

ILPA submission to Review of Border and Immigration Agency Statistics on Control of Immigration

Introduction

1. ILPA is a professional association whose members 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 and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.
2. ILPA has responded to several Home Office consultations concerning immigration-related statistics in the past. The following remain available on the ILPA website at www.ilpa.org.uk in the 'Submissions' section:
 - April 2010, ILPA response to the Home Office Statistics consultation on the publication of monthly asylum application statistical data
 - February 2008, ILPA submission to Review of Border and Immigration Agency Statistics on "Control of Immigration"
 - June 2005, ILPA submission on Immigration Statistics
3. This response answers the specific questions posed in the current consultations under discrete headings below. We also offer some additional observations at the end.

Q1. "Are the above structure of topics appropriate?" (sic.)

4. It is not possible to provide an adequate response to this question as the short explanation of what is proposed does not, on its face, say very much about structure. Insofar as the eleven suggested topics are concerned, ILPA has no objection to these, and we are satisfied that the relevant and necessary data could be provided under these topic headings. To comment further, we should need to see an example of what is proposed (i.e. how the statistical publications will look).

Q2. Should the commentary and analysis of the data be shorter and focus on key points, but also provide longer term trends?

5. The most important feature of the commentary should be that, where needed, it ensures that there is clarity as to the data presented in the

statistical tables (or otherwise presented). Thus, insofar as the headings, subheadings and footnotes etc., which accompany the current tables, leave unclear what is or is not included in the statistical count in respect of any particular piece of data, it is necessary that the commentary should resolve this. Immigration and asylum statistics are matters of considerable controversy, and ambiguity or lack of clarity in the data risk being exploited by careless or unscrupulous commentators. Beyond this, ILPA has no principled objection to the proposal to shorten and focus the commentary and analysis. To comment further, we should need to see an example of what is proposed (i.e. how the statistical publications will look).

Q3. Should the *Control of Immigration: United Kingdom Statistics, Control of Immigration Quarterly Statistical Summary and British Citizenship Statistics* be combined?

6. We do not understand this to entail any diminution in the data that will be presented. We do not object to the proposal, although we observe that there may need to be some care taken to ensure a reasonable transition as regards publication dates/cycles so that all comparison with previous publications and data sets is not overnight rendered impossible.

Q4. Should the table formats be presented in line with the above proposals?

7. ILPA is content with these proposals.

Q5. Are there reasons why data, detailed above, should be retained? If so, we would welcome information on the uses that you make of the data proposed to be dropped.

Applications by age and sex for dependants

8. Some of the data that it is proposed no longer be presented will be available elsewhere via EUROSTAT. We have previously commented on this in our April 2010 response to the Home Office Statistics consultation on the publication of monthly asylum statistical data, see paragraph six:
While the proposals include supplementing the data available on the Home Office website with data that is presented to the European Commission, it is proposed that some of the data to be presented to the Commission will only be available from the Commission's EUROSTAT website. Specifically, it is not proposed to make certain disaggregations by age, gender and nationality available on the Home Office website. There is no explanation for this provided. It does not seem to accord with the principles of the Code to which we have made reference and to which reference is made in the consultation paper. If data is being prepared and presented to the Commission, why is it not also presented on the Home Office website? If the answer to that question is that the disaggregations are only to be undertaken in respect of data including dependants (as opposed to principal applicants only), we would suggest that consideration be given to extending the current data on the Home Office be

website to disaggregate by age and sex in accord with the data to be presented to the Commission.

9. We repeat those remarks. If it is the case that there will be data on the age and sex of dependants that will neither be presented on EUROSTAT nor included on the Home Office website then this causes us concern. The age and sex of dependants is relevant information for those who wish to provide services to persons seeking asylum or who question the services provided to them, whether by Government or by local authorities. For example, the Supreme Court in *ZH (Tanzania) v SSHD* [2011] UKSC 4 has highlighted the need for procedures to ensure that the views of a dependent child are adequately represented. The question of providing crèche facilities so that single parents are not interviewed about distressing and sensitive matters in the presence of their children has also been a matter on which discussions have taken place between the UK Border Agency and groups supporting people seeking asylum.
10. Even where the tables are published on EUROSTAT and not on the Home Office website, it may be necessary to draw upon them the analysis and commentary published on the Home Office website. Where this is done, and in ILPA's view it should be done, links to the relevant tables should be provided and be maintained, to assist those reading the commentary.

Post decision reviews on asylum applications

11. We refer again to the comments made in our April 2010 response, cited above. This information should be made available on the Home Office website. The question of success rates in asylum cases is a controversial one and insufficient understanding of what the relevant statistics mean has misled many commentators.
12. We repeat the comments made above about ensuring that the data informs the Home Office analysis and commentary and that links are provided to assist those reading that commentary.

Support information and fast track information

General

13. The proposals to cease presenting "support information" and "fast track" data are of significant concern.

Support

14. ILPA continues to be concerned at the inadequacy of the UK Border Agency's arrangements for providing support and for addressing first and fresh claims for asylum. These have two broad consequences. Some individuals who should be receiving support do not receive it or experience significant and unreasonable delay in receiving it. Others continue to be eligible and in receipt of support for long periods during which their immigration status might more realistically be regularised, or

alternatively they might be granted permission to work. Such concerns are shared by many Non-Governmental Organisations, including members of the Still Human Still Here coalition¹. Such concerns have also been the subject of enquiry and debate by parliamentarians, including a report of the Joint Committee on Human Rights in 2006-07² which was subsequently the subject of a debate in the House of Commons.³ These concerns are not diminished, still less resolved, and hence transparency as to the numbers of persons in receipt of asylum support continues to be a matter of significance for statistical publication.⁴

Fast Track

15. As regards the fast track, the disparity of treatment of cases (and outcome of cases) in the fast track process remains marked.⁵ The operation of the fast track continues to be a matter of significant controversy. We understand that the legality of the fast track is currently awaiting a ruling of the Court of Appeal. We are aware that UNHCR has continued to observe significant failings in the handling of fast track cases.⁶ The subject has repeatedly and regularly arisen at the National Asylum Stakeholder Forum (NASF)⁷, and remains a matter of profound concern to ILPA and others.⁸ Transparency as to the numbers of persons, their profile and outcomes in the fast track continues to be a matter of significance for statistical publication. Given that a significant proportion of asylum claims are dealt with by the fast track, a system which gravely disadvantages those asylum-seekers subjected to it, it would not be acceptable to disguise its impact by simply amalgamating the fast track figures with the non-fast track asylum figures.

The breakdown of asylum removals by main applicant and dependants

¹ By way of example of that coalitions concerns, we cite the following extract from Still Human Still Here's response of June 2010 to the Law Commission's consultation on adult social care: "In 2009, just one member of the Still Human Still Here coalition, the British Red Cross, assisted more than 11,600 destitute asylum seekers in need of emergency assistance. During last year, several research reports documented that the number of refused destitute asylum seekers increased significantly and that they were destitute for longer periods of time.¹ This situation has deteriorated still further in 2010, due to the Government's decisions to cut support levels to some asylum seekers awaiting initial decisions and to stop granting access to Section 4 support for those refused asylum seekers who are waiting for a decision on a further submission."

² See the Committee's Tenth Report for the Session 2006/07 on *The Treatment of Asylum Seekers* (HL 81/HC 60)

³ See *Hansard* HC, 13 Dec 2007 : Column 145WH

⁴ The Committee's webpages currently indicate interest in a further enquiry into the treatment of asylum seekers, and these issues concerning support are prominent in the two submissions the Committee has to date published, see: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/treatment-of-asylum-seekers/>

⁵ For example, the Control of Immigration Statistics publications for 2008, 2009 and 2010 show a 99% refusal rate at initial decision in the fast track as compared to general refusal rates at around 70%. Disparities at appeal are also marked.

⁶ See UNHCR's 2010 First Quality Integration Project Report and 2008 Fifth Quality Initiative Report. The latter highlighted that many concerns as to the quality of decision-making were particularly accentuated in the fast track, and the former confirms that many of UNHCR's earlier concerns remain.

⁷ For example, on the last occasion that the Minister for Immigration attended NASF, July 2010, the fast track was raised with him. It has been raised at NASF several times before and since.

⁸ A report by Detention Action is to be published in May 2011.

16. The proposal no longer to distinguish between principal and dependants in relation to asylum removals would disguise the true relationship between asylum in-take, decision/appeal outcomes and removals. The development of the asylum backlog 'legacy' up to March 2007 was in significant part a result of a failure to face the reality of claimants, whom the Immigration and Nationality Directorate could not reasonably expect to be able to return (whether voluntarily or forcibly) by reason of factors including instability in the individual's country of origin, statelessness and lack of documents.⁹ ILPA has raised concerns at the current backlog in the New Asylum Model,¹⁰ as fully operated from March 2007. Disguising the true relationship between in-take, decision/appeal outcomes and removals would not be acceptable as it would potentially disguise similarly unrealistic behaviour or expectation on the part of the UK Border Agency as has previously contributed to the build up of the last backlog.

Information on court proceedings

17. We understand that the data on court proceedings and appeals will in future be available from the Ministry of Justice or HM Courts and Tribunals Service. We have no objection to data that is presented as part of the data published by the Ministry of Justice or HM Courts and Tribunals Service no longer appearing in the Home Office statistics. If any specific data is to appear neither in the Home Office statistics nor in those published by the Ministry of Justice or HM Courts and Tribunals Service (including in circumstances where the Ministry of Justice or HM Courts and Tribunals Service will publish overarching data that is not disaggregated as it is now on the Home Office website), then we should wish to see what detail will be lost and to comment specifically upon that. As stated above, the question of the final outcome of asylum and immigration cases is a matter of considerable controversy and there have been many instances where data has not been adequately understood or where ambiguity has been exploited by careless or unscrupulous commentators. For example, the reporting of the outcome of a case that has been conceded by the Home Office after the courts have been seized of it, has misled many commentators and in some instances appears to have been used by them to mislead others. The topic has been the subject of letters from ILPA to Ministers and officials, and has also come up in parliamentary debates.
18. Even where the tables are published by the Ministry of Justice and HM Courts and Tribunals Service and not on the Home Office website, it may

⁹ Further explanation of this is provided in ILPA's September 2007 memorandum to the Joint Committee on Human Rights in response to the Government's response to that Committee's Tenth Report for the Session 2006/07 (*op cit*). The memorandum remains available in the 'Submissions' section of the ILPA website at www.ilpa.org.uk

¹⁰ ILPA wrote to the UK Border Agency concerning this issue in March 2010 following the findings in the asylum thematic report of the Chief Inspector of UK Border Agency published in February 2010. Thereafter, this matter was the subject of particular discussion at the May 2010 meeting of the National Asylum Stakeholder Forum.

be necessary to draw upon them the analysis and commentary published on the Home Office website. Where this is done, and in ILPA's view it should be done, links to the relevant tables should be provided and be maintained, to assist those reading the commentary.

19. We are also concerned, given the pressures on all Government departments, that where statistics of relevance to one department are being collected by another that there be discussion between the departments if it proposed to stop analysing particular information, so that, where appropriate, the department to whom the information remains relevant can take over the analysis of his data.

Q6. Should all data (except passenger arrivals) be published unrounded? If not, please state the reasons why, including any risks of disclosure?

20. Broadly, we support the proposal to publish data unrounded. We acknowledge the concerns regarding the potential for unrounded data, particularly where this produces very small numbers, to risk identifying individuals. However, previous presentation of such concerns (e.g. expressed at the former Detention Users' Group concerning the production of data on age-disputed cases in detention¹¹) has not always distinguished between the risk of identifying a person by their inclusion in the data and the risk of identifying characteristics of a person by their inclusion in the data. It is likely the latter that is more real, since to know that the data was identifying Mr X or Ms Y I would need to be familiar with him or her in advance. Simple data sets, of themselves, therefore, carry less risk than complex data sets referring to, and cross referring to, several discrete features.
21. The relevant risk is more real where the numbers are consistently small, and in cases where this is likely to be or proves to be the case it may be possible to address this by providing data over a longer period so as to increase the size of the data set.

Additional observations:

22. We have referred to our previous consultation responses (see paragraph 2, above). These may usefully be reconsidered by those currently responsible for the presentation of Home Office statistical data on immigration control. We highlight the following:

From the April 2010 ILPA response to the Home Office Statistics consultation on the publication of monthly asylum application statistical data

Disputed age

¹¹ The April 2009 minutes of the Detention Users' Group record concern that data could not be presented regarding age disputed cases in detention by reason of the risk of disclosure. Those concerns were subsequently addressed permitting the disclosure of data.

In the April 2010 submission ILPA made the pointed that in disaggregating data by age, all cases where age is a matter of dispute should be clearly identified and that this should include those cases that the UK Border Agency considers 'borderline', those where it is treating the applicant as an adult and those where it is not disputed that the child is under 18, but his/her exact age is unknown. ILPA reminded the Home Office that this is also required for the UK to respond to the recommendation of the UN Committee on the Rights of the child that the UK:

71 (d) Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed"¹²

Applications that are withdrawn

ILPA also highlighted that Article 4(1) of Regulation 862/2007 requires statistics on the numbers of applications that have been withdrawn and that statistics should identify those persons whose application is automatically withdrawn (for example because they leave the UK) and then divided those who have acted to withdraw their applications and who are granted leave to remain in the UK and those who are not.

Detention

As set out in the April 2010 response, in 21 May 2009, ILPA attended a meeting hosted by the UK Border Agency for discussion between 'stakeholders' and Home Office Migration Statistics as to data on detention. Matters identified included that the Home Office:

- Provide a total number of those leaving detention during the year, broken down by reasons for leaving detention;
- Provide details of the full length of detention, including time spent in prisons post-sentence under immigration powers (though excluding time spent in prison cells under immigration powers).

Cohort-based data

In the 2010 response, ILPA recalled its February 2008 response to the review of Border and Immigration Agency statistics on Control of Immigration where it drew attention to the recommendation made by the National Statistics Quarterly Review Series, Report No. 46 that there was a greater need for cohort-based statistics. The Control of Immigration statistics continue to provide snapshot data and cumulative data, which do not permit analysis that would be permitted by cohort-based data. The report had highlighted the specific recommendation as having a "substantial priority". We highlighted in April 2010 that no significant progress had been made towards including cohort-based data in the Control of Immigration statistics and asked that this be revisited, a request that we reiterate.

Disaggregation of statistics on forced removals and voluntary departures

¹² Committee on the Rights of the Child, Forty-Ninth Session, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/Gbr/Co/4, 20 October 2008

In April 2010 ILPA suggested that these should be disaggregated, observing that the UK Border Agency has repeatedly drawn attention to its preference for voluntary departures over forced removals and disaggregation of the statistics would allow success in achieving this to be monitored. We cited the Earl of Sandwich:

*“Under the Freedom of Information Act, it is apparently possible to obtain a general table headed: “Removals, voluntary departures and assisted returns of asylum applicants, by country of nationality, age and sex, 2007.”*¹³

Judicial Review applications

ILPA has repeatedly drawn attention to shortcomings in Ministers’ and the UK Border Agency’s use of statistics pertaining to judicial review applications in asylum and immigration cases, for example in our letter of 24 April 2009 to Lin Homer, then Chief Executive of the UK Border Agency. This we highlighted in our April 2010 response, observing that In a high number of judicial reviews the UK Border Agency either concedes the substantive issue and/or makes a fresh decision, following which the judicial review is withdrawn, but this is not captured in the statistics and Government pronouncements frequently highlight the number of judicial reviews of immigration decisions that were successful in that they went to a full hearing and succeeded, without drawing attention to the substantial number of judicial reviews that did not proceed to a full hearing because the Secretary of State agreed to withdraw the decision. We observed that this misrepresentation has then affected other publications for example the National Audit Office report *Management of Asylum Applications by the UK Border Agency*.¹⁴ We continue to recommend that urgent attention be given to improving the statistics collected on this subject.

From the February 2008 ILPA submission to Review of Border and Immigration Agency Statistics on “Control of Immigration”

In this response ILPA highlighted that it is misleading simply to measure settlement, ‘turnaround’ and removal figures without consideration of the large numbers of people who will have long term temporary status and therefore may be living and working in the UK for extended periods without being counted as ‘settled’, indicating that this should be measured by reference to the age, gender and nationality of the subjects.

¹³ *Hansard* HL report 10 March 2009 Col 1147

¹⁴ Report by the Comptroller and Auditor-General, January 2009, HC 124 of session 2008-2009. See pages 21-22

ILPA also observed that the UK Border Agency holds rich sources of data in screening forms for asylum applicants and visa application forms and that these contain detailed information on the family and personal circumstances of applicants which, in a disaggregated form, could give real insight into the background, skills and characteristics of immigrants and refugees.

An increasing number of forms are now submitted online, raising the possibility, with the appropriate consents of those under study, to interrogate this information more easily. Such information could contribute to longitudinal surveys of immigrants and immigrant contributions.

ILPA also urged that regard be had to social services and private fostering data as a key source for useful information concerning the many unaccompanied and abandoned migrant children as well as those whose family placements have broken down. Such data might provide some better insight into the scope of trafficking for sexual and domestic labour purposes.

ILPA also pointed out that in jurisdictions (such as Canada and Australia) there has been analysis of cases where immigration applicants were unrepresented and unassisted which showed that unrepresented litigants often withdrew their cases or did not attend all the proceedings. The data had highlighted that unrepresented parties either do not engage with the appeal process or that they battle on against the odds, depending on the confidence and tenacity of the unrepresented person. Research by ILPA members on survivors of trafficking had shown similar patterns of engagement when they were unrepresented in the appeal process. This information is important for the Home Office, for appellate authorities, the Legal Services Commission and practitioners. It is important to ascertain whether there are atypical outcomes for unrepresented parties.

ILPA also observed that there is limited information on immigration decision-making undertaken by entry clearance officers at British Embassy posts abroad or in the juxtaposed controls in France and Belgium and urged that this be addressed.

ILPA also recommended that there be better data published to show who is being deported or removed from the UK and the countries to which they are removed, presented by reference to the age, gender and nationality of the persons removed and indicating the types of claims advanced by those removed (the proportion who are asylum seekers whose claims have failed, students, visitors who have overstayed, or persons who sought family settlement). The data should differentiate between children removed in company with their families and separated children. ILPA observed that *“The Home Office currently collects this type of data. Our concern is to have it made public and accessible.”*

ILPA emphasised the importance of publishing data showing the nationality, age and gender of persons removed within Europe for asylum processing under the Dublin Regulation (“Dublin II”), as well as the characteristics of those removed in conjunction with European partners to their countries of origin (often on flights chartered by particular European countries) and drew attention to a particular need for data on children who are the subject of ‘third country removals’. The recent cases of *MSS v Belgium and Greece* (Application no. 30696/09) European Court of Justice Grand Chamber judgment of 21 January 2011 and *A v SSHD* (CO/1995 / 2009) and *T v SSHD* (CO/1858/2010) have highlighted the importance of collecting information on Dublin removals.

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