ILPA MONTHLY

SEPTEMBER 2020

Family Reunion to the UK from Europe After 31.12.20

What happens next?

From 31 December 2020 and the end of the Brexit transition period, refugees in Europe will no longer have access to family reunion in the UK using the Dublin III Regulations.

IN THIS ISSUE

While the Dublin Regs have undoubtedly failed in achieving their primary purpose as a burden sharing mechanism within Europe, the loss of their inter-state procedural accessibility and more flexible evidential requirements will have a devastating impact on the ability of refugees in Europe to seek reunification with family members in the UK via legal routes.

How many families will be affected? Focusing on Greece, where both Safe Passage and Refugee Legal Support have a presence, an annual average of 921 applicants[1] will need to find alternative routes to join their family members in the UK after family reunion requests are no longer available.

The key feature of the Dublin system is that it guarantees that applications for international protection (including subsidiary protection) are examined by a single Member State determined via a hierarchy of criteria. The procedure is state-to-state, and a significant proportion of applications are made without the applicant being legally represented or having to take any steps aside from providing documents which evidence the family relationship. The evidential criteria under the Dublin system are more flexible than practitioners who are used to making UK Immigration Rule applications will be accustomed to.

The most relevant categories of application for family reunification purposes are the following articles of the regulations:

- **Article 8.1** - *Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor*
- **Article 8.2** - *Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her*
- **Article 9** - *The applicant has a family member in the requested member state who is a beneficiary of international protection*
- **Article 10** - *The applicant has a family member in the requested Member State whose application for international protection has not yet been the subject of a first decision*
- **Article 16** - *Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant*
- **Article 17.2** - *To bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16* - [the discretionary clause]

'Family members' and 'relatives' are defined in Article 2. Where the relationship existed in the country of origin, the following family members are included:[2]

- *Spouses;*
- *Unmarried partners in a stable relationship*
- *Minor children (below age of 18) including adopted children (unless the child is married); and*
- *Parents or responsible adults (where the family member is an unmarried minor).*

The definition of relative includes:

- *Adult aunts or uncles; and*
- *Grandparents*

In 2018 (representative of average numbers in recent years) the UK received a total of 1,940 Dublin requests (mostly Take Charge Requests (TCRs)) and sent 5,510 requests (mostly Take Back Requests). Greece made 731 requests to the UK (38% of the total). Of these, 123 i.e. 16% were in respect of minors present in Greece.

continued...

[1] Based on recent years' statistics.

[2] The requirement that the family relationship must have pre-existed is dispensed with in relation to Art 9, "Family members who are beneficiaries of international protection".

Almost all of the Greek requests to the UK over recent years have been TCRs falling under one of the following Dublin articles.

Greek TCRs to the UK in 2018[3] - breakdown by Dublin article

Art. 8.1 unaccompanied minor with family	61	8%
Art. 8.2 unaccompanied minor with relative	62	8%
Art 9 Family who are beneficiaries of IP	460	61%
Art 10 Family who are applicants for IP	48	6%
Art 11 Family procedure	2	.2%
Art 12 MS has already issued a visa	1	.1%
Art 16 Dependent persons	15	2%
Art 17.2 Discretionary clause	79	11%
TOTAL	**728**	**96.3%**

Of particular note, over 60% of potential applicants relate to individuals whose family members have refugee status in the UK. From 1 January 2021, as things stand, all applicants will need to make applications via the UK entry clearance process, navigating the onerous online procedures and subject to the rigid evidential requirements.

Category of applicant for Family Reunion	**Application procedure & HO application fees post 31.12.20** (UK EC = entry clearance procedures)
Arts 8.1 & 8.2 unaccompanied asylum seeking children (UASCs)	EU/UK transfer procedures *may* be negotiated. Otherwise, UK EC - Immigration Rules 352D & 319X for certain cases & outside the Immigration Rules. Fee waivers available in some cases.
Art 9	UK EC - Immigration Rule 352A for certain cases & outside of the Immigration Rules. Fee waivers available in some cases.
Arts 10, 11, 12, 16 & 17.2	UK EC – outside the Immigration Rules No fee waivers available.

Practitioners in the UK will immediately appreciate the challenges that potential applicants will face in making Immigration Rule applications, not to mention the additional burden of paying Home Office application fees and the health surcharge. From a practitioner's point of view, family reunification applications can be particularly demanding in terms of communicating and working with both family members in the UK and a client located in another country, who is often living in challenging conditions. Since LASPO came into effect in 2013, family reunification work has been out of scope for legal aid and an application for Exceptional Case Funding is needed, which inevitably acts as a deterrent to practitioners taking on this work. In acknowledgment of the difficulties in accessing representation, organisations such as the British Red Cross and Refugee Action have received dedicated funding for family reunification work. Despite this, access to representation remains an acute issue which, come next year, will only be exacerbated when hundreds of additional applicants will need to make online applications using the UK entry clearance procedures.

What hope is there for a replacement of Dublin III family reunification?

As far as we understand, the European Commission currently does not have a mandate to negotiate a replacement to family reunification under Dublin III.[4] In May 2020, the UK Government published a draft negotiating document setting out their proposal for the future of family reunion, which covers UASCs only. This is an inadequate and flawed text primarily because it proposes an entirely discretionary system with no mandatory obligations, timeframes or reference to individual rights. Unlike Dublin III, the proposal also has no provision for asylum seeking adults and accompanied children to join certain family members in the UK (Articles 9, 10 and 16 of Dublin III). There is also no discretionary/humanitarian clause (Article 17.2), which under Dublin III has allowed Member States to bring together other relations such as cousins.

In any event, it has recently been reported that the EU has refused to consider the UK's draft proposal, noting that it adds little value and is not within their mandate. Given their lack of mandate, it seems extremely unlikely that any EU-UK agreement will be reached on the issue.

In June 2020, with Safe Passage's support, a cross-party group of MPs tabled an amendment to the Immigration Bill to protect family reunion rules under Dublin III, but the Government voted it down. We now hope the Government will be defeated when the Bill returns to the House of Lords, but this is far from guaranteed.

While Safe Passage, RLS and other organisations will continue campaigning for an *adequate* replacement to Dublin III family reunification to be implemented into UK law or negotiated with the EU, immigration practitioners should be prepared for a post-31.12.2020 scenario in which we are left with the current immigration rules and outside the rules entry clearance applications under Article 8 ECHR.

Case study

To grasp what this will mean for asylum-seekers in Europe with family members in the UK, it may be useful to provide a case study of a pre-Dublin III and potential post-Dublin III scenario.

Farid is a Syrian child currently in a refugee camp in Lesvos, Greece. He registered his asylum claim in March 2020. He wished to be reunited with his older brother who is a refugee in the UK. The Greek authorities identified he had an older brother in the UK and submitted a Take Charge Request to the UK in May 2020. Once the request was made, the Home Office sent the UK-based older brother a Sponsorship Undertaking Form to complete with basic details of his and his younger brother's circumstances and relationship. Safe Passage assisted the brother to complete this form, and ensured that conclusive evidence of the family link was provided. Under Dublin III, the UK authorities must accept the Take Charge Request within 2 months, i.e. by July 2020. The Greek authorities must then arrange and book a flight for Farid to come to the UK within 6 months. They will issue him with a laissez passer (one way travel document) and flight ticket.

If a child like Farid arrives in Greece in the potential post-Dublin III scenario, he would be in a very different situation. The Greek authorities would not have the same obligation nor mechanism to make a request to the UK Government for him to be reunited with his brother. He may receive assistance from organisations on the ground, but the onus will be on Farid and his older brother to ensure an application is made. Farid may be eligible to make an application under paragraph 319(x) of the Immigration Rules, providing he meets the requirements. However, the application process is much more difficult than that of Dublin III and the evidential burden is much higher. As well as evidencing the family relationship and Farid's older brother's status in the UK, a number of other requirements will need to be demonstrated including that: there are 'serious and compelling family or other considerations which make exclusion of the child undesirable'; that Farid can be maintained and accommodated adequately by his older brother without recourse to public funds; and that Farid is not leading an independent life. There is an application form and a fee. There is the difficulty of Farid not having a valid ID. There is the need for Farid to book, travel to and attend a biometric appointment. It could take at least 6 months, if not longer, for a decision to be made on his application. There is then the possibility that the application will be refused by the Home Office and need to be appealed, whereas it would have been straightforward under Dublin III. Delays in entry

[3] The 2019 breakdown is similar.

[4] The political declaration set the framework for what can be negotiated. The EU Commission's mandate to negotiate is based on this. There is no mention of family reunification or unaccompanied asylum-seeking children. The most relevant paragraph is para 114 – illegal migration – but it would be extremely difficult for any of the three points under this to be interpreted to encompass family reunification/UASC.

clearance appeals being listed prior to the Covid-19 disruption could often exceed one year.

As evident from the above discussion, legal representation will become essential if all UASC and separated families in Europe are required to navigate the process of making entry clearance applications under the Immigration Rules.

Appeals

Unfortunately, most family reunification cases under Dublin III are not as straightforward as Farid's. Conclusive evidence of the family link is often not available and the Home Office regularly make incorrect and unlawful refusals of Take Charge Requests. Nonetheless, when this occurs, the sending state's Dublin Unit has three weeks to put forward further evidence and ask that the case be re-examined (known as a 're-examination request'). It is also possible to challenge the decisions in the UK via judicial review and request that the process be expedited.

In a post-31.12.2020 scenario, we may be left with a situation where the vast majority of family reunification applications from asylum-seekers in Europe with UK-based family members will be refused and need to be appealed. As we are all aware, it can take over a year for an entry clearance appeal to be listed.

The reason that many of these applications will be refused is not simply down to the stringent requirements of and the high evidentiary bar under the Immigration Rules. Applications will also be refused because the vast majority of applicants who are currently eligible for family reunification under Dublin III are not eligible under the family reunification provisions in the UK Immigration Rules. Many applicants will therefore be in the territory of making Article 8 applications outside the rules. Even in the case study above, if Farid's brother did not have limited leave to remain in the UK as a refugee but had indefinite leave to remain or a different immigration status, he would not meet the rules and any prospect of family reunion being achieved would require an outside the Rules application (with all the associated difficulties of such applications and, ultimately, the inevitable need for an appeal).

So what can we do as practitioners?

Prior to the end of this year, practitioners should ensure that clients with asylum-seeking family members in Europe - eligible for family reunification under Dublin III - are aware of the upcoming changes and the need to act promptly. In particular, **Take Charge Requests must be submitted by the sending state to the UK on or before 31.12.2020**. After this, family reunification under Dublin III will no longer be an available route to the UK.

If your practice includes family reunification work, you should ensure that you are signed up to the ILPA Refugee Working Group and the dedicated Google Group Families Together Group (RFR) administered by the Red Cross to view and share updates, queries and experiences of practice. It will be particularly important for practitioners to share experiences of entry clearance applications when we are post-31.12.2020.

Safe Passage is also working actively on family reunification cases to the UK from Europe and is able to advise other practitioners on the best strategic approach for cases going forward. The relevant contact email address is: info@safepassage.org.uk. The RLS legal clinic in Athens can also offer support and representation for potential applicants located in the Attica region: coordinator@refugeelegalsupport.org

Article by Isabella Mosselmans (below left) and Annette Elder (below right).

Isabella Mosselmans is an Immigration/Asylum Lawyer at Safe Passage International.
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Statistical data sourced from: http://asylo.gov.gr/en/wp-content/uploads/2020/03/Dublin-stats_February20EN.pdf • https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets

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.

Coronavirus Work

We have met with UKVI to discuss the latest developments in relation to the Covid-19 policy response. We have also been raising issues with the Home Office and Sopra Steria when they have been arising, including data protection issues and technical defects with the IDV App, switching, and re-issuing vignettes where applicants are stuck outside of the UK. We are continuing to press on the long list of issues that remain outstanding.

Asylum casework consultation response

We submitted ILPA's response on Asylum casework to the Independent Chief Inspector of Borders and Immigration.

Our recommendations stated that the Home Office must train decision makers on Country of Origin Information standards and methodology, implement the recommendations in UKLGIG's report 'Still Falling Short' and 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.

Fourteen recommendations were made in total.

Read ILPA's response here.

ILPA ACTIVITIES

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

Adrian Berry, our Chair of Trustees, has been quoted in the House of Lords by Lord Pannick and Baroness Hamwee. Adrian's evidence to the Public Bill Committee was quoted as follows:

"You need to make better laws. Make it certain and put on the face of the Bill those things that you think are going to be disapplied because they are inconsistent with immigration provisions."—[*Official Report*, Commons, Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee, 9/6/20; col. 52.]

We are continuing to work with colleagues across the sector now that the Bill is in the House of Lords.

The Shadow Minister for Immigration continues to seek ILPA's expertise in relation to the government's proposed statutory instruments under the European Union (Withdrawal Agreement) Act 2020 and other Brexit legislation.

LEDS Consultation Response

We responded to the College of Policing's consultation on its Code of Practice for the new Law Enforcement Data Service. The LEDS will draw together the Police National Computer and Police National Database. We raised concerns over the lack of adequate safeguards to ensure that the right to privacy is upheld. The broad nature of the sources of data, together with the potential to increase the data pool, makes quality control challenging. The Code is also not transparent about who would have access to the database. We highlighted that clear mechanisms for scrutinising LEDS including Parliamentary oversight and/or public scrutiny over new data sources and access rights must be specified. There must also be robust safeguards which ensure that LEDS is not used for immigration enforcement.

Read our response here.

Simplification of the Immigration Rules

We have been continuing to feedback your comments on the Home Office's draft Rules to the Simplification of the Immigration Rules Taskforce. In particular, we have sent comments on the draft suitability, student and skilled worker rules.

We have also highlighted concerns around a proposed refusal ground on rough sleeping. We wrote to the Home Office to show that such a move would penalise the most vulnerable and that government policy is often responsible for street homelessness. We thank the Family and Personal Working Group convenors for their helpful contributions.

Please continue to look out for emails asking for further input.

Paragraph 39E – overstaying

The Home Office asked for ILPA's views on less restrictive alternatives to paragraph 39E. We recommended that the time limit of 14 days should be abolished and that a 'good reason' is sufficient to discount a period of overstaying. Alternatively, we said a return to a 28-day grace period, which was the position prior to Statement of Changes HC 667, would be welcomed.

Further, we highlighted members' concerns that paragraph 39E should not be redrafted in isolation. Contrary to *R (Ahmed) v SSHD* [2019] EWCA Civ 1070, we urged the Home Office to make clear that where an application for leave to remain has been accepted in reliance on paragraph 39E that a future application for ILR will not be prejudiced.

Thank you for all of your responses to our call for evidence.

Asylum Bill

The team met with Holly Lynch MP (Shadow Immigration Minister) to discuss the potential Asylum Bill.

Migrants' Commissioner

We have been involved in meetings with the Home Office and civil society groups to discuss the Migrants' Commissioner, a recommendation of the Wendy Williams Windrush Lessons Learned Review. For the role to be meaningful, there must be a clear purpose for the Commissioner. How will he or she represent the views of migrants? In what way(s) will the role differ from the ICIBI? Fundamental issues concerning the Commissioner's independence, accountability and powers were raised during the meeting. Further meetings will be held so that the role makes a positive difference.

Settlement scheme

We continue to raise ad hoc issues with Gabi Monk, head of the EU Settlement Scheme. She has agreed to attend an ILPA EU Working Group to inform members about operations at the Home Office and learn from practitioners' experiences.

Detention and Adults at Risk

Sonia met with the ICIBI to discuss the Adults at Risk inspection, highlighting particular areas they may want to investigate.

We have met with Home Office officials to discuss detention policy and are working with the National Asylum Stakeholder Forum subgroups on reporting and detention policy.

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.

As a result of the Covid-19 outbreak, the SLF has not been running regular funding rounds. We have been accepting out-of-rounds funding proposals where the urgency can be demonstrated.

We recently awarded the following grant:

JCWI has been awarded funding to seek to intervene in *NM (Pakistan) v SSHD* C5/2019/0994. In granting permission to appeal, Holroyde LJ found this was an appropriate case to provide guidance on the approach to a family relationship in the case of an ageing parent living in the UK with the support of adult children.

We are pleased to be able to announce that we are able to return to regular funding rounds and the next two application deadlines are as follows:

5pm on Tuesday 20th October 2020

5pm on Tuesday 24th November 2020

ILPA is still running the SLF in house and so if you have any queries please email info@ilpa.org.uk

We are delighted to be able to confirm that we have appointed a new SLF project manager. Claire Tindale will be joining us from the 20th October 2020. Claire will oversee the future funding rounds and the expansion of the criteria for the SLF fund.

Claire read International Relations and Law MA (Hons) at University of Edinburgh as a mature student and in 2014 started working in the asylum and refugee sector with the British Red Cross Refugee Services in Glasgow, where, amongst other things, Claire designed, implemented and ran the duty casework service while also coordinating the asylum support casework service. Both roles gave Claire extensive experience of working on the frontline delivering welfare advice and casework support to asylum seekers and migrants.

Having gained substantial experience of asylum support Claire moved to London in 2018 and joined the Asylum Support Appeals Project (ASAP) as Training Coordinator and Legal Adviser. During her time there Claire designed and delivered training on asylum support law through face to face training and webinars to case workers and lawyers throughout the UK. As part of ASAP's legal team Claire provided advice on asylum support law through ASAP's national second tier advice line.

Claire is an experienced project manager having successfully managed ASAP's Lottery funded Help Through Crisis partnership with the British Red Cross, PAFRAS, Solace and Open Doors in Yorkshire and Humberside.

Claire moved full-time to Freedom from Torture in March 2020 where she has led on the London Centre's welfare service for asylum seekers and refugees who are survivors of torture. The welfare service ensures asylum seekers and refugees access their legal entitlements. During her time at Freedom from Torture Claire has built on her frontline experience by developing expertise in mainstream benefits, homeless applications and the issues facing newly recognised refugees.

www.strategiclegalfund.org.uk

STRATEGIC LEGAL FUND FOR VULNERABLE YOUNG MIGRANTS — Managed by ILPA

Secretary of State's approach to Schedule 10 accommodation for Foreign National Offenders declared unlawful:

R (*Humnyntskyi and Others*) v SSHD [2020] EWHC 1912 (Admin)

Bail accommodation under paragraph 9 of Schedule 10 to Immigration Act 2016 – "Schedule 10 accommodation" – is often the only recourse for otherwise destitute immigration detainees who are neither current nor failed asylum-seekers. Refusals of Schedule 10 accommodation may result in prolonged detention or in release to, or the prolongation of, street homelessness.

An important recent judgment of the Administrative Court declares the Home Office's policy and practice concerning eligibility for Schedule 10 accommodation for foreign national offenders (FNO) to be unlawful, both because it is systemically unfair and because the Secretary of State has been unlawfully fettering her discretion. The judgment has significant ramifications for FNOs to whom the unlawful policy and practice are being or have been applied. It is also (at least potentially) significant for other categories of destitute immigrants eligible for Schedule 10 accommodation, and more broadly for those bringing systemic challenges or cases centring on issues of detention or destitution.

Paragraph 9 of Schedule 10 sets out the criteria for eligibility for support and accommodation:

- The person must be on immigration bail, and must be subject to a condition requiring him or her to reside at a specified address (though the Secretary of State can make an "in principle" decision to grant bail subject to the provision of accommodation, or to provide accommodation subject to the grant of bail).
- The person must be unable to support him or herself at that address unless the Secretary of State exercises her power to provide accommodation.
- The Secretary of State must consider that there are "exceptional circumstances which justify the exercise of [that] power".

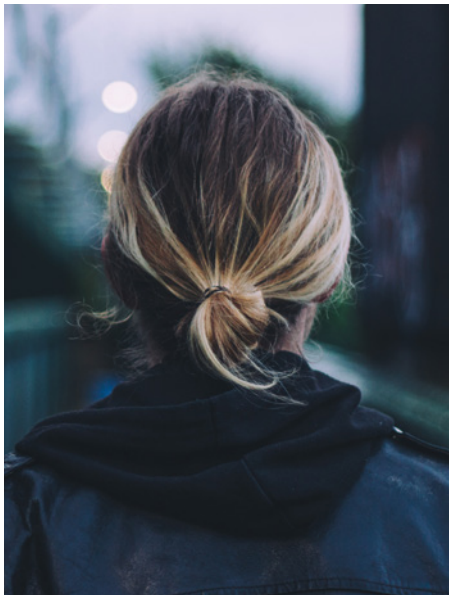
When Schedule 10 came into force in early 2018, practitioners soon noted the Secretary of State's insistence that there was no way an individual could apply for accommodation to be provided under paragraph 9. This lacuna was challenged in *R (MSM) v SSHD*, and resulted in the Secretary of State agreeing to provide "additional guidance".

The system that was subsequently established was problematic in a number of ways – most notably for Foreign National Offenders ('FNOs').

One serious issue was the opacity of the application and decision-making process. There was no specific form FNOs could use to request Schedule 10 accommodation: instead, buried deep in the Home Office's 76-page Immigration Bail policy was an instruction to FNOs to set out their need for bail accommodation, and the reasons it should be provided under Schedule 10, on the generic forms used for seeking release on bail. The questions on these forms did not directly elicit this information, or even mention Schedule 10 accommodation – leaving it up to FNOs or their representatives to access the bail policy, identify the relevant criteria, and work out that they should insert their representations under unrelated headings like *"What are the reasons why you think the Secretary of State should grant you bail?"*. There was no other systematic opportunity for FNOs to make representations on their eligibility for Schedule 10 accommodation, or to address any concerns the Secretary of State might have.

A second problem was what seemed to be a narrow and rigid approach to the "exceptional circumstances" criterion as applied to FNOs. Practitioners and NGOs alike found – on the rare occasions when they were given reasons for a decision – that only FNOs who had been assessed as presenting a "high" or "very high" risk of harm tended to be offered accommodation. Other FNOs – even those who faced a risk of Article 3-level destitution on release, or who required bail accommodation to avoid potentially unlawful detention – were routinely told that, in effect, they were not dangerous enough to be considered. Witness evidence from two senior Home Office officials in Humnyntskyi appeared to endorse this approach. All this was despite the fact that paragraph 9 did not define or limit the concept of "exceptional circumstances", and the Immigration Bail policy appeared to acknowledge that FNOs (like other detainees) should be considered for Schedule 10 accommodation if they faced a real risk of an Article 3 breach.

By the time of the hearing in *Humnyntskyi*, it had become clear that this problem stemmed in part from an unpublished guidance document relating to FNOs and Schedule 10, which – while it did not expressly limit the meaning of "exceptional circumstances" – instructed decision-makers to consider the necessity of a residence condition (which was linked to issues of risk) before moving on to "exceptional circumstances", rather than considering all criteria in the round. This meant that, in many cases, decision-makers did not consider the possibility of imposing a residence condition to facilitate the grant of Schedule 10 accommodation so as to avoid (for example) a breach of Article 3 on release.



The three successful claimants in *Humnyntskyi* had all experienced the ill-effects of this flawed system.

- Mr Humnyntskyi, a Ukrainian national (who had insisted for a time that he was Estonian), had applied several times for Schedule 10 accommodation with the help of Bail for Immigration Detainees ('BID') – but to no avail. Two grants of conditional bail lapsed in the absence of release accommodation, without any decision being communicated. Only in response to pre-action correspondence did Mr Humnyntskyi's solicitors find out that accommodation had been refused on the sole basis that he was a medium- and not a high-risk offender.
- The second claimant, A, had applied for Schedule 10 accommodation while detained; the request had been refused without substantive reasons. A was later released without an address, and ended up being forced to live in a tent for months in unsafe and unsanitary conditions. His solicitors' further attempts to secure accommodation were met with puzzling responses, including a suggestion that he would be treated as having applied for s 4 accommodation (despite never having sought asylum). Reference was also made to the fact that he was not a high-risk offender.
- The third claimant, WP, was a Polish national who was seriously mentally ill and had previously been subjected to sexual assault while street homeless. Her solicitors' requests for Schedule 10 accommodation were initially refused on the

basis that she was not a high-risk offender and that insufficient evidence had been provided of her mental ill-health. On several occasions, WP chose to remain in (unlawful) detention to avoid being released to the streets.

Before the Administrative Court, the claimants argued that the Secretary of State's approach to Schedule 10 accommodation was unlawful for two key reasons: first, that it was in breach of the Secretary of State's obligation to operate a fair system for the granting of bail accommodation; and secondly, that Home Office staff were systematically fettering their discretion in considering whether FNOs met the "exceptional circumstances" criterion (both by refusing FNOs simply on the basis that they were not "high risk", and by closing their minds to potential "exceptional circumstances" which fell outside the categories identified in the relevant policies). The claimants pointed to the facts of their own cases, as well as to wider evidence from BID and the Gatwick Detention Welfare Group.

The Secretary of State, while acknowledging that there had been errors in all three cases, maintained that these were "aberrations" and that her decision-making system was not inherently flawed.

In a judgment of 21 July 2020, the Court (Mr Justice Johnson) found in favour of the claimants on both issues.

As to the first issue, the Court concluded that the Secretary of State's policy (encompassing not only her written guidance but her broader practice) failed to satisfy the "irreducible minimum" of fairness required in all the circumstances. This included that FNOs have the ability to make representations on Schedule 10 accommodation, and to inform themselves of the applicable criteria; that FNOs' representations be taken into account by decision-makers; that decision be made in accordance with the published Immigration Bail policy; and that FNOs be notified of negative decisions.

In the Court's view, the critical question was whether – having regard to these minimum requirements – the existing system created "a real risk of unfairness in a significant number (that is in more than a minimal number) of cases." To conclude that this was the case, it was sufficient to find that there were "legally significant categories of case where there [was] (as a result of the terms of the policy) a real risk of more than a minimal number of procedurally unfair decisions".

In deciding whether this was the case, the Court considered the terms of the relevant policies and the risks they created, alongside the parties' evidence and the facts of the cases before the Court – though it did suggest that, in an appropriate case, inherent unfairness might be evident even on the face of a policy. Taken together, these demonstrated that:

- There were categories of case where FNOs had no real ability to make representations in relation to Schedule 10 accommodation – for example, where a decision was taken as a result of an "internal referral" within the Home Office (rather than in response to a request); or where FNOs were already in the community, and so could not use the generic bail forms to make their application (as instructed by the published documents).
- A significant number of FNOs were unable to access information about how to apply for Schedule 10 accommodation and what criteria would be applied, as this could be found only in the Immigration Bail policy (access to which required both English-language ability and a working internet connection).
- There was no mechanism for placing FNOs' representations before the final Schedule 10 decision-makers within the Home Office.
- The effect of the unpublished guidance was that decisions on Schedule 10 accommodation for FNOs were frequently taken on a basis that was inconsistent with the Immigration Bail policy.
- There was no mechanism for systematically informing FNOs of adverse decisions.

The Court concluded that, whatever formulation was invoked, "the exacting test for demonstrating systemic unfairness [was] satisfied" – and, indeed, was satisfied "by some margin".

As to the second issue, the Court found that the drafting of the Immigration Bail policy created an unintentional risk "that caseworkers [would] regard the categories of exceptional circumstances as closed." This problem was, however, overshadowed by the effect of the unpublished guidance, the terms of which created a further risk that only high-risk FNOs would be considered for Schedule 10 accommodation. The evidence in the case showed that this risk was frequently realised, with the result that – in practice – the Secretary of State was unlawfully fettering her discretion under Schedule 10.

The Court also found in favour of the claimants on the individual aspects of their claims: in the case of Mr Humnyntskyi, that he had been unlawfully detained during the period where conditional bail had been granted, but had lapsed; in the case of A, that he had been subjected to ill-treatment contrary to Article 3 during his period of street homelessness; and in the case of WP, that she had been unlawfully detained for a much longer period than the Secretary of State had acknowledged.

In reaching these conclusions the Court addressed a number of other issues, including:

- The test for an Article 3 ECHR breach in a destitution case: A was found to have suffered degrading treatment in circumstances of prolonged and indefinite homelessness, although the Secretary of State emphasised that A had intermittent access to food and washing facilities and, in wintertime, to church shelters.
- The circumstances in which claims raising systemic issues should be treated as academic where a claimant has obtained the primary relief sought: Johnson J held that the claims were not academic where the systemic issues (which were liable to affect two of the claimants in future) and issues around backward-looking damages and declaratory relief remained live, and that it was appropriate for them to continue in the Administrative Court.
- The limits on a public authority's ability to seek an extension of time for compliance with a mandatory injunction, particularly where breaches of fundamental rights are involved: Johnson J stressed that it will usually be inappropriate to apply at the last moment to extend time for compliance, as this risks frustrating the purpose of the order.
- The circumstances in which a public law error in relation to a decision on bail accommodation "bears on and is relevant to" a subsequent decision to detain, so as to render detention unlawful: the Court applied the recent decision of the Supreme Court in *R (DN (Rwanda) v SSHD* [2020] 2 WLR 611.
- The period of time which can reasonably be taken to source Schedule 10 accommodation once eligibility is accepted: Johnson J considered in both Humnyntskyi and WP's cases that one week should have sufficed.
- The application of EU law freedom of movement protections to an immigration detainee who is not economically active and has not been residing in the UK for more than five years: Johnson J agreed that WP's detention was required to be proportionate and that this in turn entailed a necessity test.

All of these are likely to be of interest to practitioners in the field.

The Secretary of State has not sought to appeal the Administrative Court's judgment. As a result, she will now need to think carefully about how she will revise her policies and procedures so as to ensure their lawfulness.

The changes that result are highly unlikely to resolve all the issues individuals face in seeking Schedule 10 accommodation. However, they should represent a significant step towards procedural and substantive fairness in this difficult area.

- Oleh Humnytnskyi was represented by Laura Dubinsky (Doughty Street Chambers) and Eleanor Mitchell (Matrix) instructed by Joanna Thomson and Mark Hylands of Deighton Peirce Glynn Solicitors.
- A was represented by Laura Dubinsky and Agata Patyna (Doughty Street Chambers) instructed by Nina Rathbone Pullen and Hannah Watkins of Wilson Solicitors LLP.
- WP was represented by Laura Dubinsky and Marisa Cohen (Doughty Street Chambers) instructed by Rebecca Harrington of Wilson Solicitors LLP.

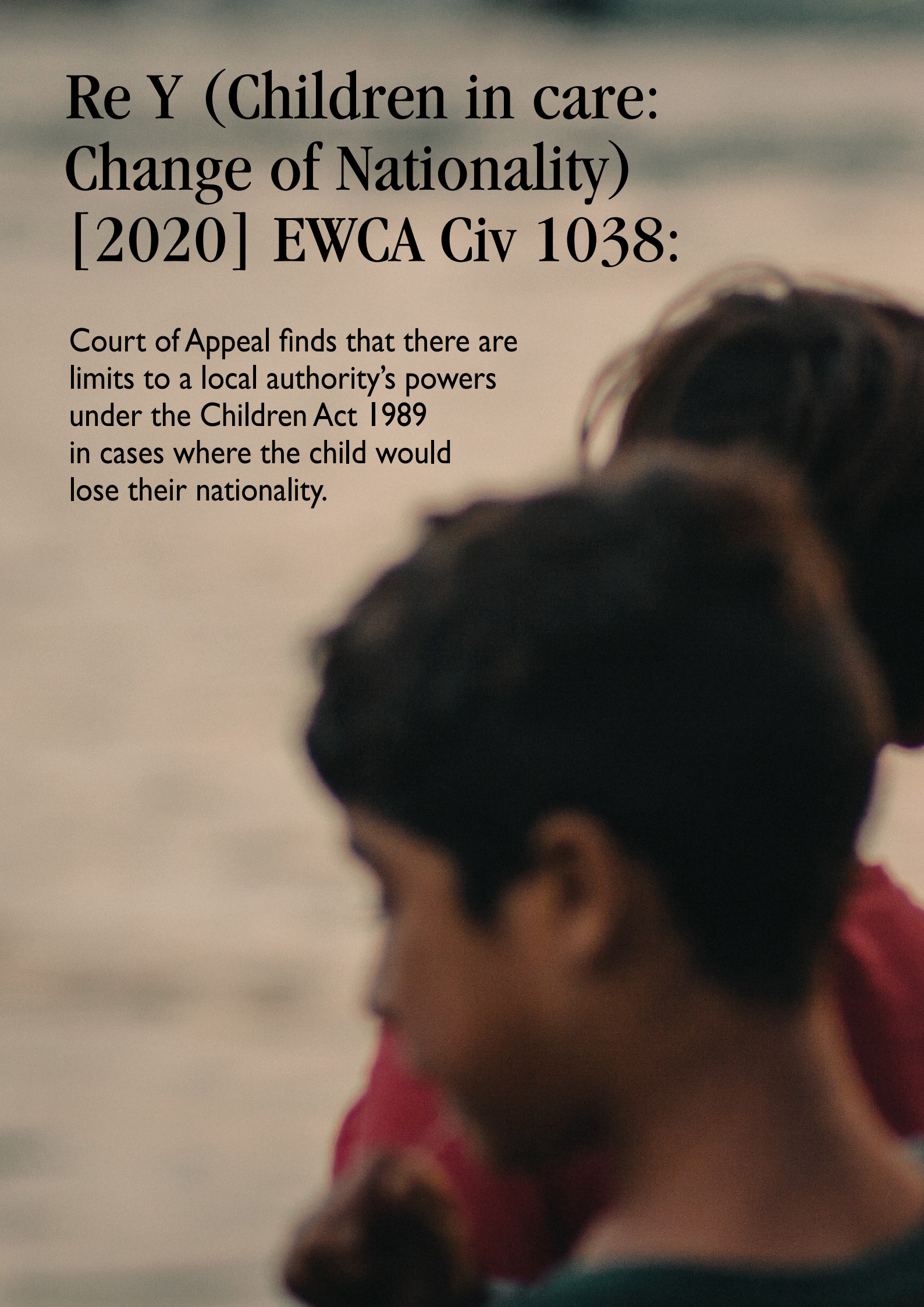
The full judgment can be found here:

www.bailii.org/ew/cases/EWHC/Admin/2020/1912.html

This note was prepared by Laura Dubinsky (below left) and Eleanor Mitchell (below right).

Re Y (Children in care: Change of Nationality) [2020] EWCA Civ 1038:

Court of Appeal finds that there are limits to a local authority's powers under the Children Act 1989 in cases where the child would lose their nationality.



This Court of Appeal judgment raises a number of important issues for those working with children in care. It highlights the difference between nationality and immigration law and how these issues should be dealt with. Nationality law is complex, particularly for children, and there are different rules and guidance for children registering under entitlement or by discretion, including on the requirement for consent.

This case raises important issues about children in care, the wishes of parents, and the statutory powers of a local authority caring for that child. The judgment highlights the complexities that can arise between nationality, immigration and community care law.

Facts of the case

The case involved two children aged 9 and 11. The children are Indian nationals born in the United Kingdom. Their parents came to the UK around 2004, although little is explained about their immigration status beyond a statement that they *'were unsuccessful in obtaining leave to remain'*. The children were taken into care in August 2015 and placed in a foster home, where they continue to reside. There has been no contact with the parents since the children were taken into care. The mother left the UK and currently lives in Singapore, while the father has remained in the UK. The children were the subject of placement orders but, following the lack of success in searching for adoptive parents, the orders were discharged. The care orders remained and the plan is for the children to remain in long-term foster care.

Nationality issue and decision

During the course of the care proceedings, the local authority stated that it would seek to obtain British citizenship for the children. The parents appealed on a number of grounds but permission was only granted on the single issue of powers around a change of nationality. The court noted that the children were Indian nationals and undocumented in the UK. If the children were to obtain British citizenship, they would lose their Indian nationality. It was further noted that other cases, where dual nationality is possible, can be contrasted with cases where nationality can be lost. The court recognised that immigration and nationality were distinct issues and that the local authority could have taken steps to resolve the children's immigration status.

The Court of Appeal found that changing citizenship is a profound and enduring decision requiring careful consideration and declared that section 33 of the Children Act 1989 did not entitle the local authority to apply for British citizenship for children, in the face of parental opposition and where that may lead to a loss of their existing citizenship, without first obtaining approval from the High Court.

Takeaways

The Court of Appeal judgment raises a number of important issues for those working with children in care. It highlights the difference between nationality and immigration law and how these issues should be dealt with. Nationality law is complex, particularly for children, and there are different rules and guidance for children registering under entitlement or by discretion, including on the requirement for consent.

It raises important points on local authority practice, including ensuring that good quality legal advice is sought and the importance of exploring immigration and nationality issues in the care plan. Although touched upon briefly in the judgment, the views of the child are extremely important, and these need to be reflected in planning and decisions. Additionally, with the UK having left the EU, there is a further need for children in care with EEA rights to obtain advice on nationality and immigration routes. Finally, it highlights the importance of understanding the issues and timeously resolving the nationality and immigration rights of children in care.

The full judgment can be found here:

www.bailii.org/ew/cases/EWCA/Civ/2020/1038.html

Article by Stewart MacLachlan

Stewart MacLachlan is a Senior Legal and Policy Officer for the Migrant Children's Project at Coram Children's Legal Centre in Colchester.

Fairness in "conducive to the good" exclusion decisions

Exclusion decisions prohibit entry to the UK and are made under a non-statutory power exercised personally by the Home Secretary. They tend to be used against foreign national (non-EU) prisoners who have taken up the offer of assistance to leave the UK under the facilitated returns scheme. They are made on the basis that preventing the person's return here is conducive to the public good.

Decisions with such far-reaching consequences need to be administered fairly. The Guidance explains that *"where possible"* the decision's subject should be notified of their exclusion via written reasons. Otherwise the notice will be served to file.

Experience suggests that the first many migrants hear of these decisions is in the context of the refusal of an entry clearance application to rejoin their family in the UK. Even then it can be rather difficult to get hold of the decision itself. This raises a question as to effectiveness of the safeguard set out in the Guidance that *"If the person is subsequently located they must be given a copy of the notice as soon as it is practical to do so."*

Having an exclusion decision hanging over one can present a serious problem for resolving an application to join one's family in the UK. For example, many entry clearance cases can be improved by the provision of further evidence on a repeat application, but an extant exclusion decision will make re-application with improved evidence pointless.

So what to do? Of course one can bring an appeal on human rights grounds, though that can be a very lengthy process. However the SSHD's guidance suggests that an exclusion decision is non-appealable. This creates a concern that even a successful appeal will not persuade an entry clearance post to grant a visa. There is support for the question of exclusion being relevant to the proportionality balancing exercise in a family life appeal: see *Campbell* [2013] UKUT 147 (IAC). But the UT there ultimately held it against the Appellant that no earlier challenge had been made against the exclusion decision.

All this leaves it unclear as to whether judicial review or an appeal is the appropriate remedy for contesting an exclusion decision, particularly where the actual decision remains undisclosed. And there are other difficulties with appeals, which face very long waits for hearing, foreseeably worsened by the pandemic. As held in recent decisions such as *BH Iraq* [2020] UKUT 189 (IAC), the disclosure duties on the SSHD are less onerous in appeals than in public law proceedings.

On 5 August 2020 Judge Keith in the Immigration and Asylum Chamber of the Upper Tribunal granted permission for judicial review in JR/1339/2020. This was because, where the exclusion decision remained undisclosed at the date the claim reached the Tribunal, the appeal was arguably not an effective alternative remedy, having regard to the points made above.

Reproduced from the Garden Court website with the author's consent.

Article by Mark Symes

Mark Symes is a Barrister at Garden Court Chambers, London.

ILPA LEGAL UPDATE

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

HA(Iraq) v SSHD [2020] EWCA Civ 1176

The Court of Appeal revisited the meaning of "unduly harsh" in s.117C of the 2002 Act. Lord Justice Underhill, who delivers the leading judgment, granted permission to appeal for the purpose of considering the UT's guidance relating to the Supreme Court's decision in *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53.

In the case, both appellants were Iraqi nationals, in settled relationships with women of British nationality and were parents to young British children. The appellants committed offences and were therefore subject to the automatic deportation provisions of section 32 of the UK Borders Act 2007.

Lord Justice Underhill considers the meaning of "unduly harsh" from paragraphs 39 and following. Both appellants contended that the effect of their deportation on their children would meet this threshold (s.117C(5) i.e. Exception 2).

Lord Carnwath's judgment in KO *(Nigeria)* is fleshed out – in particular, Underhill LJ states that the key issue is what *degree* of harshness is sufficient to outweigh the public interest in the 'deportation of foreign criminals in the medium offender category' [paragraph 44].

Lord Justice Underhill states at paragraph 52 that:

'…while recognising the "elevated" nature of the statutory test, it is important not to lose sight of the fact that the hurdle which it sets is not as high as that set by the test of "very compelling circumstances" in section 117C (6). As Lord Carnwath points out in the second part of para. 23 of his judgment, disapproving *IT (Jamaica)*, if that were so the position of medium offenders and their families would be no better than that of serious offenders.'

Tribunals will need to make an 'informed evaluative assessment' as to whether the effect of deportation would be 'unduly harsh'.

The Appellants made two primary submissions on why *KO* would be misinterpreted. First, the Appellants argued that Tribunals may not give due weight to s.55 of the 2009 Act and fail to treat the best interests of any affected child as a primary consideration. The Court of Appeal rejected this argument and held that *KO* would be interpreted as making the child's interests a primary consideration. Lord Justice Underhill considered that the best interests of the child were part and parcel of the statutory test. However, he confirms that "a careful analysis of all relevant factors specific to the child" must be conducted.

Secondly, the Appellants contended that *KO* could be read as requiring undue harshness to go beyond 'that which is ordinarily expected by the deportation of a parent'. The Court of Appeal confirmed that what is unduly harsh for a child need not be beyond the 'ordinary', in the sense that it does not need to be exceptional: 'undue' harshness may in fact be common. Such an approach might also lead Tribunals into placing children in commonly encountered fact patterns. This would be dangerous. How a parent's deportation will impact a child will depend on an 'almost infinitely variable' set of circumstances [paragraph 56].

The Court of Appeal makes clear that if a deportee cannot bring him or herself within s.117C (5) (and paragraph 399 (a)) then the Tribunal must nevertheless conduct an Art 8 ECHR proportionality assessment i.e. whether there are very compelling circumstances which outweigh the public interest in deportation: *NA (Pakistan)*.

Both of the Appellants' appeals were allowed and the underlying appeals were remitted to the UT for re-determination.

Lord Justice Peter Jackson's judgment is worth noting and highlights that decision makers must 'look at matters from the child's point of view' [paragraph 155].

Overall this is a robust judgment from the Court of Appeal providing clarity on the meaning of 'unduly harsh' in s.117C of the 2002 Act.

Implementing allowed appeals (4 August 2020)

Home Office guidance states that allowed appeals should be implemented and leave should be granted in line with the determination, unless the determination is being onwards appealed or the decision being appealed is being re-opened.

When allowed appeals are not concerned with ILR then the Immigration Health Surcharge can be charged. If payment is not then made and the appeal is allowed solely on human rights grounds, the appellant will be granted 30 months leave but may have to pay for some medical treatment.

Caseworkers are reminded that they cannot refuse to implement a Tribunal's determination because they believe (i) the Tribunal lacked jurisdiction or (ii) disagree with the determination.

Hussein and Another (Status of passports: foreign law) [2020] UKUT 250

A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport. The burden of proving the contrary lies on the claimant in an asylum case. Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue.

Legal Update continued...

ILPA LEGAL UPDATE

DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC)

The Refugee Convention 1951 was deemed to provide greater protection than Article 10(1)(d) of the Qualification Directive (Particular Social Group ('PSG')).

On one reading, the Qualification Directive requires members of a PSG to meet two criteria, which are as follows:

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, **and**

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society [emphasis added]

As Upper Tribunal Judge Hanson noted, if both elements ('common characteristics' and 'distinct identity') must be met, then mental health issues must be visible at the level of the group. It was held that the UNHCR does not apply a 'cumulative approach'.

While the Refugee Convention does not refer to mental disabilities, the UT held that 'social group' should be read 'expansively' and that those with mental health issues fell under that umbrella.

This is an important judgment recognising that a 'person living with disability or mental ill health' may qualify as a member of a PSG.

ILPA JOBS

Deputy Editor

Journal of Immigration, Asylum and Nationality Law

Salary and Hours Part time (a few hours a week) with a small annual payment

JIANL is the only peer-reviewed journal on British immigration law. It is the official journal of Immigration Law Practitioners' Association and has a wide readership among interested academics, practitioners, NGOs and others. It publishes challenging, well-written articles with both a domestic and international focus from academic and practitioner authors. The editorial team is supported by a prestigious editorial board and excellent technical support from Bloomsbury/Hart.

The editor, Dr Helena Wray, is looking for a deputy to work with her in leading the journal and this is to ask those who might be interested to come forward. We would prefer someone with some experience in reviewing or editing and with an interest in immigration law and/or understanding of the UK's legal system but will consider all candidates.

If you would like to be considered, please would you send a covering email and cv by 2nd October 2020 to Helena Wray at h.wray@exeter.ac.uk

Please also get in touch if you would like an informal conversation about the role.

This can be found in the job section on the ILPA website as well.

ILPA TRAINING

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

As many of you will know, in April we launched an exclusively online training programme to ensure that practitioners could stay informed of the latest developments in immigration, asylum and nationality law whilst social distancing measures remain in place. 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.

We want to say a big thank you to all of our **tutors** for their ingenuity and dedication to delivering high quality training, and to all of our members for supporting us during this transition. We have received fantastic feedback about the accessibility of our webinars, particularly from ILPA members located out of London, and we're dedicated to continuing to offer training online for the foreseeable future.

We have delivered some of ILPA's classic courses, as well as introducing a few new ones including; **Arguing Insurmountable Obstacles under Appendix FM**, **Deportation of EEA nationals and their dependants**, **Windrush Scheme: A Guide to Applications**, and **Mental Health in Immigration and Asylum Law**, to name but a few.

We are always adding to our webinar programme, so don't forget to follow us on Twitter and visit the training section of our website **here** for updates on new courses. Remember that you can always suggest a training session by submitting a request **here**.

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

We are offering all ILPA members currently on furlough the concessionary rate on webinars as an effort to support their transition back to work when the time comes. If you would like to take advantage of this, please email Amira.rady@ilpa.org.uk

September 2020

WEB 1050 Arguing Insurmountable Obstacles under Appendix FM (Bitesize Webinar)

Thursday 24 September 2020, 16:00 – 17:30, 1.5 CPD Hours

Tutor: Priya Solanki, One Pump Court Chambers

In this webinar, we will look at the harsh test that applies to foreign nationals who are here as overstayers and make applications as partners under Appendix FM EX.1(b) and EX.2 of the Immigration Rules. We will consider recent authorities and how these have clarified the test. There will be a detailed look at policy guidance, practical tips and examples. This webinar will allow more effective applications to be submitted and for better challenges to adverse decisions.

WEB 1041 "Dispatches from the FTT Front Lines": Current issues litigating for appellants in the FTT (IAC) (Bitesize WEBINAR)

Monday 28 September 2020, 10:00-12:00, 2 CPD Hours

Tutors: Eleanor Mitchell and Zoe McCallum, Matrix Chambers

This session will focus on a small number of important practical issues encountered by practitioners working in the First-tier and Upper Tribunals. This course will cover 1) roll-out of the online procedure: navigating standard directions and the prospect of remote hearings, 2) litigation friends: procedure in the absence of procedure, 3) evidence from children: fairness and flexibility, 4) cross-appeals to the Upper Tribunal: progress at last? and 5) expert reports: ensuring fitness for purpose.

Webinars continued...

October 2020

WEB 1052 Immigration Detention Latest Caselaw (FREE Bitesize Webinar)

Thursday 01 October 2020, 15:00-16:00, 1 CPD Hour

Tutor: Rory Dunlop QC, 39 Essex Chambers

This webinar is FREE and you can book your place HERE.

This webinar will provide an update on the latest caselaw and the forthcoming issues in immigration detention from one of the authors of the OUP textbook – Detention Under the Immigration Acts: Law and Practice.

Topics:

- AC (Algeria) – grace under fire;
- DN (Rwanda) – res judicata not yet judicata;
- Adults at Risk – a policy at risk?
- Interim relief, bail and COVID19

This webinar will comprise of a 40-minute presentation followed by a 20-minute Q&A.

WEB 1042 Immigration Judicial Reviews for OISC practitioners

Tuesday 06 October 2020, 10:00-13:00, 3 CPD Hours

Tutors: Samina Iqbal and Kezia Tobin, Barristers at Goldsmith Chambers

The 2017 Guidance on Competence permits OISC advisers authorised at "Level 3" to apply for an additional category of authorisation: Judicial Review Case Management (JRCM).

This course intends to guide OISC advisers through how to undertake Judicial Review claims from pre-action conduct through to seeking costs when a case is "won".

Topics:

- Assessing merits of pursuing a Judicial review application and alternative remedies
- Complying with pre-action protocol
- Lodging claims
- 'Ins' and 'outs' of conducting judicial review claims
- Outcomes in the Upper Tribunal
- Consent orders and Costs
- Remedies
- Urgent applications and injunctions

WEB 1056 Nationality Law is Fun

Thursday 08 October 2020, 13:00-17:15, 4 CPD Hours

Tutors: Adrian Berry, Garden Court Chambers and Diana Baxter, Wesley Gryk Solicitors

The session is aimed at practitioners who want to develop their understanding of British nationality law and who are interested in more than making applications for citizenship. It complements the ILPA courses on naturalisation and registration of children. It covers automatic acquisition of British citizenship by birth or descent, tracing family status and old Commonwealth cases on and after independence, other forms of British nationality (e.g. British Overseas citizens), and dual nationality issues in practice. It also looks at the swing to correct historical injustices based on sex discrimination, illegitimacy and birth in the British overseas territories.

It considers the nationality legislation of 1914 and 1948 before turning to the development of the British Nationality Act 1981 and its revisions down to the present day. Understand the implications of status tracing for your client and emerge a better-informed and wiser immigration, asylum and nationality lawyer.

WEB 1047 Immigration and Asylum Judicial Review in the Upper Tribunal

Tuesday 13 October 2020, 14:00-16:00, 2 CPD Hours

Tutors: Tim Buley QC and Ben Fullbrook, Landmark Chambers

The Upper Tribunal has had a judicial review jurisdiction since its creation. "Fresh claim" judicial reviews have been required to be brought in the Upper Tribunal (Immigration and Asylum Chamber) (UTIAC) since late 2011, and age dispute judicial review claims are now also routinely dealt with by the UTIAC. Since November 2013, the majority of all immigration related judicial reviews are required to be heard in the Upper Tribunal. This session will consider practice and procedure on judicial review in the UTIAC, including the transfer process, what claims should or should not be brought in UTIAC, and what kind of arguments can be made for claimants in such cases, as well as addressing issues on the cutting edge of legal developments in this area. It will also provide practical insights into tactics and presentation of claims to maximise chances of success.

The tutors are barristers at Landmark Chambers specialising in public law an immigration, who have been involved with many significant developments in immigration judicial review, and with very extensive experience of bringing successful judicial review claims against the Home Office.

- Jurisdiction of the Upper Tribunal in relation to judicial review
- Practice and procedure in the Upper Tribunal when hearing judicial review claims
- Practicalities of JR in the Upper Tribunal

WEB 1036 Applications and appeals under paragraph 276ADE(1) (iv) of the Immigration Rules ('7 Year Applications')

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

Tutors: Lucy Mair, Barrister at Garden Court North Chambers and Sumita Gupta, Solicitor at 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.

Topics:

- Paragraph 276ADE(1) (iv) of the Immigration Rules
- Policy in relation to Private Life Applications

Webinars continued...

- Fee Waivers
- Taking a Child Rights based approach to evidence and legal argument
- Preparing appeals
- Legal Aid (including Exceptional Case Funding)

WEB 1038 Sole responsibility and the Immigration Rules

Monday 26 October 2020, 14:00-17:15, 3 CPD Hours

Tutors: Nath Gbikpi at Wesley Gryk Solicitors and Adam Cotterill at Penningtons Manches Cooper

The course will review the Immigration Rules relating to sole responsibility for family members of PBS migrants and British and settled citizens; case law relating to the concept of sole responsibility, and the practical application of the Rules. We will also think of alternative options for families who cannot meet the strict Immigration Rules relating to sole responsibility.

Topics:

- The Rules relating to sole responsibility
- Case law relating to the concept of sole responsibility
- Applications in practice – evidence
- Difficulties with the rules
- Alternative options to move to the UK, including "compelling circumstances" and Tier 4 student applications
- Case studies

WEB 1051 FGM Claims

Thursday 29 October 2020, 15:00-18:15, 3 CPD Hours

Tutor: Priya Solanki, Barrister at One Pump Court Chambers

In this webinar, we will look at how to successfully argue claims based on Female Genital Mutilation (FGM). We will discuss the need for expert medical and country evidence and what this should address. We will have a detailed look at various country guidance decisions and useful Policy Guidance documents. There will also be a consideration of the link between asylum and immigration law and FGM protection orders.

In this webinar, we will aim to cover the following:

- An understanding of what FGM is, including the types of FGM, the prevalence of the practice globally, cultural underpinnings and motives, consequences of FGM, issues relevant to risk
- A quick overview of the Female Genital Mutilation Act 2003 and the mandatory reporting duties
- FGM Protection Orders (FGMPO) and the link between these and asylum law
- A look at relevant UKVI Policy Guidance
- Useful country guidance decisions to discuss risk factors, how to address arguments on credibility, state protection and internal relocation
- Dealing with practical issues such as anonymity and vulnerable applicants
- Expert evidence
- Practical tips and examples
- Case Activity / Group Discussions

November 2020 Highlights

Here are there highlights from the November 2020 webinar programme. You can view all of the November training here.

WEB 1057 Fee Waivers: how to make a successful application

Thursday 12 November 2020, 15:00-17:00, 2 CPD Hours

Tutors: Duduzile Moyo Families Together Project Solicitor at the Joint Council for the Welfare of Immigrants (JCWI) and Mala Savjani, Solicitor at Wesley Gryk Solicitors and ILPA Well-being Ambassador

This is a course for practitioners who wish to assist their clients with fee waiver applications. The course will provide a general overview of the current case law and Home Office guidance, and a practical introduction to making successful applications, with guidance on the type of documents that need to be submitted.

This training will cover:

- Legislative framework
- Guidance Framework
- What types of applications can attract a fee waiver?
- In-country and out of country fee waivers
- Criteria for a fee waiver
- Who can apply for a fee waiver?
- What is covered by a fee waiver
- How to apply
- Supporting documents and format
- Who has to supply the documents?
- How long does it usually take to get a decision?
- How is the application processed?
- Date of application is the date of the immigration application
- What happens if the application is refused?

WEB 1053 Running a Deport Case

Tuesday 17 November 2020, 14:00-17:15, 3 CPD Hours

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

A course for practitioners representing individuals facing criminal deportation, with a particular focus on evidence collection, and the current state of Article 8 case law.

Topics:

- Legal framework
- Case law
- Process
- Evidence gathering
- Status of individuals' subject to deportation
- Funding options

Webinars continued...

ILPA TRAINING

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

WEB 1011 Psychological factors in credibility assessments of asylum seekers

Thursday 19 November 2020, 10:00-13:15, 3 CPD Hours

Tutors: Raggi Kotak, 1 Pump Court Chambers and Zoe Given-Wilson, Centre for the Study of Emotion & Law

"We will show you how to use your knowledge and understanding of the processes, together with appropriate research materials to challenge negative credibility findings for your clients."

This course will present and discuss various psychological reasons why some asylum seekers have particular difficulties in presenting their case. We will present the latest research findings that help elucidate some of the psychological processes at work. We will encourage discussion of the ways in which these findings can help legal representatives to better inform and support clients going through the asylum system.

Finally, we will consider some of the effects that working with traumatised clients can have on us, both professionally and personally.

Participants will have a clear understanding of some of the psychological factors involved in asylum seekers' presentations of accounts of traumatic experiences, both at interview and in Court. A better understanding of these issues should equip lawyers to recognise and explain the difficulties that their clients may be having, helping to persuade decision makers and reduce credibility issues. It may also help lawyers understand difficulties they might have in their own interviewing of traumatised claimants.

Topics to be covered:

- Traumatic memory and the effects on presenting cases
- Discrepancies in repeated interviews and possible psychological explanations for these.
- Difficulties in disclosing traumatic experiences, particularly sexual violence.
- Research findings related to decision making in asylum appeal courts.
- Self-care

Upcoming Working Group Meetings

2020

You can find the sign-in details by accessing our calendar here.

23 September	**Economic Migration Working Group.**
07 October	**Family and Personal Migration Working Group**
10 November	**Well-being Working Group.**
02 December	**North West Working Group.**
03 December	**Yorkshire and North East Working Group.**
09 December	**Family and Personal Migration Working Group.**
10 December	**Northern Ireland Working Group.**
16 December	**Economic Migration Working Group.**

ILPA GET IN TOUCH!

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

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

ILPA MEMBERSHIP

Become a Trustee of ILPA

Have you thought about becoming a trustee of ILPA?

"I'm a trustee of ILPA because I place immense value on the work of the organisation and want to do what I can to support it. The coming years will place tremendous pressures on the sector and we need a thriving ILPA to support its members and to drive policy and practice in the right direction."

Helen Johnson OBE, ILPA trustee and Head of Children's Services, Refugee Council

"I'm a trustee of ILPA because the organisation has been a great support to me throughout my legal career. Now having the opportunity to use my experience and skills to shape the direction of the organisation, and support its development, is really rewarding"

Julie Moktadir, ILPA Trustee, Partner at Stone King LLP

We are holding an informal (Zoom) event where you can meet Nicole and some of our current trustees and find out all about what the role entails, and ask any questions you may have. Wednesday 30 September 2020, 11am – 12.00.

Register for your place now, find out more about the role here and if you can't make it then please get in touch at any time: helen.williams@ilpa.org.uk

All members whatever level of experience or area of work are welcome.

EU quarterly update

The EU quarterly update will be delivered in November. This is on account of the imminent rule changes on Appendix EU, EU family reunion and other aspects relating to EU nationals.

A note on our email communication

As you will know we send out a lot of information by email, we use Campaign Monitor for this and some of you have found the emails going to spam or being blocked by a fire wall.

If you are not sure you are getting the information you are expecting then please get in touch with helen.williams@ilpa.org.uk to check.

All contacts who are signed up to ILPA are automatically added to our 'All Members' email list where we send information we think is relevant to all members, otherwise our work is split around the thematic and regional working groups and you can sign up to those, and check your subscriptions, through our website under the working group pages. (You can unsubscribe at any time).

ILPA WHO'S WHO

ILPA's Board of 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

Treasurer: TBC

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

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: Allan Briddock - One Pump Court, 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, Nath Gbikpi - Wesley Gryk Solicitors LLP, Nicole Masri - Rights of Women

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

Legislation Adrian Berry - Garden Court Chambers

Refugee: Ali Bandegani - Garden Court Chambers, Beya Rivers - Hackney Community Law Centre

Removals, Detention and Offences: Bahar Ata - Duncan Lewis. Sairah Javed - JCWI, Pierre Makhlouf - Bail for Immigration Detainees

Well-Being: Aisha Choudhry - Bates Wells LLP, Kat Hacker - Helen Bamber Foundation, 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: Barry Price - Latta & Co Solicitors, Kirsty Thomson - JustRight Scotland, John Vassiliou - McGill & Co Solicitors

Southern: Tamara Rundle - Redstart Law

South West: Sophie Humes - Avon and Bristol Law Centre, Glyn Lloyd - Newfields Law, Luke Piper - South West Law, Marie Christine Allaire Rousse - South West Law, Dr Connie Sozi - Deighton Pierce Glynn

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

Robin Pickard
Legal and Parliamentary Officer

Nicolette Busuttil
Executive Assistant

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

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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**

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