ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

Comments on behalf of the Immigration Law Practitioners' Association on the advance copy of the LSC's Immigration Specification

25 July 2007

Dear Fiona

Thank you for circulating the advance copy of the Immigration Specification. On behalf of ILPA my comments are as follows:

1. This version is somewhat clearer, and the introductory layout more user friendly, than the previous draft, but it would benefit from a contents list so that one would not have to trawl through 23 pages to identify the location of guidance on any given point.

2. I cannot, however, say that the bail provisions for non-exclusive contract cases are any clearer. I have tried to track them through the specification, first at 11.47(c) which specifies the CLR Upper Limit in "bail only matters". The trail is then picked up again at 11.106, which refers us back to 11.45 rather than 11.47(c) for clarification of the Upper Limit. So what is the bail CLR limit in a detained appeal case? It surely cannot be included in the appeal limits specified at 11.47(a) and (b), but 11.47(c) as drafted refers solely to "bail only" matters. If it is intended to mean "bail only matters or the bail element of appeal matters" then it needs to say so. Or did you intend to take ILPA's advice and have separate "bail only" CLR forms in all non-exclusive contract cases? If so, I cannot discover where that is specified, either in 11.106 or elsewhere. Please clarify.

3. In CLR cases, 11.12.8 and 11.17.8 ("Representations to the Home Office after an appeal has been dismissed . . .") have been left in place despite our arguments against them in our consultation response, but in fact it now occurs to me that they are actually meaningless, and can have no application, if 11.13 and its unnumbered equivalent at the end of 11.17 mean what they say. Quite simply, stage 2 will have ended when the s.103A CLR decision is made. There is no stage 3, and s.103 orders do not cover work unrelated to review and reconsideration applications. Any further representations after the s.103A CLR decision will have to constitute a separate matter start. If this is not the correct interpretation, please explain.

4. If it is denied that my interpretation in the preceding paragraph is correct, then I refer you to point 15 of ILPA's main response of April 2007 to the consultation on the draft specification. We will take advice on a potential *Wednesbury* challenge if our members are expected to undertake to make further post-appeal representations under fixed fees unless we are first provided with full details of

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how the cost of that work has been estimated and factored into the calculation of the fees.

5. I cannot quite credit that the LSC and Ministry of Justice really intend to continue to express the pre-ASU and s.103A advice fee of £100 as inclusive of disbursements, as it still is at 11.36.(c) and 11.52. Why, when every other element of the scheme in both immigration and non-immigration categories has disbursements payable separately? Did you overlook this point? If it is not changed then ILPA will seek legal advice on a discrimination-based challenge because as it stands it is clearly to the detriment of the quality of advice that non-English speaking clients can expect to be able to access.

6. I am pleased to see that you have relented at 11.85 and reverted to the present position where sponsors or family members with sufficient interest can sign Legal Help and CLR forms for applicants and appellants outside the European Union.

7. In relation to 11.103(e) I am pleased to note that the LSC has at long last recognised that there was and is no lawful basis for its previous attempt to exclude attendance at non-asylum interviews from scope.

8. I am also pleased to note the addition of waiting time to 11.106(a), but disappointed that the unrealistic cap of 3 hours for a return journey has been retained. It would be one thing if a fixed 3 hour travel allowance were claimable, so that one could might of some hope of balancing the occasional 1½ hours return journey to, for example, Pentonville against all the 6 hours and longer return journeys to Long Lartin and elsewhere. As it stands, however, all the "swings and roundabouts" here belong to the LSC, and the provision remains as mean minded and unfair as ever.

9. Again in relation to 11.106, I take it that waiting "at the Detention Centre" means at the place of detention, whether prison or Detention Centre. Is that right? If so, why not say so?

10. The separate matters guidance is somewhat better than before, but is still not clear enough. There are many compassionate cases which one would not classify as asylum claims, but in which Article 3 might feature. I am thinking for example of applications to vary leave for very elderly applicants, or to regularise the status of children in long term local authority care. If every single case in which an Article 3 argument, among others, might be advanced is to be treated as an asylum matter start then you are going to have to increase the numbers of matter starts allocated dramatically, and I do not see how you can realistically estimate the numbers with sufficient accuracy. I think you would be better off making it clear that a case is to be reported as an asylum matter starts if and only if it is:

    a. a claim, including a fresh claim, under the Refugee Convention and/or Article 3 of the ECHR that falls to be recorded by the Home Office (whether or not it has yet been so recorded) as a "claim for asylum" within the meaning of s.94(1) of the *Immigration and Asylum Act 1999*; or

b. an application for further leave to remain by a former asylum seeker who was granted limited leave to remain as a refugee, or Humanitarian Protection or Discretionary Leave and the application is therefore liable to active review by the Home Office.

11. My second category above is presently covered by 11.118, but that provision is not happily worded. Please bear in mind that suppliers have to classify cases as asylum matter starts or not at the point of accepting instructions to prepare an application, not once the stage is staged is reached, goodness knows how much later, when "the Home Office are reviewing that Client's status". I submit that the wording I have suggested above is more fit for purpose.

12. I do not believe that 11.118 cases have up until now ever been taken into account in calculating the number of asylum matter starts available for distribution among suppliers. ILPA raised this issue in its consultation response, and I raise it again now. If we are wrong, please explain precisely how the calculations were done, and provide figures comparing total numbers of asylum matter starts made available by the LSC annually before the Home Office ceased granting ILR on recognition to refugees and started the Active Review programme with total numbers made available annually since then. If we are right, please confirm that additional asylum matter starts are now going to be made available to cover 11.118 cases, and explain the basis on which the numbers have been or will be calculated.

I hope that ILPA is going to receive a reasoned reply both to this and to our April 2007 specification consultation response.

Best wishes,

Vicky Guedalla
for ILPA