

ILPA COMMENTS ON THE UK BORDER AGENCY DRAFT OPERATING STANDARD FOR THE PROVISION OF WELFARE SERVICES IN IMMIGRATION REMOVAL CENTRES

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration, nationality and asylum law and practice, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups including the UK Border Agency Detention User Group.

Objectives

ILPA does not agree with the objectives stated at the head of the document and does not consider that those listed provide scope to carry out the activities set out in the document. **The objective should be to provide welfare services, not only welfare services in connection with return or voluntary departure.**

The stated objectives of helping detainees to prepare for their removal from the United Kingdom and promoting the benefits of voluntary return schemes are unlikely to inspire confidence on the part of detainees. The objective of 'Providing information on accessing legal services' appears too limited; the mere handing out of a list of names and addresses may not be sufficient for all detainees to get in touch with a legal representative.

ILPA's understanding is that, depending on which organisation has responsibility for operating an Immigration Removal Centre (i.e. either the UK Border Agency or a private contractor), Welfare Officers will be UK Border Agency staff or employees of the same organisation. This has implications for the role of a Welfare Officer as it gives rise to potential conflicts of interest (for example the UK Border Agency is the other party at a bail hearing).

Consideration should be given to Welfare Team staff being privately and independently contracted to do this work and nothing else. Our comments below, however, reflect the current situation and are designed to ensure that Welfare Officers do not undertake their activities in such a way as to give rise to conflicts of interest.

If what is envisaged is not an officer working in towards all aspects of the interest of detainees but a 'returns promotion officer' then this should be made clear.

ILPA would welcome clarification of the training that Welfare Officers are required to undertake before and while working at Immigration Removal Centres (IRCs.)

We make the following comments with reference to the headings in the draft Welfare Standard.

Minimal Auditable Requirements

Welfare Teams

Our only comment on points two to eight is that point two should read that a Welfare Team should be “available to provide services” rather than “shall provide services.” The Welfare Team may otherwise be in breach of the standard if detainees do not wish to use their services.

Services Provided

The activities listed under this heading go beyond the stated objectives and it is not wholly clear how the officer will ‘assist’ in the tasks. It would be clearer if this were stated in each service. The section also raises questions of possible conflicts of interest and of confidentiality. In these matters, the Welfare Officer is acting on the detainee’s behalf, and must act as agreed with the detainee and with the detainee’s informed consent. We suggest that it would be good practice to record the detainee’s consent to the scope of each of the actions agreed.

Financial

Clarification should be made that getting in touch with landlords on behalf of detainees requires the detainee’s consent and will be to do only that which has been agreed with the detainee. It would be better worded as ‘assisting’ a detainee to get in touch with landlords etc.

Contact with friends and family

A Welfare Officer should do not be required to carry out “tracing” with the assistance of the Red Cross, and indeed this does not reflect ILPA’s understanding of how the Red Cross tracing works. The Welfare Officer should be “assisting” a detainee to make contact with the Red Cross to obtain such assistance as the detainee may wish to receive from Red Cross tracing services

The Welfare Officer should in all circumstances be required to receive the (informed) consent of the detainee prior to assisting a detainee or acting as an agent on behalf of a detainee. This applies to all matters listed under this head. Again insertion of the word ‘assisting’ in each would be helpful but there is also a need to spell out that the Welfare Officer can only do that which the detainee has asked the Officer to do, cannot go beyond this without getting further instructions from the detainee and has an obligation to provide all information obtained to the detainee as whose agent the Welfare Officer is acting in these matters.

Property

As above. This section should make specific reference to “assisting” a detainee.

Legal

This should make specific reference to Welfare Officers “assisting” detainees with finding legal representation. As identified, the objective of ‘providing information’ stated at the top of the document could be too narrow. Such assistance could include:

- a. Welfare Officers being in regular touch with all Legal Services Commission contracted immigration suppliers within the Immigration Removal Centre region effectively to refer detainees to legal advisors who have capacity.
- b. Where the Legal Services Commission provides an on-site advice surgery,, assisting the detainee with booking appointments for such surgeries to ensure the detainee is able to see a legal advisor.
- c. Providing information to detainees about the procedure for applying for bail including maintaining a stock of bail forms to be given to detainees on request. As noted above, we see a potential conflict in Welfare Officers assisting detainees to complete bail forms if the officers are not independently employed.

Voluntary Departures

Information about voluntary departures should be provided by a person who the detainee will be assured is independent and not a member of the UK Border Agency. It should not be the task of the Welfare Officer to promote voluntary departures.

Completion of Forms

This work is legal advice work that is regulated and requires accreditation by the Office of the Immigration Services Commissioner. In these cases, as we understand it, Welfare Officers are acting on behalf of the detainee not the Secretary of State therefore we do not consider that the exemption set out in s 84(6)(b) of the Immigration and Asylum Act 1999 applies. It also gives rise to potential conflicts of interest.

Centre regime

This should not be limited to “providing information” but rather, detainees should be “assisted” to get in touch with the UK Border Agency or to take steps to apply for a transfer.

Detainees should be also be provided with information and assistance by Welfare Officers with complaints regarding any difficulties that they are facing at the Immigration Removal Centre e.g. in relation to bullying or harassment by inmates or Centre staff. Such assistance should include assisting detainees with understanding the Immigration Removal Centre’s complaints procedure and providing detainees with the form necessary to make a complaint.

Further matters.

We have suggested above that the role of the Welfare Officer is to assist the detainee. We give some examples below of assistance which could usefully be provided.

Interpreters

Welfare officers should have access to interpreters and translation services to as to facilitate communication with detainees. They should also be able to assist detainees who have difficulties communicating with external organisations by providing access to facilities, such as Language Line or equivalent, that will allow detainees to do so.

Medical

Welfare Officers and Immigration Removal Centre staff must refer to the Medical Centre if they have concerns about a detainee's mental or physical health. Any such concerns that may have a bearing on the UK Border Agency's decision to continue to detain should be referred to the detainee's UK Border Agency caseworker. Good practice is to make detainees aware that the Welfare Officer is obliged to pass on this information.

Work of the Team

Welfare Officers are required by the draft Welfare Standard to keep accurate records of all enquiries from detainees and actions completed. Copies of all such records should be made available to detainees promptly on request and free of any charge.

Point 10 envisages that certain records should be kept. Where Welfare Teams are involved in working with detainees in relation to the following issues, records should be kept and copies be made available to detainees upon request. As noted above, these should include records of the agreement with the detainee as to the assistance to be provided.

- Assisting detainees to get in touch with the International Red Cross.
- Assisting the detainee to trace telephone numbers of friends in the UK.
- Assisting the detainee to get in touch with consular officials.
- Assisting the detainee to get in touch with a known relative overseas to make arrangements for reception on arrival.
- Assisting the detainee to identify public transport options for travelling from the point of arrival to the ultimate destination.
- Assisting the detainee with the provision of bio-data, consular and bail forms and forms relating to making an assisted voluntary departure.

These documents are relevant to an assessment of whether detainees are cooperating with procedures relating to their substantive cases or relating to the removal process. The information is essential for the UK Border Agency in understanding what steps a detainee may have taken e.g. in terms of obtaining travel documentation and therefore what further steps they may reasonably be expected to take. Consequently the information is also essential for detainees when making the case for their temporary release or bail.

Point 13 conflicts with the section in the table titled “Completion of Forms” since the latter envisages “legal” casework. This emphasises the difficulties that ILPA has highlighted with this draft and we recommend that further consideration be given to this matter.

The Welfare Team should be responsible for facilitating access to welfare services offered by non-governmental organisations to detainees. They should keep up-to-date details of such services on record to be consulted by detainees and should also bring to the attention of detainees any other services that might meet needs identified by the detainee.

Sharing best practice

ILPA supports the idea of a Welfare Officers’ Handbook and urges that this should be made available in draft to the Detention Users Group for comments and suggestions. The reports of the quarterly meetings should be publicly available.

ILPA
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