020	The solicitor emailed the asylum team asking for the applicant's asylum claim to be decided as soon as possible, or for his family to be allowed to make an application outside of the Rules to come to the UK pending a decision on his claim. When writing to the Home Office, the solicitor enclosed a long and detailed statement by the applicant; and a letter by Amnesty International confirming that the applicant's daughter was facing an unfair trial, and that the applicant would face very serious danger if returned to his country of origin. Everything included in the applicant's statement was independently verifiable by Googling him.
26 March 2020	The Asylum Operations Team responded confirming that the enquiry had been received, but that "asylum claims have met substantial delay" and "all



	cases will be considered in date order, starting with the most historic case first". The Asylum Operations Team also explained that, due to COVID-19, further delays may arise.
26 March 2020	The solicitor responded to the Asylum Operations Team reiterating their concerns regarding the safety of the applicant's family, and in particular his daughter, and asking that, due to the above, his claim should be prioritised rather than be considered in date order. No answer was received.
30 April 2020	The solicitor lodged a Pre-Action Protocol letter asking that the Home Office makes a decision or interview the applicant by 21 May 2020.
30 April 2020	The solicitor also requested a copy of his Home Office file to the Subject Access Request Unit.
14 May 2020	The Home Office responded to the Pre-Action Protocol confirming that, barring any exceptional circumstances, they will decide on whether to proceed and determine my client's claim without an interview within two weeks of the letter, that is by 28 May 2020.
15 May 2020	The solicitor received a copy of his Home Office file. The file confirmed that "SCU do not currently have an interest in this case" and "there do not appear to be any security concerns". Notes to that effect were made on 6 September 2019 and 30 March 2020 respectively.
11 June 2020	Two weeks after they said they would do it, the Home Office confirmed that they would make a decision without an interview. They stated that a decision would be made in 4 to 6 weeks, that is by 23 July. The solicitor responded asking for a decision to be made quicker taking into account the continued risk which my client's family was facing.
16 June 2020	The Home Office responded to say that the decision would be made in 2 to 4 weeks, that is by 14 July.
23 July 2020	Following two chasing emails, the Home Office said that "a decision should be served within 3 weeks, barring any exceptional circumstances". The solicitor responded stating that they would have no choice but to restart judicial review proceedings if the Home Office did not make a decision earlier.
30 July 2020	The solicitor issued a PAP asking for a response by 4pm of 31 July.
3 August 2020	In the absence of a response to the pre action letter, a judicial review was lodged.
4 August 2020	The Home Office granted asylum

## Trafficking

The interaction between decision making by the Single Competent Authority on whether or not a person is a victim of trafficking/modern slavery (the 'Conclusive Grounds' decision), and asylum decision making, is a cause for great concern amongst those who work with this group. Victims of trafficking are a particularly vulnerable cohort of asylum seekers. Further, they are placed at a significant disadvantage by the Home Office's policy, which is that they will not consider whether or not to grant a victim of trafficking discretionary leave to remain until such time as their asylum claim has been determined.<sup>15</sup> This creates a **significant** disincentive for victims of trafficking/modern slavery to enter the National Referral Mechanism at all, as they are subject first to the delays within the NRM which members report as taking around two years to get a Conclusive Grounds decision<sup>16</sup>, and following that are then subjected to the delays within asylum casework.

The knock on effect of that is that some will choose not to enter the NRM due to the delay, and that means that those victims of trafficking who also have an asylum claim will lose out on the vital support that is provided to potential victims of trafficking who do enter the NRM process.

**Recommendation 10: it appears that little or no progress is being made in relation to delays, a right to work for asylum seekers would help to mitigate the impact of the delays. For example, this would massively benefit trafficking victims and remove a significant cause of trafficking/re-exploitation, and provide significant help to those with mental health problems.**

**Recommendation 11: to grant a period of discretionary leave to those with Conclusive Grounds decisions who have outstanding asylum claims, whilst they await final decisions on their asylum claims/appeals.**

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<sup>15</sup> Discretionary leave considerations for victims of modern slavery version 2.0 10 September 2018 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/739436/dl-for-victims-of-modern-slavery-v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739436/dl-for-victims-of-modern-slavery-v2.pdf), page 12

<sup>16</sup> See also page 7 in this report, which indicates an average of a two year wait for Conclusive Grounds decision among those interviewed, with the longest delay reported being 37 months [http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan\\_report\\_October2019.pdf](http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf)

## Communications, including decision letters and Home Office responsiveness to queries and challenges

Members report that when occasionally they do manage to obtain the contact details of a decision maker it feels that the whole process becomes more human and accessible. It would be a positive move for the Home Office to routinely provide the contact details of the allocated decision-maker. Members report having real difficulty in contacting reporting centres to discuss reporting issues.

Concerns were raised about a lack of care about where letters are sent, for example to vulnerable clients. There is a process in place for this, it just needs to be used.

Lack of engagement with issues that have been raised was also mentioned as an issue, with a member reporting having a recent client who is a Bajuni Somali, however, the Home Office issued her a BRP with the details of a false identity she was issued with in Tanzania as a child. The lawyer had explained in detail that the applicant was fingerprinted there as a child for a fake document, and provided DNA evidence of her relation to her mother who was granted asylum as a Bajuni Somali five years ago. The Home Office responses do not even acknowledge or engage with any of this but just state repeatedly – ‘your client was fingerprinted in Tanzania with this document therefore she is this person.’

**Recommendation 12: reporting centres and decision makers should have email addresses made available for communications about reporting issues.**

**Recommendation 13: caseworkers need to engage properly in correspondence on cases, too often it take litigation to obtain a sensible response.**