



IMMIGRATION LAW PRACTITIONERS' ASSOCIATION  
PRESIDENT: IAN MACDONALD QC

# ILPA Annual Report 2010/2011

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## **OBJECTS OF THE ASSOCIATION**

The objects of the Association are:

- To promote and improve the giving of advice to and the representation of immigrants from whatever part of the world whether coming or intending to come to the United Kingdom for settlement or some limited purpose and to promote further and assist by whatever means the giving of advice to and representation of immigrants or emigrants to or from any other part of the world.
- To disseminate information and views on the law and practice of immigration and nationality in the United Kingdom and elsewhere.
- To enhance and expand the teaching of immigration and nationality law in the United Kingdom or elsewhere.
- To coordinate the activities and interests of immigration and nationality law practitioners, to make contact with similar bodies in other countries and to make representations for and on behalf of immigration and nationality practitioners.
- To secure a non-racist, non-sexist, just and equitable system of immigration and nationality law practice in the United Kingdom and elsewhere.

## **THE EXECUTIVE COMMITTEE**

Ian Macdonald QC – President  
Andrew Tingley – Secretary  
Adrian Berry  
Hazar El-Chamaa  
Sue Shutter  
Solange Valdez (to July 2011)  
Adam Weiss

Sophie Barrett-Brown – Chair  
Kahiye Alim – Treasurer  
Nicola Cockburn (co-opted December 2010)  
Mark Henderson  
Jo Swaney (co-opted January 2011)  
Meghan Vozila

## **SUBCOMMITTEE CONVENORS**

Access to Justice Subcommittee:	Ali Bandegani (to April 2011), Mark Henderson, Alison Pickup (from April 2011)
Children Subcommittee:	Judith Dennis, Baljeet Sandhu
Detention & Fast Track Subcommittee:	Steve Bravery, Kay Everett, Pierre Makhoulf
Economic Migration Subcommittee:	Shazmeen Ali (to June 2011), Philip Barth, Philip Trott, Smruti Patel (from October 2011)
European Subcommittee:	Elsbeth Guild, Alison Hunter
Family & General Subcommittee:	Sue Shutter, Pat Saini
Legal Aid Subcommittee:	Jackie Peirce, Sonia Routledge
Offences Subcommittee:	Jawaid Luqmani, Richard Thomas
South West Subcommittee:	Rosie Brennan, Natasha Williams
Training Subcommittee:	Helen Williams
Yorkshire & North East Subcommittee:	Ish Ahmed (from February 2011), Christopher Cole

## CHAIR'S REPORT

Reviewing the collected reports of ILPA's various subcommittees and the Secretariat in preparation for the AGM is always a rewarding read and this year very much underscores the tremendous wealth of work our members and the Secretariat have contributed in the last 12 months; 2010-2011 has been a busy year indeed! Another year of great challenges but also some very notable victories. The reports of the General Secretary and each of the subcommittees cover in detail the main events and key cases over the past year and I commend those reports to you; I highlight just a few of those in my summary report.

One of the great developments of the past year has been the launch of ILPA's fantastic new website and other IT enhancements that are enabling us to communicate with members in new ways and to offer a remarkable array of services and resources to members, not least the ability for members instantly to access at their fingertips all documents published by ILPA in its monthly mailings etc. over some 12 years. This has been possible thanks to the dedication of the Secretariat and the funding we received from Unbound Philanthropy. I am delighted that ILPA has now secured further funding from Unbound Philanthropy to fund a new post of Information Officer and I look forward to welcoming Philip Reilly to the Secretariat in this role. We are as ever keen to learn from members their views on the website and any suggestions for the future.

Membership increased slightly this year as noted in the General Secretary's Report and training income also slightly increased. I very much hope that the additional benefits of membership that the new website and associated IT advances are bringing will assist in further increasing this trend and the value ILPA can offer to members at an undoubtedly trying time for practitioners.

Training remains critical to ILPA's activities, not only as a main source of income to support its wider work but in achieving its core objects of enhancing the giving of advice and representation of migrants and promoting best practice. In addition to our regular programme, we have this year delivered a very successful programme of free training as part of the Refugee Children's Project, funded by the Diana, Princess of Wales, Memorial Fund. My enormous thanks to so many members who have given their time to prepare and deliver expert training during the past year.

Having noted in last year's report with great sadness the demise of Refugee and Migrant Justice, it was a tragedy to witness a similar fate unfold for the Immigration Advisory Service (IAS). Again the efforts of many members who quickly rallied to help colleagues from IAS and step in to assist clients affected by the closure were laudable. Whilst many recommendations to seek to avoid a repeat some of the most adverse consequences of the Refugee and Migrant Justice closure were heeded, other problems persist, including the inability to obtain archived files for clients.

The inadequacies of the Legal Services Commission and the spectre of changes to legal aid loomed large this year and ILPA worked determinedly through the consultation phase and the passage of the Legal Aid, Sentencing and Punishment of Offenders Bill 2011, achieving some success in bringing certain areas back into scope, such as domestic violence rule cases.

It frustrates me enormously that the UK Border Agency and ministers alike increasingly adopt a propaganda-style approach to providing information to the public on immigration, with the result, whether intended or not, of misinforming and obscuring public debate (let us not even get started on the cat). I await with interest (although not a great deal of optimism) the cultural impact of the new Chief Executive of the UK Border Agency, Mr Rob Whiteman, in this regard.

The coalition Government's ill-considered pledge to reduce net migration has continued to trouble it in practice (an impossible, immeasurable task) and created further pressures for individual migrants, practitioners, colleges and employers alike. For example, the past year has seen the closure of Tier 1 (General); the introduction of Tier 1 (Exceptional Talent) capped at just 1000 places; the rebranding of all Tier 1 from 'highly skilled' to 'high value' migrants; the introduction of s 19 of the UK Borders Act 2007 preventing additional evidence from being adduced in Points-Based System appeals, including with retrospective effect; caps for Tier 4 institutions and reduction of the ability to work or be accompanied by dependants for Tier 4 students; additional criteria for migrants seeking to settle (including with retrospective effect), new salary threshold requirements for work permit holders and 'no unspent convictions' requirements for all categories leading to settlement (the latter ILPA has fiercely opposed in relation to domestic violence cases in particular). Further the settlement consultation, which closed in September, proposed to 'break the link' between employment routes and settlement, including the possibility of removing the ability to settle from all Tier 2 migrants (potentially retrospectively) and preventing ongoing extensions where migrants choose not, or are unable, to apply to settle – turning the Government's attention from reducing the number of migrants entering the UK to also precipitating greater outflows from the UK. The family consultation raised, amongst other concerning proposals, the prospect of a higher, and more prescriptive, maintenance threshold. We can only expect further draconian policies in the coming year and I have no doubt that members will rally both to challenge these and to seek to mitigate the impact of such changes as far as possible for clients.

It is unfortunate that the strategy and "game playing" of immigration practice has become a more pervasive feature or practise for many practitioners. However, we must not allow the law to become secondary in practice and indeed there have been some notable successful challenges and causes for celebration: *Ruiz Zambrano* (C-34/09), *ZH Tanzania* [2011] UKSC 4 and *Quila* [2011] UKSC 45, to name but a few. Other good news stories include the long awaited implementation of *Baiai* [2008] UKHL 53 with the abolition of the Certificate of Approval scheme and the end of the workers registration scheme for A8 nationals.

I am enormously grateful to the Secretariat for their continued hard work this year, particularly given the challenges of so much change and indeed the extra burden of administration and management even positive developments such as grant funding brings. My great thanks to the current team, Helen Williams, Elizabeth White, Steve Symonds, Lana Norris, Lisa Woodall and Kit Eaves. Thank you also to two members of staff who left us during the course of the year, Zoe Marsden on completing her contract as Project Coordinator for the IT and Website Project and Natasha Tsangarides who handed over the reins on the Refugee Children's Project to Lisa to take up another opportunity. And lastly, but by no means least, my thanks to our formidable General secretary Alison Harvey; I am as always indebted to Alison, without whose unfailing dedication, energy and passion ILPA would be a less dynamic organisation....and I would be a wearier Chair.

My final thank you to all our members, without whom ILPA could not continue its work. Whatever challenges and uncertainties the coming year may bring, one thing we can be sure of is that we are stronger together and ILPA will continue to fight for a just and equitable system of immigration and nationality law practice; we shall remain a force to reckoned with.

*Sophie Barrett-Brown*

*Chair*

*13 November 2011*

## **TREASURER'S REPORT**

ILPA's work continues to impress members, stakeholders and funders in spite of the challenging environment. This is reflected in the doubling of pre-tax profits for the financial year 2010-2011 to £79,001. ILPA has once again made a profit.

Income from training and membership continues to hold at similar level as the previous year. The decision of the Executive Committee to diversify income has led to direct increase in ILPA's income.

Much of the increase in the costs base of ILPA is grant funded such as increase of staff. Additional staff funded by grants include the Project Coordinator, Refugee Children's Project and the new Information Officer post to be funded by another two- year grant from Unbound Philanthropy.

There has been significant improvement in financial reporting and budgeting process with the move to accrual reporting. With the assistance of Jeremy Stone, ILPA's accountant, the monitoring of project income and expenditure has improved.

ILPA reviewed its reserves policy. ILPA continues to hold reserves in line with its reserves policy. The unrestricted reserves continue to increase with contributions made by the profits generated.

The Joseph Rowntree Charitable Trust continues to support the work of the Legal Officer's post which has been a valuable contribution to ILPA's activities and information dissemination.

The modernisation of ILPA's infrastructure continues in terms of new website launched this year. The impact of the improved infrastructure will over the next few years feed into the way ILPA communicates with members, stakeholders and the public. This will impact on the budget for communication as more use is made of the website.

### **Challenges for the Future**

In a challenging environment for funding and training ILPA's reputation has assisted it to keep its standing. Further challenges such as the debate on immigration and the cuts to legal aid will place greater demand on ILPA's resources and activities such as the work of the Legal Officer.

The retention of members and increasing the membership base continue to be a priority. The introduction of Direct Debit last year has kept membership income steady and has improved the retention rate.

There is heightened increase in competition in the training market due to other organisations seeing this as means of funding in the light of more competition for charitable/grant funding.

The Executive Committee is aware of the benefits of the charitable status to reducing ILPA's cost base.

*Kahiye Alim,  
Treasurer  
11 November 2011*

## GENERAL SECRETARY'S REPORT

This year, immigration lawyers or, if you prefer, those administrative lawyers with special expertise in immigration, in the UK and beyond, have set their sights high with notable successes: *ZH (Tanzania)* [2011] UKSC 4, *MSS v Belgium and Greece* Grand Chamber of the European Court of Human Rights (Application no. 30696/09), *Ruiz Zambrano* (Court of Justice of the European Communities Case C-34/09), *R( Lumba) v SSHD* [2011] UKSC 12, *Kambadzi* [2011] UKSC 23 and *Quila* [2011] UKSC 45 being just some. It comes as no surprise if there is something fey about the activities of immigration lawyers in this astonishing year. They face the judgment in *PR (Sri Lanka)* [2011] EWCA Civ 988, denying onward appeal even to those with an arguable case for whom the consequences of a mistake will be a matter of life and death. And the year has been dominated by cuts and especially by threats of cuts to legal aid and their consequences. Only a year after Refugee and Migrant Justice had closed its doors, the Immigration Advisory Service followed it into administration.

Going out in the wider world of legal and advice organisations challenging the cuts is a reminder of ILPA's strengths. We take them for granted because we forget how few organisations can boast them. Experienced at working with parliamentarians of all parties to influence primary legislation. Trusted to coordinate work on legislation because this role has grown naturally out of links with other organisations working in our field and the support members and staff give them. Solicitors and barristers working together. Reflecting the whole range of work from initial advice to cases before the Supreme Court and international courts.

It is infuriating to see how many people, even in the legal aid field, had rather not mention the cuts to immigration for fear that being associated with this unpopular cause will not assist their chances. It is heartening to see that, despite this, the cases that stop public meetings in their tracks are the immigration cases and that we have managed already to influence the proposals, although nowhere near enough.

Within ILPA, the most visible result of the ILPA's continuing overhaul of all its systems is the new website. It is the tip of an iceberg of changes encompassing the Secretariat's IT infrastructure, membership database and content management database. That any member, anywhere, can at any hour of the day or night get a copy of any document published in the ILPA mailing since 1999 is a step change in ILPA's level of services to members. The ability to share this information, as well as information about current work in progress, provides a platform for new ways of working on which we shall build over the coming years.

The IT project has been funded by Unbound Philanthropy which has agreed to build on this work by funding ILPA to employ an information officer. The Refugee Children's Project continues to be funded by the Diana, Princess of Wales Memorial Fund and we continue to benefit from the support of the Joseph Rowntree Charitable Trust for the Legal Officer's post. ILPA is grateful to all its funders without whom the range of activities undertaken would be greatly reduced.

I thank the Executive Committee for their work during the year. In addition to the day-to-day responsibilities of governance they have worked with the Secretariat and ILPA's accountants to improve the ways in which information is reported to them and thus their oversight. They have worked to update ILPA's Equal Opportunities Policy in the light of the coming into force of the Equality Act 2010 and also updated ILPA's protocol on representation of ILPA at meetings. They now receive an increased range of staff reports in addition to my report. They have supported the Secretariat in its successful bid to Unbound Philanthropy for funding for the Information Officer post and in work with funders generally, as well as in recruitment. My particular thanks to Adam

Weiss who has sat on two recruitment panels during the year and to Sue Shutter who volunteered in the Secretariat alongside staff at busy times. Sue Shutter and Adam Weiss attended the CHASE Charities and Associations' Exhibition conference including sessions for directors of not for profits. Sue Henderson, Sophie's PA at Laura Devine, has once again provided invaluable support and I refuse to give up all hope of her one day standing for the Executive Committee.

### **ILPA Staff**

Kit Eaves	Administrative and IT Manager (on maternity leave)
Alison Harvey	General Secretary
Zoe Marsden	Office Manger with Finance, then ILPA Information Technology and Website Project Coordinator (to August 2011)
Lana Norris	Finance Manager with administration (maternity cover for Kit Eaves)
Steve Symonds	Legal Officer
Natasha Tsangarides	Refugee Children's Project Coordinator (to February 2011)
Elizabeth White	Personal Assistant to the General Secretary
Helen Williams	Training and Membership Coordinator, with 1 ½ days per week on the Information Technology and Website Project.
Lisa Woodall	Refugee Children's Project Coordinator (from March 2011)

In addition, we welcomed Elizabeth Storey as our professional intern during the year and we do not know what we should have done without her.

### **Role of the Secretariat**

The core functions of the ILPA secretariat are:

- The coordination of liaison with Government, tribunals, courts and NGOs;
- The co-ordination and distribution of submissions to parliamentary committees, government and the European institutions;
- The design and implementation of the ILPA training programme;
- Updating members and others on all matters of asylum, immigration and nationality law, practice and policy;
- Servicing and supporting the Executive Committee and implementing its policy decisions, work that includes the identification and collation of the management information, including financial and membership information about ILPA and its membership, necessary to allow the Executive Committee to determine the opportunities, challenges, risks and threats to ILPA;
- Building and sustaining links between all the different areas of ILPA's activities;
- Support for the ILPA subcommittees and members active on ILPA's behalf;
- Responding to enquiries from members, the media and the public.

As the new IT systems and website have developed so there have continued to be new challenges, opportunities and tasks and reorganisation of existing responsibilities for all staff in the Secretariat. Helen Williams continued to work one and a half days a week on the Information Technology and Website project, which has dovetailed well with her work on both membership and training. Levels of enthusiasm and willingness to embrace new ways of working have been maintained despite heavy workloads. At one stage Lana Norris, our Finance Manager with Administration who has covered Kit Eaves' maternity leave throughout the year, must have felt that she was being asked to learn a new system a week. She was never daunted and has been a valued member of the team. We said goodbye to two staff members during the year and welcomed one more. Natasha



Tsangarides left as Coordinator of the Refugee Children's Project to become Director of the Testimony Project. We were very fortunate to recruit Lisa Woodall who, like Lana, found that we had a constant diet of challenges for her: a training programme about to kick off, and a publication and conference to deliver before she could draw breath. She rolled up her sleeves and delivered, and has not stopped delivering ever since. When the IT and website project finished we said goodbye to Zoe Marsden who had served ILPA both as cover for Kit Eaves and subsequently as Project Coordinator for the IT upgrade. Zoe has contributed hugely across all aspects of the Secretariat's work and raised our game in numerous respects. She leaves a lasting legacy.

In the new year Philip Reilly will join us as ILPA's new Information Officer. We are excited at the prospect of releasing so much of the wealth of information that ILPA holds. This is a project that will deliver benefits for members every step of the way, as new information and that already forming part of ILPA's archive is organised and made readily accessible.

With three grants to manage and an increased and changing staff body, management responsibilities for me continue to be heavy and to demand a lot of time. I am grateful to Steve, Lisa and members for their willingness to step up and cover external meetings or drafting when management responsibilities engulf my time.

Staff have benefited from a range of training. All staff received training from Matt Morris who has configured our database on how best to use it and this will continue in the coming year. Staff have also attended sessions on the new website. Helen Williams has undertaken training on the salesforce database as well as training on search engine optimisation of the website and the use of Google analytics. Helen and I attended a one day training session given by IBM on monitoring and evaluation work. Lana Norris undertook training on excel. Alison Harvey, Steve Symonds and Lisa Woodall also undertook training on immigration, asylum and nationality law through participation in a range of conferences and events

The Secretariat has been assisted by Jeremy Stone and Vicky Sholund of the Charity Accounts people (Accountants), Helen Dewar (librarian), Oakland Associates (IT), Matt Morris (membership database design), Fat Beehive (website design), Pat Kahn (designer) and HW Fisher (Auditors) to whom thanks for their support and assistance.

## Context

*"The cat's very complicated, I'm not commenting on the cat."*

Attorney General Dominic Grieve, 4 October 2011, quoted in The Sun

At the time of last year's AGM we stood on the brink of many changes, not all of which have materialised, or at least not yet. The year has been landscaped by a series of judgments whose full implications we are just beginning to tease out. At the 2010 AGM, ILPA members pondered the implications for European citizenship, and European citizens, of *Rottman v Freistaat Bayern* (CJEU C-135/08) in discussions that anticipated *Ruiz Zambrano* (CJEU Case C-34/09). *Zambrano* made aspects of *ZH (Tanzania)* [2011] UKSC 4 look conservative: the rights of the Zambrano children as European citizens appearing so much stronger than those of *ZH*'s children as British citizens. But in other respects *ZH* has been, and continues to be, a truly radical judgment; in the obligations it places upon the decision-maker to ascertain the best interests of the child and in its recognition that eliciting the child's own views must be a part of this exercise, both matters emphasised in *R(Tinizaray) v SSHD* [2011] EWHC 1850 (Admin). *ZH* and the UK Border Agency's duties under s 55 of the Borders, Citizenship and Immigration Act 2011 are a potent cocktail. Despite all this, the detention of children continues.

The European Court of Human Rights' judgment in *MSS v Belgium and Greece* (Grand Chamber, Application no. 30696/09) found both Greece and Belgium to be in violation of their obligations under Article 3 of the European Convention on Human Rights, Greece for its treatment of MSS, Belgium for sending MSS to Greece under the Dublin Regulation. That the treatment of asylum seekers by a European State could reach the Article 3 threshold is shocking; that other European States could continue to send people there is perhaps even more so. Greece pleaded that it was overwhelmed. Belgium had no such excuse. The role of the European Charter of Fundamental Rights in protecting rights of persons facing such transfers is before the Court of Justice of the European Union in *Saeedi (NS, C411/10)*, while the European Court of Human Rights is handing down 'rule 39' indications in cases against Italy.

The judgment in *PR (Sri Lanka)* [2011] EWCA Civ 988, with its exposition of the "second-tier appeals test" under s 13(6) of the Tribunals Courts and Enforcement Act 2007, casts a long shadow, albeit arguably a persuasive rather than a binding one. An arguable error of law, combined with drastic consequences if a mistake is made, was held not to be sufficient to meet the test. In short, the court seem prepared to contemplate that a person might die, or be tortured, as a result of an error recognised but not corrected. If the judgment is followed it will see immigration lawyers beating a path (without benefit of legal aid for the application if the Bill goes through) to Strasbourg in increasing numbers. They will be joined, if the Home Office goes ahead with plans to write a restrictive definition of Article 8 into the immigration laws, by those seeking to uphold the law on private and family life.

The cases of *R( Lumba) v SSHD* [2011] UKSC 12 and *Kambadzi* [2011] UKSC 23 have increased the protection for detainees, establishing that breach of a material public law duty capable of affecting the decision to detain will render the detention unlawful and addressing the factors that go to consideration of whether the length of detention is reasonable in all the circumstances. The need for such jurisprudence is huge as the periods for which detainees, especially foreign national ex-offenders, are detained continue to increase.

The year ends on a high note, with *Quila* [2011] UKSC 45. Raising the minimum age of the both spouses/civil partners in an application for a spouse or partner visa to 21 was an unjustified interference with the rights of the parties and the Supreme Court found it difficult to envisage circumstances in which the interference could be justified if the marriage (and by implication partnership) were not forced. The Supreme Court had no truck with the Secretary of State's lack of evidence and Lord Wilson's "*On any view it is a sledge-hammer but she has not attempted to identify the size of the nut*" will no doubt be quoted in many contexts in the year to come. The Minister has announced that the age will revert to 18. At the time of writing we wait to see if the High Court will be similarly robust in the case of *R(Chapti) v SSHD* CO/11183, 11435, 11441/2010 on language testing for spouses and partners.

ILPA continues to provide information and statements for the *Medical Justice* case (see *R (Medical Justice) v SSHD* [2010] EWHC 1925) as it makes its way through the courts. Meanwhile the influence of *Pankina v SSHD* [2010] EWCA Civ 719 is felt in every subsequent issue of the immigration rules, although the UK Border Agency has concentrated on giving effect to defeats in the courts, rather than anticipating them.

It is against that backdrop of such significant work on cases that we anticipate the destruction that would be wrought if the Legal Aid, Sentencing and Punishment of Offenders Bill became law in its current form, not only to those immigration and asylum support cases coming out of scope but to those asylum, detention and Special Immigration Appeals Commission cases remaining in scope, because of fears as to who will stop doing legal aid work in immigration if the bill becomes

law. This year's casualty was the Immigration Advisory Service, which, in the words of the announcement of its going into administration "...failed to reach agreement with the Legal Services Commission on support for a solvent restructure or its operations or an extended period to pay monies owed". As with Refugee and Migrant Justice, while the immediate causes of IAS's going into administration will be discussed for a long time, the underlying causes lie in the legal aid system. That the Legal Services Commission could award IAS very substantial contracts and then so shortly afterwards refuse to support its restructure, suggests that one of those two decisions must have been very wrong indeed.

ILPA members moved rapidly to ensure the painful lessons learned from Refugee and Migrant Justice's administration were applied. Members presented the administrators, the Legal Services Commission, the UK Border Agency, the tribunals and the courts with a substantial list of recommendations designed to put the interests of clients at the heart of all work on the IAS closure. Many of these recommendations were influential, for example the log-jam that had been caused when Refugee and Migrant Justice closed by refusing to release matter starts was largely averted. The problem that ILPA has highlighted for a long time, of what happens to the files of OISC-regulated organisations when those organisations close down, has proven one of the most intractable. At the time of writing it is not possible to obtain files from the IAS archive and the administrators are preparing an application to the court, anticipated, based on remarks at the creditors' meeting, to be an application for permission to destroy the files. Such a step would profoundly disadvantage many former clients of IAS. It also has the potential to affect the reputation of all OISC-regulated practitioners and arguably other practitioners as well.

Clause 36(1) of the Legal Aid, Sentencing and Punishment of Offenders Bill 2011 (Bill 205, published 21 June 2011) stated "The Legal Services Commission ceases to exist" but for the time being, we still have a Legal Services Commission, albeit one that now defers to the Ministry of Justice on all aspects of policy, even those where its duty under section four of the Access to Justice Act 1999 is directly engaged. ILPA and other organisations have worked tirelessly during the period of consultation that led up to the Bill and during its passage to ensure that the complex and unpopular area of immigration law is not overlooked. In a process where few can boast any victories we can boast some: legal aid for asylum support cases involving applications for both accommodation and subsistence were brought back into scope at the consultation stage. During the passage of the Bill, legal aid for cases under the domestic violence rule and cases under Article 2 of the European Convention on Human Rights and Article 15c of the Qualification Directive (Directive 2004/83/EC) have been brought back into scope, the latter through a change to the definition of asylum. These modest successes give us hope that more will be achieved.

Ian MacDonald QC, President of ILPA, highlighted in his address at ILPA's Refugee Children's Conference in May the need to redouble efforts to tackle poor quality legal advice and representation in immigration, asylum and nationality cases, a matter that has preoccupied ILPA since its inception. Accounts of poor advice and representation are dominating discussion of immigration and asylum in the debates on legal aid while excellent legal representatives labour to cope under systems designed with the incompetent or unscrupulous in mind. To speak up for the best immigration law practitioners, it is becoming increasingly important to castigate those who prey on our clients and/or whose work is incompetent and inadequate.

Judicial reviews of fresh claims for asylum transferred to the Immigration and Asylum Chamber of Upper Tribunal on 17 October 2011. A panoply of practice directions, rule changes and statutory instruments surrounds them, in stark contrast to the lack of such instruments to address how those age dispute judicial reviews which are the subject of individual transfers from the High Court should be handled. ILPA successfully resisted the prospect of Presenting Officers handling

judicial reviews of fresh claims; rights of audience in the transferred cases will remain as for the High Court. Meanwhile, a draft statutory instrument has been laid imposing fees for appeals before the First Tier Tribunal.

As the Ministry of Justice storms ahead implementing changes, what of the UK Border Agency? Not content with implementing s 19 of the UK Borders Act 2007, changing the rules of evidence in Points-Based System appeals with the intended result that it would win more appeals, it did so with a lack of transitional provision that pulled the rug from under those with pending appeals. ILPA persuaded peers to debate the issue and we hope, although we do not trust, that the robust telling-off the Home Office received will cause it to think twice in future. ILPA has secured or supported debates on every statement of changes in immigration rules laid during the year. The case for their being subject to the affirmative procedure in parliament appears overwhelming, with both the corrections and the successful challenges subsequently made to them evidence that they are insufficiently scrutinised at the moment.

In short, the Agency is still hoist by the petard of reducing net migration. Students continue to bear the brunt of many changes. In a consultation that brought back memories of the debates on ‘earned citizenship’, although admittedly with a lot less bureaucracy, it was proposed to break the link between employment and settlement. An Agency that was prepared to describe the most qualified and highest earning not only as the “brightest” but also, as the “best” of migrants, making money and skills the determinants of worth in general, now envisages Tier 2 migrants as *gastarbeiter*. Tier 1 (General) was abolished, with entrepreneurs and investors substituted as the migrants to be wooed. It is no longer enough to be ‘highly skilled’ to enter in Tier 1, now you must be possessed of ‘Exceptional Talent’ (unless you have large sums of money, in which case your language and other skills are of no interest). We are close to a situation where a UK visa can be used as a reference.

In the year in which it finally implemented *Baiai* [2008] UKHL 53 the Agency has now family migration in its sights. Family migration is envisaged as a luxury for comfortably off. And we are not commenting on the cat.

Cuts to the public sector have been sweeping and the Agency has not been immune. In the language of ‘...not having the resources’ immigration lawyers will hear echoes of the culture of failure that dogged the Agency in the past; a sense that some problems were too big to be tackled. Work to clear the backlog or ‘legacy’ had appeared as the most striking effort to ditch that culture, now the Case Audit and Assurance Unit and the ‘controlled archive’ look like evidence of its resurgence, as does the current scandal over checks of biometric details in the passports of persons not exercising European treaty rights and who said what to whom.

This year we celebrated the end of the workers registration scheme and of restrictions on A8 nationals and the Government’s decision to change its mind and opt into the EU Directive on prevention and combating trafficking in human beings. ILPA and the AIRE centre had persuaded the European Commission to commence infringement proceedings against the UK over its use of the right to reside test to deny A8 nationals benefits. Alas, these were dropped when the restrictions were lifted. Proposals to charge family members of EEA nationals at the Public Enquiry Office were put on hold after, having sought to persuade the Agency to take the question to the Commission and failed, ILPA itself alerted the Commission to the proposals.

Those who were surprised about the Home Secretary’s stance about the cat, on which we are not commenting, had perhaps not been following one of the longest running battles of the year, to

persuade her not to make those applying under the domestic violence rule subject to the requirement to be free of criminal convictions. The illogicality (an “absolute” commitment to end violence against women and girls, we were told, had to “balanced” against the need to maintain immigration control) as much as the position, presaged the later *débâcle*. It is a battle ILPA, Southall Black sisters, Rights of Women, Eaves Housing for Women and the hundred plus organisations who supported us, will continue to fight.

Not the least of the plaudits ILPA has received during the year have come from members whose occupation, focus or sense of purpose has for one reason or another gone or is under threat, who have found in the Association the opportunity to be useful and productive and emerged renewed from the experience. To be part of this is one of the most satisfying parts of my job.

### **Training**

The training programme is at the heart of ILPA’s work: there is a direct line from our objectives to the provision of training to improve practice and share knowledge, be it of the substantive law or of tactics and strategies. ILPA has provided 67 training sessions since the last AGM, exclusive of the 25 courses that have been provided under the auspices of the Refugee Children’s Project, which are dealt with separately below. This compares with 75 sessions in the year to the last AGM. Training has spanned all areas of ILPA’s work. Most courses have taken place in London, but this year courses have also been delivered in Birmingham, Bristol, Glasgow and Leeds.

A huge thank you to ILPA’s trainers for the sheer hard work that goes into their direct and immediate contribution to promoting excellence in immigration, asylum and nationality law practice. Few training providers can boast a stable of over 70 trainers, combining and collaborating according to need. Their enthusiasm for raising standards is infectious.

Feedback testifies to the quality of the courses and that they are hitting their mark. The training programme is also informed by suggestions from subcommittees and tutors, feedback from participants on courses, requests by email or telephone and consideration of the materials and members’ questions coming into the secretariat. Thus the training programme grows and develops in response to demand and curiosity. Feedback and suggestions for training are always welcome, always read and always discussed and even where a suggestion does not generate a stand-alone course it will often inform the content and focus of existing courses.

The training subcommittee continues to support ILPA to evaluate and develop its training programme. We are grateful to Alison Stanley, Hazar El-Chamaa, Mandie Sewa, Caron Pope, Adam Weiss, Sophie Barrett-Brown and Steve Symonds who have met during the year.

The accounts for the year to March 2011 show a modest increase in revenue from training over the previous year. Training courses continue to contribute substantially to ILPA’s income. The ability to pay by credit card over the telephone is valued by those booking training and we are also starting to see use of the new on-line booking facility. ILPA continues to sell packs in response to requests where we identify that the pack works as a stand-alone resource and is suitable for self study and we have sold packs from eleven different courses this year.

Advanced courses function as seminars for expert practitioners to share ideas and insights with their peers while introductory courses make a new area rapidly accessible. Once again, new courses were added to the programme, including courses on refugee family reunion, on Indian immigration law, on the European Charter of Fundamental Rights, on mental health in detention

and a very rapid response to the decision of the European Court of Human Rights in *Sufi and Elmi*. Old favourites are reshaped and refined to provide a focus on the topics of most importance at the time when the course is delivered. Thus elements of ILPA's nationality, European law and welfare benefits courses were presented as stand-alone courses to reflect current needs.

Training continues to be viewed by many organisations, chambers and firms as a direct or indirect source of income in straightened times. In this year, as in previous, years it is the quality of ILPA training and its responsiveness to the needs and demands of practitioners that mean that it holds its own. We endeavour to discuss with chambers, firms and organisations their providing training in conjunction with ILPA in ways that support them and help to support ILPA. The assistance of all those, be they course providers or individual tutors, who touch base with ILPA to avoid clashes with ILPA training and to look for opportunities to promote the value of ILPA membership at other training sessions they are doing is valued.

### *Training Partners*

Once again, ILPA collaborated with the AIRE centre, this time on "Returns to Mogadishu: the ECHR judgment and its impact on domestic law" in July 2011.

ILPA and HJT-Training continue their joint working to train MPs' researchers. The courses continue to receive excellent feedback and there is enthusiasm for extending the programme.

ILPA provided in-house training for the NSPCC Child Trafficking Advice Line.

Alison Harvey trained at the University of Glasgow Nationality, Immigration and Asylum law course (part of the LLM programme in Contemporary Law and Practice) in March 2011.

### *Venues*

This year ILPA training courses have been generously hosted by Bindmans LLP, Faegre and Benson LLP, Leung and Co and the Scottish Refugee Council.

### *ILPA/ILPA supported Seminars and Conferences*

- Butterworths Lexis Nexis Immigration Law Conference, 27 January 2011;
- Asylum & the European Convention on Human Rights, ILPA/ AIRE Centre, 25 May 2011;
- International Bar Association Biennial Global Immigration Conference October 2011;
- Butterworth's Lexis Nexis Business Immigration Conference, 26 October 2011;
- ILPA annual seminar on the free movement of EEA nationals, October 2011.

### *Speakers*

Our thanks go to the following, who have delivered training for ILPA during the year (firms and organisations are as of the date when training was delivered):

Shalini Agwaral, Clasis Law	Andrea Als, PricewaterhouseCoopers Legal LLP
Naomi Angell, Osbornes Solicitors	Nick Armstrong, Matrix Chambers
Joseph Austen, Kingsley Napley LLP	Rachel Azimi, PricewaterhouseCoopers LLP
Navtej Singh Ahluwalia, Garden Court Chambers	Tim Barnden, Wesley Gryk Solicitors
Sophie Barrett-Brown, Laura Devine	Liz Barratt, Bindmans LLP
Philip Barth, Penningtons Solicitors LLP	

Adrian Berry, Garden Court Chambers  
 Catherine Briddick, Rights of Women  
 Tim Buley, Landmark Chambers  
 Rebecca Chapman, Toaks Chambers  
 Azhar Chohan, Solicitor  
 Graham Denholm, 1 Pump Court  
 Hazar El-Chamaa, Penningtons Solicitors LLP  
 Judith Farbey QC, Doughty Street Chambers  
 Laurie Fransman QC, Garden Court Chambers  
 Professor Elspeth Guild, Kingsley Napley LLP  
 Hildur Hallgrimsdottir, AIRE Centre  
 Amie Henshall, Parker Rhodes, Hickmott

Tasaddat Hussain, Broadway House Chambers  
 Scott James, Faegre and Benson LLP  
 Peter Jorro, Garden Court Chambers  
 Raggi Kotak, 1 Pump Court  
 John McCarthy, Designated immigration judge  
 Nuala Mole, AIRE Centre  
 Sonali Naik, Garden Court Chambers  
 Barry O'Leary, Wesley Gryk Solicitors  
 James Perrott, PricewaterhouseCoopers  
 Legal LLP  
 Chris Randall, Bates Wells Braithwaite LLP  
 Sasha Rozansky, Pierce Glynn Solicitors  
 Alison Stanley, Bindmans LLP  
 Nick Stanage, Doughty Street Chambers  
 Steve Symonds, ILPA

Andrew Tingley, Kingsley Napley LLP  
 Ronan Toal, Garden Court Chambers  
 Mahrukh Umrigar, Clasis Law  
 Adam Weiss, AIRE Centre  
 Trevor Wornham, Wornham and Co.  
 Colin Yeo, Renaissance Chambers

Tom Brett-Young, Wornham and Co  
 Gillian Brownlee, Kingsley Napley LLP  
 Nichola Carter, Penningtons Solicitors LLP  
 David Chirico, 1 Pump Court  
 Kathryn Cronin, Garden Court Chambers  
 Kathryn Denyer, Lexis Nexis  
 James Elliot, Wilson and Co Solicitors  
 Nadine Finch, Garden Court Chambers  
 Vanessa Ganguin, Laura Devine Solicitors  
 Alexander Goodman, 4-5 Gray's Inn Square  
 Alison Harvey, ILPA  
 Dr Jane Herlihy, Centre for the Study of  
 Emotion and Law

David Jones, Garden Court Chambers  
 Jonathan Kingham, Lexis Nexis  
 Jawaid Luqmani, Luqmani Thompson  
 Catherine Meredith, Mitre House Chambers  
 Jenny Moss, Kalayaan  
 Edward Nicholson, No5 Chambers  
 Jed Pennington, Bhatt Murphy Solicitors  
 Mahmud Quayum, Camden Community Law  
 Centre  
 Nick Rollason, Kingsley Napley LLP  
 Sadat Sayeed, Garden Court Chambers  
 Robert Sparks, Fisher Meredith Solicitors  
 Mark Symes, Garden Court Chambers  
 Shahram Taghavi, Bates Wells and  
 Braithwaite LLP  
 Kelly Tomkinson, Wright Hassall LLP  
 Philip Trott, Bates Wells Braithwaite LLP  
 Stefan Vnuk, Laurence Lupin Solicitors  
 Helena Wilson, AIRE Centre  
 Scott Wright, Faegre and Benson LLP

## ILPA Meetings

### *Subcommittee meetings*

All ILPA subcommittees are open to all members. The following subcommittee meetings took place during the year since the last AGM:

Access to Justice	2	Detention and Asylum Fast-Track	0
European	8	Family and General	7
Economic Migration	9	Immigration Offences	0
Legal Aid	5	Training	2
Children	5	ILPA South West	2
ILPA Yorkshire and North East	2		

Subcommittee email lists ensure that those subcommittees that meet infrequently and those members who cannot attend meetings can nonetheless keep in touch with others with similar interests on a regular basis. They vary in size from, at the time of writing, 32 (Offences) to 346 (Economic Migration). Active members of subcommittees share information and ideas, represent ILPA at meetings, contribute to consultation responses and draft letters on matters of particular concern. The informal subcommittee structure means that members at all levels of seniority (you really do not have to be a genius to attend European subcommittee meetings although, admittedly, it helps), whatever time they have to give, can make their contribution. The majority of information circulated to subcommittees is now posted on the members' area of the website.

That the informal structure can be sustained, with members dipping in and out according to time, interest and need, depends upon the work of convenors: convening meetings, planning and setting agendas, ensuring that minutes are prepared and reporting monthly to the Executive Committee and other convenors, reports which are now shared with all members on the subcommittees' page of the website. We are grateful to convenors for all the work they do to support their subcommittees, now showcased on pages of the website devoted to particular subcommittees.

New subcommittee convenors have been appointed during the year; we welcome Alison Pickup, Ish Ahmed and Smruti Patel. Subcommittee email lists have grown and it is possible for members to sign up to subcommittees on the website. A number of subcommittees, including Family and General and European, have seen a rise in attendance at meetings during the year. ILPA Yorkshire and North East subcommittee and ILPA South West have both provided opportunities for members to communicate on matters relevant to particular regions and allowed members to meet with regional representatives of the UK Border Agency and the Legal Services Commission etc. The Economic Migration subcommittee met with Ian Robinson and Richard Jackson of the UK Border Agency about Tier 2 in June.

We created a new asylum email list during the year. Already it has 194 members and consideration will be given to recreating an asylum subcommittee in the course of the next year.

### ***Members' meetings***

Subcommittees frequently hold themed meetings and, wherever possible, themed and speaker meetings take place under the auspices of the most appropriate subcommittee but are publicised to all members. Some topics are clearly cross-cutting. These have formed the subject of members' meetings:

- With the Chief Assessor of The Law Society Immigration and Asylum Accreditation Scheme, 11 May 2011;
- On the residue of legacy cases, 5 July 2011;
- On the Immigration Advisory Service in administration 14 July 2011;
- With Clive Stafford Smith of Reprieve re using nationality law to assist European and other foreign nationals on death row in the United States of America, 20 September 2011.

### **Membership**

We are delighted to report a modest rise in membership. As of 15 November 2011 the total number of ILPA members was 934, an increase of 42 members on last year's figure (and as opposed to the fall of 22 last year). 162 new members joined this year (as compared to 167 last year). Of the new members, 91 are individuals and 71 are organisations. Overall, 51% of members are organisations and 49% are individuals, percentages almost identical to last year. Our



database now allows us to count contacts at member organisations. A total of 2004 individual members/contacts at organisation members are in touch directly with ILPA.

What of those who have ceased to be members during the year? It continues to be the case that some firms have opted for organisation membership to replace multiple individual memberships. It continues to be the case that some firms or individuals have informed us that they have given up this area of work, as described elsewhere. There continue to be those who lapse by accident. Direct debits and the ability to pay over the telephone by credit card are helping to reduce this number. Seventeen per cent of members now pay their membership by Direct Debit, an increase of 5% on last year and we hope to see that figure go up in the year to come.

It is early days to determine the effect of the new website on membership numbers. The resources directly and easily available to members have increased dramatically and will continue to increase, not least with the assistance of the new information officer. The website is an excellent showcase for members: the directory of members, which members of the public use to find representatives, is much more prominent. Analytic tools allow us to see how much the directory, and other services on the site such as the jobs page, are used. Even we are surprised. Between the new website going live on 11 August 2011 and 7 November 2011 the jobs page was viewed over 5,000 times, and that does not include those who were directed by emails to specific advertisements.

There is a wealth of new material on the site, from the guidelines for ILPA members to information about ILPA, that we hope will help members of the public looking for advice and representation and also encourage potential new members to consider joining ILPA. With the new website ILPA presents a much more attractive face to the world and, with it, membership is more valuable than it was before and is increasing in value with every resource added.

We recognise the risk that if members share login and passwords with non-members ILPA's membership numbers, and with it the range of ILPA's activities, will be put at risk. We very much hope that instead members will be urging comrades to join ILPA. Membership is valued by members as much for what they can do or support others to do to promote a just and equitable immigration, asylum and nationality law practice, as for what they can get in terms of information. Those speaking on public platforms or hosting meetings are welcome to get in touch with the Secretariat for information about membership for inclusion in conference packs or to distribute. The Secretariat can also support (or arrange to provide) speakers to talk about ILPA and its work to other practitioner groups, networks or organisations – do not hesitate to ask for assistance.

We shall monitor the effect of the website on membership numbers and the configuration of membership. In the case of organisation members the relationship between the individual worker and ILPA is now, through emails and the website, much more direct and immediate than when they waited for the hard copy mailing to be passed down to them. As and when numbers of members rise, we shall consider whether there is a way to reflect these relationships in membership fees to try to ensure that membership costs are spread as equitably as possible and that membership is accessible as possible to all who could benefit from it.

### **Dissemination of information and communications**

From December 2010 to November 2011 members have been sent 12 hard copy mailings and 402 numbered enclosures, 36 fewer than last year. This has been supplemented, from December to August, by 81 documents/bundles of documents publicised through the hard copy mailing as

documents available, an increase of 20 on last year. We are grateful to Unbound Philanthropy and the Diana, Princess of Wales, Memorial Fund for their support for the mailing.

The old distinctions between “enclosures”, “documents available” and “publications” (links to items of interest) has now broken down, as all documents and news items circulated by ILPA, whether in the hard copy mailing or by email to one subcommittee or to all members, are now loaded onto the website. Members continue to receive the hard copy mailing, although there is a facility for the environmentally conscious/space-starved to opt-out of this, safe in the knowledge that they are not missing anything because it is also online. Information can be loaded onto the website as soon as it is available, and then sorted and selected for the monthly round-up in the mailing. The new systems offer something for everyone: emails highlighting new developments for those who need to know everything relevant to a particular area at once; home page feeds for those who want to glance at updates; mailing pages for those who want regularly to check what is new across all areas of ILPA’s work and the hard copy mailing for those who continue to practice the lost art of reading rather than merely scanning information. That we can now put all documents on line means that we are free to focus the hard copy mailing on documents likely to be of most interest to members rather than having to use it for that which did not fit neatly under any subcommittee but felt as though it ought to be available somewhere.

To get the most out of their membership, members need to be signed up to the relevant subcommittee lists and logged into the website. Many are but not all and we shall make efforts during the coming year to ensure that all members are making the most of ILPA’s information.

### *Information Service Project*

The Information Service is part of the work led by the Legal Officer that is supported by funding from the Joseph Rowntree Charitable Trust with additional support in respect of information sheets relating to refugee children from the Diana, Princess of Wales, Memorial Fund. Since the last AGM, the information service has produced eleven Updates and forty-five Information Sheets as well as four notes from seminars and workshops, an increase on all fronts over last year. A substantial proportion of the Information Sheets concern legal aid, including the consultation on the proposed changes and the Legal Aid, Sentencing and Punishment of Offenders Bill. Other Information Sheets cover topics including *Access to Healthcare*, *Age Disputes*, *Appeals involving Children*, *Detention*, *Detention of Children*, the *Employment-related Settlement Consultation*, the *Family Migration Consultation*, *Making Asylum Claims*, the *Points-Based System*, the *Race Discrimination Authorisation*, *Senior Care Workers*, *Settlement*, *Students* and judgments in *Zambrano* and *ZH (Tanzania)*, and concerning *Marriage Age* and *Zimbabwe Country Guidance*.

Notes from workshops provide updates relating to legal aid, separated children, persons living with HIV/AIDS and a general immigration update. All of these publications are available in the Info Service section of the website. Many of these and other workshops are described in the section on liaison with other organisations below. In addition, the Legal Officer provides considerable one-to-one support to non-lawyers in these organisations keen to check their understanding of the existing system and proposals for change in the context of their influencing work.

The information and talks are the most visible part of the information service project, but they are combined with flexible, tailored interventions which can take the form of supporting organisations to inform their members/supporters, raise their concerns, respond to consultations on policy changes, to brief on legislation, in writing and through meetings, at national and local level and to engage in public interest litigation. Support is provided face to face, by phone and by email, directly by the Legal Officer. Relationships have been developed over the years of the project’s

operation so that there is now a high level of confidence, through organisations' own experience or from their observations of the experiences of others, that ILPA will be both willing and able to help them. During the course of this year, that support has led directly to NGOs and community organisations such as Midaye Somali Development Network, Refugee Youth and Al Hasaniya Moroccan Women's Project responding to the legal aid consultation and lobbying on the Legal Aid, Sentencing and Punishment of Offenders Bill.

The primary audience for the information service is non-lawyers and considerable effort goes into ensuring that non-lawyers can understand the information but we are aware that many lawyers value the succinct, clear updates the information service provides, and have even information sheets cited with approval in court cases as providing agreed expressions of Home Office Policy.

### ***Information Technology and Website Project***

The bulk of the funded upgrade project is now complete with an upgraded IT system, our new Customer Relationship Management database and our new website, with a resources database sitting behind it. These and their enormous beneficial effects on all aspects of ILPA's work are described throughout this report.

The remaining project funds will be spent in the year to March 2011 refining the system. Helen Williams is taking this work forward. The work does not of course stop there. Unbound Philanthropy, whose generous funding made this project possible are now funding our Information Officer project which is very much a development of this work. And it is not the intention to have one upgrade and then rest on our laurels. Now that we are fit for the 21<sup>st</sup> century we intend to stay that way and to be able to give information technology the prominence it deserves in an organisation with objectives to educate, inform and influence.

### **Other Publications and Projects**

The *Journal of Immigration, Asylum and Nationality Law*, Managing Editors Helena Wray, Senior Lecturer in the Department of Law at Middlesex University and Gina Clayton, Visiting Lecturer at Middlesex University. Book reviews editor, Dr Prakash Shah. Published by Bloomsbury Professional.

ILPA's *European Update* has maintained its very high standards during the year with extensive coverage of developments at European level.

There were two new ILPA publications during the year. The May 2011 *Resources Guide for Practitioners Working with Refugee Children* by Natasha Tsangarides and Lisa Woodall grew out of the training packs on the Refugee Children's Project. It details child-specific information and links to the key international legal and policy instruments; UK legislation and immigration rules; UK Border Agency policy, guidance and instructions; good practice guidance; ILPA information sheets; and information on thematic issues relating to children in the status determination system. It is an online publication as this is the best format for a publication that contains links. A second edition is currently in production along with a case-law digest detailing the most significant cases affecting refugee children.

Also in May 2011, we published *Working with Refugee Children: Current Issues in Best Practice*, a collection of essays by Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo edited by Lisa Woodall. It is a collection of essays carefully edited to be user-friendly and of practical application. It incorporates and develops experience and materials from the Refugee Children's Project training courses, discussions at the children's subcommittee (on email and at

meetings) and on the leading cases during the year. 1200 copies were printed and distributed for free across the UK and at the time of writing we are planning a reprint/2<sup>nd</sup> edition as they have nearly all been distributed. Copies have gone far and wide: to the tribunals judiciary and their libraries, to practitioners in immigration, family law, criminal law and community care law, to social workers, officials in the Ministry of Justice and UK Border Agency, to academics, staff of inter-Governmental organisations and parliamentarians. It has been very well received.

ILPA receives very many requests for assistance with research and we have to be selective. It is always sad to have to say no and nice to say yes. This year Alison Harvey sat on the Advisory Group of the UNHCR/Asylum Aid research project on Mapping Statelessness in the UK and was a contributing expert to the International Commission of Jurists' Practitioners' Guide on Migration and International Human Rights Law. ILPA South-West Subcommittee members met with Dr Nick Gill of the University of Exeter about his research on geographic disparities in asylum appeal success rates. Members assisted a University of Cambridge researcher looking at domestic violence and immigration. Philip Trott assisted a researcher from Danish National Centre for Social Research with a comparative study of immigration policies and initiatives concerning recruitment and integration of highly skilled immigrants. ILPA Children's subcommittee was attended by Sarah Pack, 2011 Michigan Fellow in Refugee and Asylum Law. Louise Hooper represented ILPA at the Strategic Focus Group meeting of The Anti-Trafficking Monitoring Group. Alison Harvey met with researchers from the Refugee Studies Programme in Oxford about their research on legal aid. Alison Harvey and Lisa Woodall provided information to the Social Market Foundation for its work for Hammersmith and Fulham Community Law Centre looking at immigration appeals cases of unaccompanied children. Alison Harvey contributed to research by a group of funders on women with insecure immigration status and did work with VSO on the 'brain gain.' She contributed to research for "Friction and Overlap between EU Free Movement Rules and Immigration Law in the United Kingdom", research funded by the Nuffield Foundation, led by researchers at the Universities of Edinburgh and Glasgow. Steve Symonds contributed to British Red Cross research on family reunion for refugees.

Contributions to research by Government departments and official bodies are detailed under meetings and publications below.

### *Refugee Children's Project*

The project, funded by the Diana, Princess of Wales Memorial Fund, aims to raise the quality of legal representation of refugee children through training, information provision, publications including best practice guidance and holding annual conferences.

The project continues to be guided and informed by the advisory group set up at its inception and is grateful for the ongoing commitment of the members of the advisory group:

Liz Barratt, Bindmans LLP  
Judith Dennis, Refugee Council  
Nadine Finch, Garden Court Chambers  
Kalvir Kaur, ECPAT UK

Denise McDowell, Greater Manchester  
Immigration Aid Unit  
Caroline Little Association of Lawyers for Children

Heaven Crawley, University of Swansea  
Kamena Dorling, Children's Legal Centre  
Catriona Jarvis, Senior immigration judge  
Adrian Matthews, Office of the Children's  
Commissioner  
Baljeet Sandhu, Islington Law Centre

Sheona York of the Immigration Advisory Service and Fiona Hannan, formerly of the Legal Services Commission participated in the Advisory Group during the earlier part of the year.

Over the course of the project thus far, ILPA has provided, and will continue to provide, a series of free training sessions across the UK relating to all aspects of the law as it affects refugee children, covering both substantive and procedural issues. Training has been provided to both immigration practitioners and practitioners in the fields of family, community care and crime who come across matters related to immigration status in their work, with spaces made available for non-practitioners nonetheless working closely with refugee children. The courses have been offered at different levels to reach as wide an audience as possible.

So far the project has provided 595 participants with free training over 25 courses. *Working with Refugee Children* courses have been delivered in Birmingham, Cardiff, Glasgow, London, Manchester and Wales, covering *Best Practice in Working with Refugee Children; Age Disputes; Immigration Law for Criminal, Family and Community Care lawyers; criminal and community care law for immigration lawyers; Appeals and Legal Developments in Children's Cases*. A new course, *Working with Lawyers for non-practitioners* has been developed to help non-lawyers identify a good lawyer practitioner and understand the responsibilities (and limitations) of the lawyer's role. Bristol will be added to the list of places in which courses take place next year. Our thanks go to the following, who have delivered training for the project during the year (firms and organisations are as of the date when training was delivered):

Steve Bravery, Bravery Law  
Kalvir Kaur, ECPAT  
Richard Thomas, Doughty Street Chambers  
Shu Shin Luh, Garden Court Chambers  
Robert Ward, 15 New Bridge Street  
Baljeet Sandhu, Islington Law Centre  
Parosha Chandran, 1 Pump Court  
Martina Flanagan, Camden Community Law Centre  
Simon Cox, Doughty Street Chambers  
Kirsty Thompson, Legal Services Agency  
Alison Pickup, Doughty Street Chambers  
Amie Henshall, Parker Rhodes Hickmott

Nadine Finch, Garden Court Chambers  
Jackie Peirce, Glazer Delmar  
Colin Yeo, Renaissance Chambers  
Nick Armstrong, Matrix Chambers  
Sally Thompson, Luqmani Thompson  
Adam Hundt, Pierce Glynn Solicitors  
Stefan Vnuk, Lawrence Lupin Solicitors  
Laura Dubinsky, Doughty Street Chambers  
  
Zubier Yazdani, Pierce Glynn Solicitors  
Roopa Tanna, Islington Law Centre  
Ruth Heatley, Greater Manchester Immigration Aid Unit

We thank Kenworthy Chambers, the Scottish Refugee Council, the Equality and Human Rights Commission and the Wales Strategic Migration Partnership for their generous hosting of the project. A particular thank you to Jamie Spurway at the Scottish Refugee Council for his help.

As detailed in the publications section above, two publications have emerged from the project: the *Resources Guide* by Natasha Tsangarides and Lisa Woodall and *Good Practice in Working with Refugee Children: Current issues in best practice* by Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo, edited by Lisa Woodall In addition to the contributions from trainers and members of the advisory group we thank the following for their contributions to the publication:

Ian Macdonald, QC, President of ILPA  
Nick Armstrong, Matrix Chambers  
Helen Johnson, Refugee Council  
Sonia Routledge, Birnberg Pierce

Helen Johnson, Refugee Council  
Melissa Canavan, immigration judge  
Jane MacAdam, University of Sydney  
Steve Symonds, ILPA

Alison Harvey, ILPA  
Solange Valdez, Sutovic and Hartigan

Helen Williams, ILPA  
Zubier Yazdani, Pierce Glynn Solicitors

The project's first annual conference was held on 20th May 2011. It was well attended by almost 100 delegates including barristers, solicitors, advocates, staff of the UK Border Agency, social workers and staff of non-Governmental organisations. It received excellent feedback. ILPA was extremely pleased to welcome a panel of young people, former refugee children, who spoke eloquently and informatively about their experiences, their lives with settled UK status and what they felt children and young people needed from their lawyers, social workers and other support workers and how the system of immigration and asylum affects (and effected) them and their peers. ILPA is hugely grateful to them for their time and input and the popular opinion was that they were the stars of the conference. The other speakers at the conference were:

Sophie Barrett-Brown, Chair of ILPA	Ian MacDonald, QC, President of ILPA
Baljeet Sandhu, Islington Law Centre,	Judith Dennis, Refugee Council
Catriona Jarvis, Senior Immigration Judge	Clare Tudor, Scottish Refugee Council
Steve Bravery, Bravery Law	Shu Shin Luh, Garden Court Chambers
Colin Yeo, Renaissance Chambers	Manjit Gill, No 5 Chambers
Ben Hawkin, No 5 Chambers	

Children seeking international protection need the best possible representation within a system that is not adequately designed for, nor safeguards, their well-being. Feedback and intense assessment of the first year of the project has shown so far that the training has assisted legal representatives in promoting the rights and entitlements of refugee children. It is our hope that this will continue to be the case in the second year.

Children's information sheets were provided as part of the information service as detailed above. The project also supported legal updates and other relevant enclosures in the mailing.

### **Litigation**

ILPA continued to be involved in the *R (Medical Justice) v SSHD* [2010] EWHC 1925 (Admin) litigation on removals without notice including producing a further witness statement on the issue of notice where the person has consented to a voluntary departure. ILPA prepared witness statements and assisted in research for challenges to the award of contracts under the immigration tender and assisted with the *Cart, Eba MR* litigation. It advised Kanlungan and others developing a legal strategy on settlement applications by senior care workers.

### **Liaison with Government and other organisations**

The public sector and those funded by Government, including a significant number of non-Governmental organisations with whom ILPA works, have faced huge cuts this year. Government departments have examined again the meetings they convene and questioned their utility, while other non-Governmental organisations have looked to ILPA to keep calm and carry on and to support their efforts to continue their work with fewer resources. ILPA has kept calm, sometimes under intense provocation, and carried on and this is the work that we describe here.

As we do every year, we issue this section with the health warning that ILPA members are actively involved with and in a range of networks and organisations and while our lists record those who represented ILPA at meetings, other members are often also there with other hats on. Also, to the lists below must be added ILPA's training sessions and members' meetings at which external

speakers were present. Once again, the volume and frequency of meetings makes it inevitable that some must be covered by staff of the Secretariat and that they must step in from time to time to assist with others. It continues to be inspiring how many members find time in incredibly busy lives to give generously of their expertise to represent ILPA at meetings as the lists below testify. Whatever Government departments and non-Governmental organisations may be short of, they are not short of the best advice money cannot buy.

### *Home Office liaison*

The formal groups and the ILPA representatives who attended during the year are:

- Child Trafficking Advice Line Advisory Group; Alison Harvey; replaced by the Child Trafficking Information Forum; Lisa Woodall;
- UK Border Agency Detention User Group; Steve Symonds. (Disbanded and replaced by the Detention and Escort Forum, which ILPA declined to join in the light of the terms of reference. Steve Symonds represents ILPA at twice-yearly detention ‘events’ designed for those not participating in the Forum. They can’t live with us, can’t live without us....);
- UK Border Agency Employers’ Task Force; Nichola Carter, Philip Barth, Philip Trott, Hazar El-Chamaa, Tracy Evlogidis;
- UK Border Agency National Asylum Stakeholder Forum and its subcommittees (Case Resolution, Children, European Operations,) (and specific workshops); Liz Barratt, Professor Valsamis Mitseligas, Alison Pickup, Steve Symonds, Lisa Woodall, Solange Valdez, Colin Yeo. The National Asylum Stakeholder Forum meetings included sessions attended by Damian Green MP, Minister for Immigration;
- UK Border Agency International Group User Panel; Nichola Carter, Alison Harvey;
- UK Border Agency Corporate Group: Alison Harvey. Including a session attended by the Minister, Damian Green MP.

In addition to these regular, formal meetings, there were series of bilateral and multi-lateral meetings with the UK Border Agency as follows:

- With representatives of the Public Enquiry Office in Croydon; Sophie Barrett-Brown, Philip Barth, Gillian Brownlee, Maria Fernandes;
- With Bill Brandon and Ian Cheeseman of the UK Border Agency about the Asylum Process Instruction on survivors of torture; Jo Swaney;
- With Eddy Montgomery, UK Border Agency Director of Operations North West Region and with staff in the European Casework Directorate; Sophie Barrett-Brown, Alison Harvey, Alison Hunter, Meghan Vozila, Nick Rollason;
- With Emma Churchill, Head of Asylum and other staff of the agency on Presenting Officers; Alasdair Mackenzie and Steve Symonds;
- Refugee Children’s Consortium meetings with the UK Border Agency; Nadine Finch, Steve Symonds.

There were one-off meetings as follows:

- With Ian Robinson UK Border Agency on the cap on immigration, 9 December 2010, Firuza Ahmed, Sophie Barrett-Brown, Emily Brodie, Holly Buckley, Rose Carey, Afrene Campbell, Ilda de Sousa, Melanie Forte, Jessica Smith, Catherine Maclay, Sue Shutter, Edward Taylor, Philip Trott, Laura Devine, Shazmeen Ali, Andrew Tingley, Kathryn Denyer, Gurjinder Hohti, Nicola Carter, Meghan Vozila, Marian Dixon, Hazar El-Chamaa;
- With Emma Churchill, Head of Asylum on presenting officers, 10 January 2011; Alasdair Mackenzie, Steve Symonds;

- With Ian Robinson re Tier 1, 18 January 2011; Sophie Barrett-Brown and Philip Trott;
- With Ian Cheeseman, UK Border Agency on LGBT (Lesbian, Gay, Bisexual and Transgender) cases, 18 February 2011; S Chelvan, Steve Symonds;
- ILPA South West Subcommittee with Matthew Gregory, Points-Based System Compliance Team Manager, February 2011;
- With Jonathan Nancekivell-Smith, Director of Visa Services, 1 March 2011; Sophie Barrett-Brown, Nichola Carter, Alison Harvey, Sue Shutter, Steve Symonds, Colin Yeo;
- With UK Border Agency on gender guidance, 16 March 2011; Steve Symonds;
- With UK Border Agency re codes of practice at Intellect, 18 March 2011; Rose Carey;
- visit to Asylum Support Unit, 7 April 2011; Alison Harvey, Kalvir Kaur, Steve Symonds;
- With Immigration and Criminality Policy staff of the UK Border Agency re domestic abuse and changes to the Immigration Rules, 20 April 2011; Alison Harvey;
- With the Migration Advisory Committee on Tier 2 shortage occupation lists, 13 May 2011; Nick Hobson;
- Tour of new facilities for the UK Border Agency customer facing areas, Liverpool 9 June 2011; Tom Brett-Young, Kate Nickson;
- With Ian Robinson re Tier 1 Investor/Entrepreneur, 8 July 2011; Philip Barth, Sophie Barrett-Brown, Hazar El-Chamaa, Marie Haughey, Jennifer Lambe , Siobhan Owers, Kamal Rahman, Linda Rowe, Andrew Tingley;
- With Brodie Clark, Head of Border Force, UK Border Agency re treatment of students at the border, 1 August 2011; Alison Harvey;
- With the Migration Advisory Committee on settlement, August 2011; Hazar El-Chamaa and Caron Pope;
- Family migration speech by Damian Green MP, Immigration Minister, 15 September 2011; Barry O'Leary;
- With Clive Peckover, UK Border Agency on the family migration consultation, 15 September 2011; Barry O'Leary, Steve Symonds;
- Family Migration Consultation event, 16 September 2011; Steve Symonds;
- With Jill Beckingham, Director, Agency Records Modernisation Programme, Mark Baldock and Andy Bennett re Subject Access Requests to UK Border Agency 5 October 2011; Sophie Barrett-Brown, Alison Harvey, Jed Pennington and Steve Symonds;
- With Sally Weston, Strategy Immigration and Border Directorate, Home Office re litigation strategy, 31 October 2011; Alison Harvey, Steve Symonds.

In addition, Alison Harvey represented ILPA at a reception given by the outgoing Chief Executive, Lin Homer and Nick Rollason represented ILPA at a ResPublica Policy Breakfast with Damian Green MP, Minister of State for Immigration on 6 July 2011. Muhunthan Paramesvaran of Wilsons LLP represented ILPA at a meeting of those providing services in Harmondsworth Immigration Removal Centre convened by the Geo Group who run the centre and Lisa Woodall visited Cedars at Pease Pottage where families are held prior to removal. Alison Harvey contributed to ESRO research on behalf of the UK Border Agency on MPs correspondence and Steve Symonds took part in a telephone conference with Gail Adams, UK Border Agency Regional Director for Wales and South West about the Agency's harm matrix on 12 January 2011. ILPA's South West subcommittee met with Kenny Chapman, Local Immigration Team manager in the South West, on 26 October.

### *Liaison with courts and tribunals*

The regular meetings and those who have represented ILPA at them during the year are:

- Administrative Courts User Group; Jawaid Luqmani;



- Presidents' Stakeholder Forum; Alison Harvey, Mark Henderson;
- Asylum Support Tribunal User Group; Sasha Rozansky;
- Administrative Appeals Chamber of the Upper Tribunal User Group; Adrian Berry.

ILPA representatives attended the Immigration and Asylum Chambers' Country guidance Seminar on 16 June 2011. Alison Harvey and Steve Symonds met with Jeremy Rintoul of the Council of Immigration Judges to apprise him of ILPA's concerns about the proposed changes to legal aid.

### *Ministry of Justice and Legal Services Commission*

The regular meetings and those who have represented ILPA at them during the year are:

- Civil Contracts Consultative Group; Matthew Davies, Alison Harvey, Jackie Peirce;
- Civil Contracts Consultative Group, Immigration Representative bodies meeting (now abolished): Alison Harvey, Sonia Routledge, Solange Valdez;
- Legal Services Commission Stakeholder Group: Alison Harvey.

In addition the following meetings were held:

- Ministry of Justice meetings on the Legal Aid consultation and Bill: Nick Armstrong, Matthew Davies, Polly Glynn, Alison Harvey, Sonia Routledge and Stefan Vnuk;
- Representative Bodies workshop on Assurance and Audit, 2 June 2011; Jawaid Luqmani;
- About IAS in administration, 21 July 2011 Alison Harvey, Sonia Routledge;
- ILPA South West meeting with Louise Parcell of the Commission, 6 October 2011;
- Legal Services Commission/Bail for Immigration Detainees Roundtable on detention legal advice with exclusive contractors, 10 October 2011; Alison Harvey, Steve Symonds;
- Practitioners' Working Group re legal aid tenders, 3 November 2011; Jackie Peirce;
- On Very High Costs Cases, 8 November 2011, Russell Blakely.

Solange Valdez and Alison Harvey met with those conducting an external review of the Civil and Crime Contract Tenders on 21 February 2011.

### *International Organisations*

#### *Inter-Governmental*

- Launch of Office for Security and Cooperation in Europe (OSCE)'s publication on trafficking for domestic servitude by the OSCE Special Representative Dr Maria Grazia Giammarinaro 7 March 2011; Sophie Freeman;
- Meeting with European Commission Director General of Home Affairs Manservisi, 31 March 2011; Adrian Berry, Saadiya Chaudry, David Chirico, Elspeth Guild, Alison Harvey, Alison Hunter, Peter Jorro, Valsamis Mitseligas, Steve Symonds, Shahram Taghavi & Meghan Vozila;
- Michael Manly, UNHCR Chatham House lecture on statelessness, 7 July 2011; Alison Harvey;
- Meeting with the Council of Europe's Group of Experts on Action Against Trafficking in Human Beings (GRETA), 24 October 2011, Alison Harvey.

Michel Meduna of the staff of the European Commission participated in ILPA's seminar on Directive 2004/38 in October. See also research above.

#### *Non-Governmental*

- ECRE Advocacy Conference (Berlin) 4-5 April 2011; Ali Bandegani and David Chirico;

- International Commission of Jurists Workshop on Migration and Human Rights – Brussels, 18 April 2011, Alison Harvey.

#### ***Other Government Departments***

- Ministry of Justice re the legal aid consultation 19 January 2011; Polly Glynn;
- Ministry of Justice re asylum legal aid 21 January 2011; Alison Harvey, Sonia Routledge;
- Ministry of Justice re domestic violence and legal aid, 28 January 2011; Matthew Davies;
- Ministry of Justice re the telephone gateway 28 January 2011; Sonia Routledge;
- ILPA meeting with Michael Tant, Ministry of Justice re Legal Aid 28 June 2011; Alison Harvey, Steve Symonds, Nick Armstrong, Stefan Vnuk, Matthew Davies;
- ILPA meeting with Ministry of Justice re Legal Aid 17 August 2011; Alison Harvey, Steve Symonds, Nick Armstrong and Stefan Vnuk.

#### ***Other official bodies***

Regular meetings:

- Chief Inspector of the UK Border Agency Refugee and Asylum Forum; Alison Harvey, Colin Yeo, Steve Symonds;
- Office of the Children’s Commissioner for England and Wales Advisory Group (refugee children); Steve Symonds;
- Office of the Immigration Services Commissioner, Alison Harvey

Other meetings were held as follows:

- With the Legal Services Board, 25 July 2011; Gillian Brownlee, Michael Hanley, Alison Harvey, David Jones, Peter Jorro, Steve Symonds, Andrew Tingley;
- With Yarl’s Wood Immigration Monitoring Board 13 June 2011; Steve Symonds;
- Administrative Justice & Tribunals Council conference 17 November 2011; Alison Pickup.

#### ***Parliament***

Lest we start to suffer withdrawal symptoms from the continued absence of any bill on immigration, asylum and nationality we have the Legal Aid, Sentencing and Punishment of Offenders Bill to keep us busy. With a prayer against every Statement of Changes in immigration rules, there has been no time to be bored.

ILPA representatives attended meetings of the All Party Parliamentary Groups on Legal Aid (Alison Harvey, Steve Symonds, Sue Shutter, including a joint meeting with the All-Party Parliamentary Group on domestic violence), Migration (Alison Harvey, Robert Sparks), and Refugees (Alison Harvey, speaker at the group’s AGM). Steve Symonds and Alison Harvey also met with individual peers and MPs and their staff.

ILPA representatives also attended:

- House of Lords The future of civil legal aid – afternoon tea 23 May 2011; Alison Harvey;
- Detention Forum meeting hosted by Julian Huppert MP, 15 June 2011; Steve Symonds;
- Home Affairs Committee Conference on Migration and Asylum on 12 September 2011, attended by parliamentarians from different countries of Europe; Judith Farbey QC, Adrian Berry, Alison Harvey (Speaker), Alison Stanley, David Chirico, Katie Dilger, Mahmud Quayum, Rose Carey, S. Chelvan, Sarah Craig, Sonal Ghelani, Sonali Naik, Steve Symonds, Sue Shutter, Sue Willman, Syd Bolton and Tom Kettle;

- Peers' seminar on children and domestic violence in the Legal Aid, Sentencing and Punishment of Offenders Bill, 7 November 2011, Steve Symonds.

In addition Philip Barth spoke at a Westminster Legal Policy Forum seminar on immigration on 23 March 2011.

As well as sharing information with parliamentarians and committees, providing individual MPs, peers and researchers with briefings and information, ILPA provided evidence and published parliamentary briefings as follows:

- For House of Commons debate on legal aid, 15 December 2010;
- Evidence to Home Affairs Committee enquiry into the Impact of proposed restrictions on Tier 4 migration – January 2011;
- Submission to the Joint Committee on Human Rights inquiry into the Human Rights implications of Extradition Policy – January 2011;
- Second submission to the House of Commons Justice Select Committee Access to Justice inquiry, January 2011;
- On Statement of Changes HC 908 and the domestic violence rule, 26 April 2011;
- For House of Lords debate on Statement of Changes HC 863, 9 May 2011;
- For House of Lords debate on Statement of Changes HC 1148, 7 September 2011;  
For the House of Lords debate on Statement of Changes HC 1511, 9 November 2011;
- Twenty-six briefings and memoranda for the Legal Aid, Sentencing and Punishment of Offenders Bill.

ILPA also provided information to peers on the Community Legal Service (Funding) (Amendment No. 2) Order 2011 7 September 2011 and assistance with individual questions.

### ***Non-governmental organisations, networks and others***

The usual disclaimer: the leading non-governmental organisations in the field are ILPA members; non-governmental organisations are represented among the convenors of ILPA subcommittees and ILPA members are active in many networks. We can only present a sample of this work and name only those with a specific mandate to represent ILPA, inevitably meaning that staff names figure heavily, but ILPA members' attendance and engagement goes much wider. As those working in this area reel from funding cuts, ILPA has worked hard to ensure that scrutiny and questioning are maintained. See also this report *passim*, for work in partnership with non-governmental organisations and networks for training.

Regular meetings and representation on groups during the year include:

- Anti Trafficking Legal Project (ATLeP): Alison Harvey;
- Asylum Rights Campaign: Steve Symonds;
- Diana, Princess of Wales Memorial Fund Refugee and Asylum-seekers Initiative: Natasha Tsangarides; Lisa Woodall;
- Diana, Princess of Wales Memorial Fund Strategic Legal Fund: Alison Harvey;
- Housing and Immigration Group: Alison Harvey, Steve Symonds;
- The Law Society: Immigration Law Committee - Stefan Vnuk; Specialist Practitioners Group - Jackie Peirce, Sonia Routledge, Alison Harvey & Steve Symonds; Immigration and Asylum Scheme Chief Assessor's Technical Board Nicola Cockburn;
- Information Centre for Asylum Seekers and Refugees Advisory Group: Alison Harvey;
- Medical Justice: Steve Symonds;

- Refugee Children's Consortium: Nadine Finch, Alison Harvey, Steve Symonds, Natasha Tsangarides, Lisa Woodall;
- Still Human Still Here: Steve Symonds;
- Trafficking Law and Policy Network: Alison Harvey.

The Asylum and Access to Justice, Detention and Asylum Fast Track subcommittees and ILPA staff used the Refugee Legal Group to disseminate information of interest to its users.

ILPA representatives attended meetings and discussed developments with a wide range of organisations (some of them ILPA members) as part of a wider programme involving ILPA members spanning influencing work, training and support. These *included* the Advice Services Alliance, Administrative Law Bar Association, Advice Network South West, AIRE Centre, Al Hasaniya Moroccan Women's Group, Amnesty International, Anti-Slavery International, Anti Trafficking Legal Project (ATLeP), Anti-Trafficking Monitoring Group, Asylum Aid, Asylum Support Appeals Project, Association of Charitable Foundations, Association of International Student Advisors South West/Wales, Association of Visitors to Immigration Detainees, Bail for Immigration Detainees, Bail Observation Project, Barrow Cadbury Trust, Bar Council, British Refugee Council, Children's Legal Centre, Churches Refugee Network, Citizen's Advice, Coram Foundation, College of Law Bristol Pro Bono team, Comic Relief, Detention Action, Detention Forum, Diana Princess of Wales Memorial Fund, ECPAT UK, Eaves Housing, Electronic Immigration Network (EIN), Employment Lawyers' Association, European Council on Refugees and Exiles, Freedom from Torture, Front Line Forum (Plymouth), Goldsmith's College, Helen Bamber Foundation, Information Centre for Asylum Seekers and Refugees, Institute of Advanced Legal Studies, ILGA, Joint Council for the Welfare of Immigrants, Joseph Rowntree Charitable Trust Justice, Justice First, Justice for All, Kalayaan, Kanlungan, Kensington and Chelsea Social Council, Kent Refugee Support Group, Law Centres Federation, LawWorks, Legal Aid Practitioners' Group, London Advice Services Alliance, Legal Aid Practitioners' Group, London Refugee Churches Network, London Refugee Voice, Midaye Somali Development Network, Migrants Law Project, Migrant and Refugees Communities Forum, Migrants Resource Centre, Migrants Rights Network, Migrant Voice, Oxfam, Nuffield Foundation, Praxis, Pro Bono Unit, Public Law Project, Refugee Action, Refugee Children's Rights Project, Refugee Studies Centre University of Oxford, Refugee Youth, Reprieve, Rights of Women, Scottish Refugee Council, Social Market Foundation, Society of Legal Scholars, Southall Black Sisters, South West Advice Network, South West Asylum Seeker and Refugee Forum, South West Migration Partnership, Student Action for Refugees, Still Human Still Here, The Childrens Society, The Law Society, Trust for London, University of Central London, UKCISA, UKGLIG, Unison, Unite Unbound Philanthropy, Westminster Legal Policy Forum, Widows and Orphans Support Group, Women Asylum Seekers Together and Women's Institute.

In addition to the conferences described above, ILPA representatives were speakers at the following conferences, again, often as part of a wider programme of work:

- Evelyn Oldfield Unit AGM 8 December 2010; Alison Harvey;
- Policy Network seminar: Immigration & political trust 13 December 2010; Alison Harvey;
- Migrant and Refugee Communities Forum/Migrant Rights Network meeting on Legal Aid 8 February 2011; Steve Symonds;
- Scottish Refugee Council seminar on refugee naturalisation (Birmingham) 10 February 2011; Steve Symonds;
- ESRC seminar series Access to Justice in Theory and Practice 6 May 2011; Alison Harvey;
- Launch of Detention Action and report on the Detained Fast Track asylum system 12 May 2011; Alison Harvey;

- Justice Extradition & Deportation conference 21 June 2011; Alison Harvey (session chair);
- Funding Cuts and Proposed Legal Aid Cuts: what do they mean to asylum seeking and refuge women? Eaves seminar 12 September 2011; Alison Harvey ;
- Kensington and Chelsea Social Council forum on immigration advice for HIV patients 13 September 2011; Steve Symonds;
- Migrants Rights Network Black History Month lecture 28 October 2011; Alison Harvey (discussant).

### **Responses and submissions**

In addition to the parliamentary briefings described above and the information disseminated through the Information Service, ILPA wrote 78 responses, submissions and letters this year, down on last year's massive 102, but in excess of the years before that. Many of these were enormous pieces of work.

1. To Emma Churchill UK Border Agency re asylum improvement project, 26 11 2010;
2. To Home Secretary, Rt Hon Theresa May MP re guidance on *HJ and HJT*, 26 11 2010;
3. Response to Tribunals Service Immigration and Asylum consultation on proposed changes to documents served on parties, November 2010;
4. To Damian Green MP and Sarah Teather MP re guardianship for children seeking asylum and subject to immigration control, 7 December 2010;
5. Comments on the UK Border Agency's Keeping Children Safe Trainer Notes, 07 12 2010;
6. Response to the Immigration and Asylum Chamber, Upper Tribunal, Consultation on Float Lists – December 2010;
7. Initial response to the Ministry of Justice consultation on Legal Aid – December 2010;
8. Response to the Chief Inspector of the UK Border Agency: A thematic inspection of asylum – the use of country information in decision making – December 2010;
9. ILPA to Mr Justice Blake re reported and Country Guidance cases, December 2010;
10. To the Administrative Court re former Refugee and Migrant Justice clients, 19 01 2011;
11. Response to the Ministry of Justice consultation Introducing fee charges for appeals in the Immigration & Asylum Chambers of the First-Tier Tribunal & Upper Tribunal – 01 2011;
12. Evidence to Migration Advisory Committee on graduate-level occupations – January 2011;
13. To Ministry of Justice re review of literature on litigants in person – January 2011 ;
14. Response to UK Border Agency consultation on Student Immigration System, 01 2011;
15. Response on the indicators and information strategy of the transparency section of the Home Office Business Plan – January 2011;
16. Comments to UK Border Agency on family reunion policy – January 2011;
17. Response to Ministry of Justice Proposals for the Reform of Legal Aid in England and Wales – February 2011;
18. Comments on UK Border Agency draft leaflet Your Stay in the UK – February 2011;
19. Response to Ministry of Justice Proposals for Reform of Civil Litigation Funding & Costs in England & Wales (implementation of Jackson LJ's Recommendations), February 2011;
20. Response to Ministry of Justice consultation: A Platform for the Future (merger of the Courts and Tribunals services) - February 2011;
21. Response to Ministry of Justice consultation: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders – February 2011;
22. To the OISC re storage of files when OISC-registered organisations close, 8 March 2011;
23. To UK Border Agency re English Language test centres 10 March 2011;
24. To Eddy Montgomery UK Border Agency re European Casework, 14 March 2011;
25. To Jonathan Nancekivell-Smith, UK Border Agency Visa Services Directorate re supporting documents for EEA family permit applications, 14 March 2011;

26. To Jonathan Sedgwick, Acting Chief Executive UK Border Agency re section 55 duty to safeguard and promote the welfare of children, 18 March 2011;
27. To the Judges' Council re legal aid 18 March 2011;
28. To UK Border Agency re domestic violence immigration rule, 21 March 2011;
29. ILPA to Damian Green MP, Minister of State for Immigration re Ministerial Authorisation under paragraph 17(4)(A), Sch. 3, Equality Act 2010, 21 March 2011;
30. ILPA to the Home Secretary re domestic violence immigration rule, 31 March 2011;
31. To Dr Hywel Francis MP re treatment of asylum-seekers, 1 April 2011;
32. Comments on UK Border Agency Asylum Instruction on "Claims for Asylum from UNRWA assisted Palestinians: Article 1D of the Refugee Convention"- April 2011;
33. ILPA to Damian Green MP, Minister of State, re Certificate of Approval fee repayment, 8 April 2011;
34. Comments on UK Border Agency draft EEA forms – April 2011;
35. To Jonathan Sedgwick, Acting Chief Executive of the UK Border Agency, re Zimbabwe, 26 April 2011;
36. ILPA to UK Border Agency re separated children in the Third Country Unit Removal Process, 5 April 2011;
37. To UK Border Agency: same day service at Public Enquiry Office, Liverpool, 14 05 2011;
38. Joint letter with Rights of Women, Eaves Housing and Southall Black Sisters to Home Secretary re changes to immigration rules on domestic violence, 10 May 2011;
39. To Legal Services Commission re new matter starts, 11 May 2011;
40. To UK Border Agency re drafting errors in HC 863, 20 May 2011;
41. To Commissioner Reding re EEA charges at the Public Enquiry Office, 13 May 2011;
42. To Jonathan Sedgwick, Acting Chief Executive UK Border Agency re applications for entry clearance by posted workers, May 2011;
43. ILPA to Jonathan Djanogly MP, Minister, re legal aid and judicial review, 19 May 2011;
44. To Jeremy Oppenheim UK Border Agency re section 20, 20 May 2011;
45. Response to Home Office consultation on changes to immigration-related Home Office statistical outputs – May 2011;
46. Response to OISC consultation on the intention to produce an Equality Scheme – May 2011;
47. Submission to Independent Chief Inspector of the UK Border Agency re 2011/12 inspections on immigration detention - May 2011;
48. Comments on UK Border Agency draft Asylum Instruction on gender identity - May 2011
49. To Head of the Asylum Screening Unit, 13 June 2011;
50. To the UK Border Agency re cases involving claims of torture, 15 June 2011;
51. Comments on UK Border Agency Enforcement Guidance and Instructions "Chapter 45 – Family Cases", 17 June 2011;
52. To the UK Border Agency re the form of the Agency's consultation on Employment-related settlement, 20 June 2011;
53. Response to UK Border Agency consultation on the UN Convention on the Rights of Persons with Disabilities: Review of Immigration Reservation – June 2011;
54. Response to Tribunal Procedure Committee Judicial Review of "Fresh Claim" decisions in immigration and asylum cases – consultation on proposed amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 – June 2011;
55. Response to Tribunal Procedure Committee Consultation on proposed amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 – June 2011;
56. To the UK Border Agency re subject access requests, 12 July 2011;
57. ILPA to Tribunals Service, UK Border Agency, Legal Ombuds, Administrators and others re closure of Immigration Advisory Service, 12 -18 July 2011 and ongoing;

58. To the Legal Services Commission re IAS closure 16 July 2011;
59. To the Chief Inspector of the UK Border Agency re marriage and partnership applications, 17 July 2011;
60. To the Information Commissioner re UK Border Agency and subject access requests, 21 July 2011;
61. To OISC re regulation of first responders (National Referral Mechanism), 27 July 2011;
62. To Jonathan Sedgwick Acting Chief Executive UK Border Agency re proposed amendment to paragraph 34C of the Immigration Rules, 29 July 2011;
63. Comments on the Equality & Human Rights Commission detention report, 31 July 2011;
64. To Sonia Dower, UK Border Agency re Asylum Screening Unit, August 2011;
65. ILPA to Damian Green MP, Minister of State, re Legal Aid, 16 August 2011;
66. To Nigel Farminer, UK Border Agency re Tier 1 investors, 22 August 2011;
67. To John Sirodcar Legal Services Commission re archived Refugee and Migrant Justice files, 22 August 2011 and follow-up email;
68. To Eddy Montgomery UK Border Agency re legacy cases, 25 August 2011;
69. Response to the Ministry of Justice consultation on the Community Legal Service (Funding) (Amendment No2) Order 2011 - August 2011;
70. Response to UK Border Agency consultation on Employment Related settlement, Tier 5 and overseas domestic workers – September 2011;
71. To Trowers and Hamlin, solicitors for Cork Gully, administrators of IAS, re storage of IAS files, 19 September 2011;
72. To the Head of the Asylum Screening Unit, UK Border Agency, 22 September 2011;
73. Submission to Migration Advisory Committee re UK Border Agency consultation on family migration (and minimum income threshold proposal) - September 2011;
74. To Jonathan Djanogly MP, Minister in the Ministry of Justice, re accessibility of Refugee and Migrant Justice and Immigration Advisory Service files, 4 October 2011;
75. Response to UK Border Agency: Family Migration, a consultation – October 2011;
76. Response to OISC proposal to alter the standard of proof in its complaint scheme from criminal to civil in respect of allegations of fraud and illegality – October 2011;
77. ILPA to the OISC re standard of proof in OISC complaints scheme, 25 October 2011;
78. Response to the consultation on a UK Bill of Rights, 11 November 2011.

And nothing about the cat.

In addition many informal communications chase responses to letters written, fight to get items on an agenda or to ensure more accurate minutes, or simply provide helpful information following a meeting. Members share a rich vein of material through subcommittee lists.

### Summary

Last year I identified three aims for the year. I summarise this report on each of them below

- **To ensure that ILPA members' expertise can be at the forefront of work on new developments in law, policy and practice during the year to the benefit of all those striving for a just and equitable immigration law practice, in particular in challenging proposals to cut legal aid; in supporting practitioners working with refugee children through the Refugee Children's Project and in testing the assumptions underlying the Government's commitment to reduce net migration**

That was one aim? Having now been on the IBM training on monitoring and evaluation I see its flaws, not least that it is more about outputs than outcomes. But as far as outputs go, a review of this report suggests that ILPA has done all these things that it set out to do.

- **The ‘going live’ of our communications and website and work to ensure that we exploit the new technology at our disposal to the full**

The new website went live later in the year than I had hoped but that is the only niggle. We have made huge strides and we are not the same organisation as we were a year ago. The Secretariat now treats the upgraded IT system as the norm, although no-one yet takes it for granted. The new membership database has streamlined all working practices and vastly improved the quality of ILPA record-keeping and will continue to support the work of the Secretariat as ILPA starts to use its potential to the full. There will be work to refine and improve the website and make best use of all that it can do but it has made ILPA much more useful both to members and non-members.

- **Work further to strengthen ILPA’s Executive Committee and subcommittee structure and associated representation at meetings and contributions to consultations**

I am delighted to see so many members of the Executive Committee standing for a further term and work on financial reporting has the potential to strengthen the Committee. New subcommittee convenors have been appointed to strengthen the subcommittee system. The range of subcommittee meetings during the year has been good and subcommittee reporting to the Executive Committee and keeping of minutes have improved, although some subcommittees are better in this regard than others. Performance by subcommittees can now be compared by looking at the subcommittee pages of the website. As this report illustrates, it has been a very successful year in terms of drawing on active (whether in person or on-line) members of subcommittees to represent ILPA at meetings. This report does not capture the names of those who have contributed to responses or drafted letters but I am pleased to report that members of subcommittees, in particular the European, Detention and Asylum Fast-Track, Family and General and Legal Aid subcommittees have led on and undertaken substantial pieces of work.

- **Charitable status for ILPA**

The way to charitable status appears paved with good intentions. Yet again, this has fallen victim to the pressures of work over the course of the year.

My main aims for the next year will be:

- **To preserve legal aid for immigration and legal practitioners**
- **To make valuable resources from ILPA’s archive and coming into the Secretariat available to members and easily retrievable through the website**
- **Further to increase membership and the responsiveness of ILPA to members**

I thank all those whose achievements are catalogued in this report and hope that it stands as a tribute to their energy and achievements. The cat is immaterial; I do not comment on the cat.

*Alison Harvey*  
*General Secretary*

11 November 2011



## ACCESS TO JUSTICE SUBCOMMITTEE REPORT

Last year's Access to Justice Annual Report began with the major event of that year, the abolition of the Asylum and Immigration Tribunal and the creation of Immigration and Asylum Chambers in the First-tier Tribunal and Upper Tribunal to take over its work. It observed that while moves were already underway to transfer age dispute judicial reviews to the Upper Tribunal Immigration and Asylum Chamber (UTIAC), there were as yet no moves to transfer the far more numerous fresh claim judicial reviews.

Over this year, a number of age dispute judicial reviews have been transferred to Upper Tribunal Immigration and Asylum Chamber. There have however been few if any hearings and ILPA has expressed concern about listing delays, especially given that avoiding delay was one of the reasons for transferring these cases to Upper Tribunal.

The main event - transfer of fresh claim judicial reviews - finally occurred on 17 October. From that date, fresh claim judicial reviews should be lodged in Upper Tribunal Immigration and Asylum Chamber (on the new forms) and those lodged in the Administrative Court will be transferred to Upper Tribunal. The Lord Chief Justice's direction (which determines the scope of the transfer of jurisdiction) restricts transfer to judicial reviews that challenge a fresh claim decision alone, or which challenge a fresh claim decision and a decision to remove. The good news for ILPA is that judicial reviews are not being transferred if they include a challenge to any other decision, which "for the avoidance of doubt" includes "where the applicant seeks to challenge detention". Similarly, challenges to certification cannot be transferred whether or not they also include a fresh claim challenge.

On the other hand, the decision to transfer fresh claim judicial reviews which, in addition, challenge removal from the UK (including by way of interim relief) means that procedures in Upper Tribunal Immigration and Asylum Chamber for considering urgent applications for injunctions are of acute importance. ILPA has been in extensive dialogue in recent years with the Administrative Court and the Civil Procedure Rules Committee over procedures for urgent interim relief to prevent removal. Recently, ILPA has intervened when it became apparent that the UK Border Agency, as Defendant, was providing the Administrative Court with information about charter flight removals (including timing) which it sought to prevent the Court sharing with claimants (and which it refused to provide to claimants directly). This led to Sir Anthony May, President of the Queen's Bench Division, confirming to ILPA at the Administrative Court User Group that any information provided by the UK Border Agency as Defendant in ongoing proceedings must be disclosed to the claimant. ILPA is seeking similar assurances in relation to Upper Tribunal Immigration and Asylum Chamber's practice, along with raising other concerns and suggestions for improvement to the consideration of urgent applications.

ILPA also made substantial submissions to the Tribunal Procedure Committee's consultation on changes to the Upper Tribunal Procedure Rules arising out of the transfer of fresh claim judicial reviews and the proposed practice directions. In particular, ILPA successfully pressed for rights of audience to remain as they are in the Administrative Court (so that only the Treasury Solicitor rather than Home Office Presenting Officers can act for the UK Border Agency which hopefully means that relatively realistic advice will continue to be given to the UK Border Agency on settlement of fresh claim judicial reviews). Other proposals made by ILPA have not so far been implemented. These include taking advantage of the fact that the forms only deal with fresh claim JRs in order to simplify them, including for the benefit of litigants in person, and making formal

allowance for the possibility of a reply to the Acknowledgment of Service, especially where that relies on new reasons.

It remains to be seen how in practice the Upper Tribunal Immigration and Asylum Chamber will respond to its new judicial review jurisdiction and how this will impact on access to justice. For the time being it is relatively reassuring that the procedures basically mirror those in the Administrative Court.

ILPA's other main concern about the transfer of immigration and asylum appeals to the First Tier Tribunal and Upper Tribunal was that it may be used to limit access to justice to the courts. ILPA had successfully fought off attempts to shut claimants out of the High Court during the epic ouster battle several years ago and in its response to the consultation on the abolition of the Asylum and Immigration Tribunal made clear that it would be no less opposed to ouster being implemented by the back door in the changeover to the new tribunal structure. The result was that there was no provision in the legislation seeking to limit judicial review of the Upper Tribunal but the Government expressed its hope that the judiciary itself would not permit judicial review.

ILPA kept a close watching brief on the *Cart/Eba/MR* litigation throughout its progress through the courts, including active consideration at different stages of whether ILPA should intervene (we concluded this was unnecessary in light of the existing arguments and interventions). The litigation ended this year with the Supreme Court confirming that the Upper Tribunal must be subject to judicial review but that the 'second appeals test' in Tribunals Courts and Enforcement Act 2007 s13(6) should be applied: [2011] UKSC 28; 29. The 'second appeals test' limits appeals to cases which raise 'some important point of principle or practice' or where 'there is some other compelling reason for the relevant appellate court to hear the appeal'. This was a big step forward from the judgments appealed from in England - though not Scotland - especially as the Supreme Court judgments appeared to recognise that drastic consequences for the individual could be a "compelling reason" under the second appeals test.

However, shortly thereafter, the Court of Appeal gave guidance on applying the second appeals test to substantive appeals to it from the UT: *PR, SS & TC* [2011] EWCA Civ 988. When immigration and asylum appeals were transferred to the new tribunal structure, ILPA was extremely concerned about the implications of applying the second appeals test to appeals from Upper Tribunal Immigration and Asylum Chamber to the Court of Appeal. It supported an amendment to exclude immigration and asylum appeals from the second appeals test and in response, the Government gave (and parliamentarians relied on) assurances that "cases which raise the real prospect that the decision of the Upper Tribunal is in breach of the UK's human rights obligations ... are precisely the sort of cases that would meet the test set out in s.13(6)."

The Court of Appeal nevertheless considered that the application of the test was a matter of judicial policy and it need not give weight to what ministers had told Parliament. Critically, it found that 'compelling reason' in the second limb of the test meant '*legally* compelling reason', which on one view can be read as excluding potentially drastic consequences *in fact* for the appellant as a basis for granting permission to appeal where there is an arguable error of law which does not raise an important point of principle or practice (a phrase which the Court also interpreted restrictively). Its interpretation was arguably more restrictive even than the stance advanced by the Home Office.

The consequences of applying the second appeals test are particularly severe if the appeal has been heard *de novo* in Upper Tribunal Immigration and Asylum Chamber so that the appeal is not in

reality a second appeal at all. The Court of Appeal noted in *PR* (para 16) that "the then Master of the Rolls (Sir Anthony Clarke) had commented [in response to the consultation on abolishing the Asylum and Immigration Tribunal] that since 2005, the Court of Appeal had seen a 77% increase in applications for permission to appeal from AIT cases, the majority of which were from reconsiderations by ordinary Immigration Judges that raised no point of general importance" and that "it is wholly disproportionate for these cases to be considered by the most senior judges who sit in the Court of Appeal".

It is therefore ironic that the Senior President's Practice Statements encourage the Upper Tribunal Immigration and Asylum Chamber to rehear appeals itself rather than remit to the First Tier Tribunal. The Upper Tribunal Immigration and Asylum Chamber follows this policy arguably even more enthusiastically than the wording of the Practice Statements requires. Lack of judges in the Upper Tribunal means that these rehearings are often conducted by a single First Tier Tribunal judge sitting as a deputy Upper Tribunal judge. The sole effect of not formally remitting to the First Tier Tribunal is that the Court of Appeal is the only avenue of the appeal. It recreates precisely the problem of appeals to the Court of Appeal from 'second stage reconsideration hearings' that actually created the problems caused by the Court of Appeal being first port of call for challenging "reconsiderations by ordinary Immigration Judges".

In *PR*, the Court of Appeal confirmed that the second appeals test applied to such appeals from rehearings even though they were not "true second appeals" but considered that "A slightly less demanding standard may be appropriate where there has been only one level of judicial consideration." (para 53) ILPA is urging the Upper Tribunal Immigration and Asylum Chamber Immigration and Asylum Chamber to change its practice regarding remittal. A lively members meeting was held to discuss tactics.

This was not the only significant limitation on appeal rights to come about in the course of the year. Section 19 of the UK Borders Act 2007 was brought into force at very short notice in May. This deprives many applicants under the Points-Based System of an effective right of appeal to the Tribunal since it precludes them in most circumstances from relying on any evidence which was not submitted to the UK Border Agency with their original application. There is still some scope for debate about the scope of the exceptions to this rule.

Last year's annual report discussed the unfairness and threat to access to justice created by the proposals for fees for appeals that had just been published. Draft statutory instruments to introduce fees for appeals to the First-Tier Tribunal have now been laid and published (and corrected, re-laid and re-published) and are being brought into force on 19 December 2011. The fees are set at £80 for a paper hearing, £140 for an oral hearing. Fast track appeals and certain decisions (including decisions to deport and decisions to remove under Sched 2 to the Immigration Act 1971, s 10 of the Immigration and Asylum Act 1999 and s 47 of the Immigration, Asylum and Nationality Act 2006) are excluded. There is no requirement to pay fees for those who are in receipt of 'main' asylum support under Part VI of the Immigration and Asylum Act 1999 (formerly known as NASS support – but not section 4 support), Legal Services Commission funding (although the Ministry of Justice recognised that with the impending abolition of legal aid for non-asylum immigration cases it may have to introduce a different means test), or services from a local authority under s. 17 of the Children Act 1989. It will be seen that the vast majority of asylum appellants are likely to be excluded from fees by these provisions, with the remainder being able to seek deferral of the fee.

ILPA made substantial submissions on the proposals in response to the consultation and won significant concessions: in particular, the Ministry of Justice accepted that fees should not be

charged at all for appeals in the Upper Tribunal and has agreed to introduce a power to allow First-tier judges to require the UK Border Agency to reimburse the fee (though it intends that the judiciary should not exercise this power where the decision was overturned on the basis of fresh evidence without fault being found in the original decision). This power will have to be introduced by amendments to the procedure rules which have not yet been published.

Another major consultation for ILPA was that on the Ministry of Justice's proposals for implementation of Lord Justice Jackson's report on reform of civil litigation funding and costs. ILPA pointed out that the Jackson proposals had been made before the current savage cuts to legal aid were envisaged and it was now proposed to withdraw recoverability of Conditional Fee Agreement success fees in judicial review just when practitioners might have been able to develop their use to mitigate some of the effects of the cuts.

In one respect, the Jackson report and the Court of Appeal have led to what should be a very significant improvement on costs in judicial review. In *Bahta & Others* [2011] EWC Civ 895, paragraph 65, the Court of Appeal adopted the key proposal at para 4.13 of the Jackson Report which stated that "in any judicial review where the Claimant has complied with the protocol, if the Defendant settles the claim after (rather than before) issue, by conceding any material part of the relief sought, then the normal order should be that the Defendant pays the Claimant's costs." It warned Administrative Court judges against too-ready resort to making no order for costs in cases which settle after being issued and had "serious misgivings" about the UK Border Agency's attempts to avoid costs awards on the basis that it was settling on pragmatic grounds, holding, satisfyingly, that "The expression "purely pragmatic" covers a multitude of possibilities. A clear explanation is required, and can expect to be analysed so that the expression is not used as a device for avoiding an order for costs that ought to be made" (paragraph 63).

The UK Border Agency came under heavy criticism for its failure to engage with the pre-action process, the Court holding that there can be "no special rule for government departments" based on pressure of work. The judgment may well have contributed to the UK Border Agency's decision to set up a committee to work out how to reduce the amount of money it spends in paying damages and legal costs. It has recently proposed a pilot of a system for sending letters before claim by e-mail, presumably to make it more likely that there will be an in-time reply.

Last year's annual report dwelt on the tragic closure of Refugee and Migrant Justice, which it described as "the most damaging event of the year for access to justice". The Ministry of Justice's cuts are considered more fully in the legal aid report. But they have already dealt a further damaging blow to access to justice by triggering the closure, on almost exactly the anniversary of Refugee and Migrant Justice's closure, of IAS, the remaining national not for profit provider of immigration and asylum advice and representation. On this occasion, most staff were shut out immediately so had no opportunity to try to safeguard their clients' position, although those that did struggled courageously. The First Tier Tribunal and Upper Tribunal at least moved swiftly to adjourn cases involving IAS appellants. The latest turn of events is that it is not possible to obtain archived IAS files. We are aware that an application to the court by the administrators of IAS is in preparation and fear, based on comments at the creditors meeting, that this may be an application to destroy the archive of files. Effective access to old files is of course essential especially to representatives instructed at short notice and ILPA is looking at the possibility of intervening in these court proceedings.

That closure came a few days after IAS had acted for *Saeedi* (known as *NS*) before the Grand Chamber of the Court of Justice of the European Union, in which an exceptional 13 Member

States also intervened. Like many other claimants, he had been represented by Refugee and Migrant Justice until their closure, whereupon IAS had stepped in just before the hearing in the Court of Appeal, only for that lifeboat also to sink. It is some memorial to the work of these organisations that the Advocate General's opinion, published in September, concludes that the UK has no opt-out from the EU Charter of Fundamental Rights and that claimants can therefore rely on rights such as Article 1, the right to human dignity, Article 18, the right to asylum, and Article 47, the right to a fair hearing and an effective remedy. The latter is particularly apposite as it applies Article 6 fair trial guarantees to asylum/ humanitarian protection appeals and judicial reviews (from which the Strasbourg caselaw had excluded them) and, unlike Article 6, provides expressly that "Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary". Moreover, the Advocate General concluded that the third country deeming provision for Dublin returns which had been upheld in *Nasseri* [2009] UKHL 23 was incompatible with Article 47.

As to the operation of the Dublin Regulation generally, the Advocate General held that Member States' duties under the Charter override principles of mutual trust so that Member States are bound by the Charter to take responsibility for examining asylum claims where there is a serious risk that the responsible state under Dublin (in this case Greece) would not comply with asylum seekers' fundamental rights under the relevant articles of the Charter. The Court's judgment is expected in the New Year.

In *Sufi and Elmi* (Applications no.s 8319/07 and 11449/ 07), the European Court of Human Rights held that conditions in southern and central Somalia are so dire that virtually anyone returned there will be at risk of breaches of their Article 3 rights. The judgment is important not only for its findings on the facts but its clear statement that the approach articulated by the Grand Chamber of the Strasbourg Court in the Dublin Regulation case of *MSS v Belgium and Greece* (Application no. 30696/09) applies to the assessment of whether humanitarian conditions breach Article 3 and not, as the Government advocated, the *N v UK* (Application no. 26565/05) approach which applies in healthcare cases. The Court was also critical of the Home Office's Fact Finding Mission report for its reliance on unidentified sources. The Government has sought a referral to the Grand Chamber and astonishingly has instructed caseworkers to ignore *Sufi and Elmi* in the meantime, including by continuing to assess humanitarian conditions by reference to *N* rather than *MSS*. They appear to have forgotten the reminder they received in *Bahta* [2011] EWCA Civ 895 (para 70) that decision makers are not entitled to disregard the rule that a court decision establishes the law unless or until overruled by a superior court.

The subcommittee also held a useful meeting on the less positive Country Guidance on Zimbabwe, which did at least establish that dangers could not be disregarded simply because they will arise several months after removal (in the case of elections in Zimbabwe) rather than immediately following expulsion. Following the new country guidance, the UK Border Agency has restarted removals for the first time since 2005. ILPA did obtain a positive response to its request for confirmation that nobody who would have succeeded under the previous *RN* guidance would be removed while proceedings remain ongoing in the Court of Appeal (followed, after it was cited in judicial review proceedings, by a slightly bizarre follow-up stating that while these criteria currently determined who to select for removal, the UK Border Agency could remove whoever it liked).

ILPA has continued to press members' interests at user group meetings in the Tribunals and in the Administrative Court, as well as a useful immigration judiciary seminar on Country Guidance in Field House. Two Upper Tribunal Immigration and Asylum Chamber Guidance Notes issued by

Mr Justice Blake over the year are welcome steps in transparency. *Guidance Note No 1: Permission to appeal to UTIAC* publishes the guidance given to judges for dealing with applications for permission to appeal to Upper Tribunal Immigration and Asylum Chamber. *Guidance Note No. 2: Reporting Decisions of UTIAC* addresses the system for deciding which decisions to designate as "reported" and the restrictions on publishing and citing other decisions. This is a matter on which ILPA has repeatedly made representations over recent years. The Guidance Note reflects a more open approach to the procedure for deciding which determinations to report and, finally, an openness to representatives proposing determinations for reporting - albeit followed by the surprising statement that "resources prevent the Chamber corresponding about reporting decisions". The confirmation in the Guidance Note that First Tier Tribunal judges are "expected to follow the law set out in reported cases" unless contrary to legislation or a binding decision of a superior court confirms the critical role in developing the law that is made by the decisions of the Reporting Committee about which cases to report. ILPA will continue to press for greater transparency and for better opportunity for input into the process.

*Co-convenors: Ali Bandegani (to April 2011), Mark Henderson, Alison Pickup (from April 2011)*

## **CHILDREN SUBCOMMITTEE REPORT**

A formidable year in respect of legal representation for children and families and yet a ground - breaking year for the recognition of the rights and best interests of children.

It is disappointing to begin this report with mention of the loss of yet another legal service provider that specialised in and represented a large volume of children's cases. IAS represented many children in asylum and immigration proceedings and their demise has left many young people without legal advice and representation. Throughout the year the subcommittee has continued to engage with the UK Border Agency around the closure of Refugee and Migrant justice, meeting with the UK Border Agency to discuss legal representation and obtaining reassurances that children's cases would not be prejudiced whilst they remained unrepresented.

Government efforts to restrict legal aid in the future for children in many areas of law is of great concern to the subcommittee. Members have been working very closely with the Refugee Children's Consortium and the JustRights campaign to ensure that no child is ever left without access to free legal representation. Members have also worked closely with the Association of Lawyers for Children, family law associations and Young Legal Aid Lawyers to ensure that the risks of loss of legal aid to children turning 18 are understood.

The subcommittee has met in February, April, June and September 2011 and have a festive party with a difference planned for 15<sup>th</sup> December. The committee, as ever, is very grateful to ILPA staff for its support throughout the year, in particular Steve Symonds and Alison Harvey who continue to provide on-going expertise and support, often representing ILPA in meetings relating to children. However, we would like to give a special thanks to Lisa Woodall, of ILPA's Refugee Children's Project, for her work and contribution to the subcommittee over the last year and for important cover when Baljeet was ill during the summer. She has taken a lead on behalf of the subcommittee in our efforts to engage more practitioners in its discussions. The subcommittee and the Refugee Children's Project have worked well together to further ILPA's work in this area. We wish to thank the project for its support in responding to consultations and policy documents and attending relevant stakeholder meetings.

Subcommittee members were extremely pleased to be involved with ILPA's publication *Good Practice in Working With Refugee Children: Current Issues in Best Practice*, which was launched at the project's first children's annual conference in May.

### **Family Returns**

Members have attended a UK Border Agency-led conference on Family Returns and submitted a formal response to the UK Border Agency on their process guidance, chapter 45, on Family Returns, which calls for the guidance to be redrafted because of errors in it and other concerns.

The new UK Border Agency family returns process introduced at the end of February 2011 has been the subject of much discussion and analysis by the subcommittee. We have paid particular attention to the Independent Family Returns Panel which receives all its briefings and information on a case from the UK Border Agency. The family and/or its legal representative may *not* address the panel or submit information to it. Neither does the family or its legal representative see what information has been submitted to the Panel members. The subcommittee is grateful to the interim chair of the Panel Chris Spencer for his discussion at the September meeting and his willingness to hear concerns raised by ILPA members. We remain interested in hearing from ILPA members with experience of the process and its impact on children.

### **Detention**

The subcommittee is extremely disappointed by the Government's failed attempt to end the detention of children. Subcommittee members visited the Family Detention Facility (Cedars at Pease Pottage) just prior to its opening. At the time of writing we understand that 1 families have been through the facility, not all of whom have been removed as a result. Members consider that the creation of Cedars does not mark an ending to detention of families as heralded. It is a detention centre in terms of the restrictions placed on the families there.

Whilst there may be fewer families detained at the end of the asylum process, families in the new facility are held against their will, having been taken to it following an arrest process that appears to have changed very little from previous practice. We shall continue to monitor the process and the way it is described by officials. The failure to have an appropriate regulatory framework to safeguard the interests of families leaves the legality of the facility and its accompanying processes open to challenge. We welcome updates from members involved in legal challenges.

We also remain concerned at the policy and practice of holding children subject to immigration control at ports and at Tinsley House and members will continue to challenge publicly the assertion, when made, that the pledge of ending detention of children has been realised.

### **Significant cases and judgements over the last year**

An important case involving the detention of children, kick started the year. In *R(Suppiah & ors) v SSHD* [2011] EWHC 2 (Admin) the High Court found that the detention of two families was unlawful because of the failure of the UK Border Agency to comply with the statutory duty under s 55 of the Borders Citizenship and Immigration Act 2009, including the failure of the Agency to provide documentation and/or witness evidence which demonstrated that they had properly considered and adequately discharged their safeguarding and welfare duty under s 55.

But members will now surely be aware of the mother of all cases heard in the Supreme Court, with the long awaited judgement finally handed down in February 2011, *ZH(Tanzania) v Secretary of*

*State for the Home Department* [2011] UKSC 04, which recognised children as rights holders and not simply attachments to adult's cases.

*ZH* was a case involving the removal of a family where the mother was a Tanzanian national and her children British citizens. The courts were asked to decide whether removal of the family was or was not proportionate under Article 8 of European Convention on Human Rights. The children were separately represented in the case before the Supreme Court. The Supreme Court held, with leading judgment from Baroness Hale and concluding comments by Lord Kerr, that the best interests of a child, protected by Article 3 of the UN Convention on the Rights of the Child, are a factor that must rank higher than any other in a case concerning a child. A child's British citizenship and also their wishes and views were important. The impact of the judgment is rippling throughout the law courts having been relied on a number of key decisions in education, disability, welfare and criminal law. It is one the most significant cases relating to the rights of children and very simply raises the bar on procedural safeguards in decision-making.

*ZH (Tanzania)*, was closely followed by a detention case of *R(SM) v Secretary of State for the Home Department, FM (child interested party)* [2011] EWHC 338 (Admin), a British Citizen child was made an interested party to his father's challenge to his detention. The High Court held the detention of father was unlawful. He was separated from his children and the advice given by the UK Border Agency's Office of the Children's Champion was seriously deficient in failing to consider the welfare and best interests of the children.

An important Court of Appeal decision in *DS(Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 305 concerned separated children and the duty to trace parents, and children in armed conflicts especially in Afghanistan. The Court identified a duty imposed by the European Reception Directive upon the Secretary of State to try to trace the families of separated children and held that the UK had failed to comply with that duty having now also the need to consider the best interests of children and the section 55 duty.

In the landmark European case of *Gerardo Ruiz Zambrano v Office national de l'emploi* C-34/09, the Court of Justice held that as Belgian citizens, the children of the family were also 'citizens of the European Union' and as such their parents unlawfully present had to be put in a position to remain with the children and work to support them in Belgium.

*R (BT et ors) v SSHD* [2010] EWHC 3572 (Admin) was heard in the Court of Appeal in October this year and is a challenge against the removal of separated children under the Dublin Regulation. Judgment is awaited. The Court heard evidence in support of the argument that the Dublin II regulation should not result in children being moved, save to reunite them with carers elsewhere in Europe or because it is deemed by an independent guardian to be in their best interests. In the alternative, the Court was invited to rule that in all cases, it is necessary for the sending member state to ascertain individual care planning arrangements through direct communication between caring agencies.

The case of *AN & FA v SSHD* [2011] EWHC 2541 (Admin) was heard before the High Court at the end of July 2011. The case challenged the treatment of separated children on arrival to the UK at the port of Dover, including their detention. The court found that it was unlawful to fingerprint children without an appropriate adult present and the Secretary of State conceded that the use of G4S security guards was inappropriate. Mr Justice Mitting found that once a child intimated or expressed a fear/asylum claim then any information obtained from the child in questioning in an illegal entry interview (after this point) would be inadmissible as evidence in the asylum decision-



making process by both the UK Border Agency and the Immigration and Asylum Chambers of the tribunals. This ran contrary to paragraph 352 of the immigration rules and safeguards also extended to screening interviews. However, the court failed to consider the rights and needs of all separated children arriving at port, and safeguards that must be considered and applied. An application for permission to the Court of Appeal is pending.

Recently, in the case of *BN v SSHD* [2011] EWHC 2367 (Admin) the court highlighted the need to facilitate and take into consideration children's views in immigration decisions that affect them, in this case the proposed removal of their mother. The case makes interesting reading on the role the Office of the Children's Champion and in highlighting the deficiencies in the treatment of the case.

The case of *R(Tinizaray) v SSHD* [2011] EWHC 1850 (Admin) provides important and helpful guidance for cases involving the removal of children (in families) from the UK and considerations to be given when deciding what is in the best interests of a child. The case affirms that the UK Border Agency is under a duty to ensure it has regard to the best interests of a child properly to discharge the section 55 duty and that the UK Border Agency cannot necessarily do this assessment themselves. Third party evidence is likely to be needed. There was also a recognition of the responsibilities of the Tribunals in cases where reliance is placed on Article 8 by a child.

We would like to thank members for all their hard work over the year as representatives of many of the children in these cases and their contribution to the preparation of many of the cases.

#### **Age disputes and assessment**

*FZ Croydon* [2011] EWCA Civ 59 was a significant age assessment case this year setting guidelines on the correct test at judicial review permission stages in age disputed cases. The case also laid down improved standards for the process, not least that every putative child now has the right to an appropriate adult to support him or her in the local authority assessment process.

*Y v Hillingdon* [2011] EWHC 1477 (Admin) is also a notable judgment, as the judge highlighted the consequences of inconsistency in evidence given by social workers.

#### **Meetings, stakeholder groups, consultation responses and submissions**

ILPA submitted comments to the UK Border Agency on its tier three training programme and materials for UK Border Agency staff dealing with children's asylum claims. Members also contributed to responses to the consultations on the UK Border Agency review of trafficking, the independent review of the Office of the Children's Commissioner, the Crown Prosecution Service consultation on guidance on prosecuting and trafficking and the Joint Committee on Human Rights' scrutiny of the implementation of human rights judgments in the UK.

Members also contributed to correspondence between Refugee Children's Consortium and Sarah Teather MP, Minister of State for Children and Families, regarding enforced returns of separated children to Afghanistan; letters to the Third Country Unit regarding separated children in Third Country Unit removal procedures; correspondence between ILPA and the acting Chief Executive of the UK Border Agency re the welfare and best interests of children and the work of the Agency's Office of the Children's Champion; and the UK Border Agency on the new family returns pilot and new family returns process.

ILPA was represented at all four of the children's sub-group meetings of the National Asylum Stakeholder group, which included matters surrounding legal representation, sharing of age assessment information between the UK Border Agency and local authorities, families separated

by detention and the development of the UK Border Agency's plans to return unaccompanied children to Kabul.

*Co-convenors: Judith Dennis and Baljeet Sandhu*

## **DETENTION AND ASYLUM FAST TRACK SUBCOMMITTEE REPORT**

While the past year has continued to see an increased use of detention, we have also seen important decisions and developments in relation to immigration detention. Some of the most significant cases since the case of *Hardial Singh* [1984] 1 WLR 704 were decided by the Supreme Court, including the cases of *Walumba Lumba and Kadian Mighty* [2011] UKSC 12 (*Lumba*), and *Shepherd Kambadzi* [2011] UKSC 23 (*SK*). New guidance was subsequently issued to immigration judges by the President of the First Tier Tribunal. Several lawyers noted in the immediate aftermath of the issuance of the bail guidance, that some long term detainees were granted bail.

The Government implemented its policy to end the use of detention of children at Immigration Removal Centres, while introducing a detention for children at new accommodation centres. This new procedure and form of detention is now under close scrutiny from lawyers and NGOs.

There has also been the negative development involving a change in the UK Border Agency's policy of allowing for the greater use of immigration detention in relation to people with mental health problems. Such persons will no longer be held in immigration detention in only exceptional circumstances, but instead as long as they can be adequately managed. ILPA has, with the tremendous help of Jed Pennington for which we are thankful, made detailed representations, corresponding with the UK Border Agency on the change of policy, while Jed and several other lawyers are in the midst of legal challenges to the policy. Recent cases have included *BA v SSHD* [2011] EWHC 2748 (Admin) and the case of *S v SSHD* [2011] EWHC 2120 (Admin). These cases resulted in findings of Article 3 violations and/or breaches of *Hardial Singh* principles arising from the failure to properly or adequately treat persons with serious mental health problems in immigration detention. Worrying, however, is the implication that detention in such cases may only become unlawful once a person's mental health becomes unmanageable in detention, and not also when it may be predicted that continued detention would result in such serious ill-health so as to make immigration detention inappropriate and therefore unlawful.

ILPA has also been working with the Legal Services Commission and other NGOs so as to obtain greater clarity from the Legal Services Commission as to the requirements of its immigration specification relating to detention. A meeting recently took place between NGO's and providers of advice services under current exclusive contracting arrangements, hosted by the Legal Services Commission, which identified questions in relation to which the Legal Services Commission has agreed to consider issuing further guidance.

Detailed summaries of the cases of *Lumba* and *SK*, were kindly produced by Laura Dubinsky and circulated to ILPA members. But of some of the main points of interest arising from the case of *Lumba* which was heard by a panel of 9 judges, were the findings that:

1. It is unlawful for the Secretary of State to apply an unpublished policy that conflicts with a published policy.

2. The Secretary of State cannot rely on a retrospective (or causative) argument that had a separate lawful policy been applied a person would in any case have been lawfully detained. The fact that a decision to detain was unlawful or was based on an unlawful policy makes the detention during the application of that decision unlawful.
3. However, as the applicants would have been detained anyway had the published policy been followed, only £1 nominal damages were awarded to the applicants. Exemplary damages were not awarded.
4. The majority of Judges reiterated the relevance of *Hardial Singh* principles that should be applied when assessing whether or not detention has become unlawful.
5. An individual has a right to know the criteria that are being applied so as to be able to challenge an adverse decision. There is therefore an obligation on the part of the Secretary of State to publish policies. That is so informed and meaningful representations can be made to the decision-maker before a decision is made.
6. It is therefore also clear that where the Secretary of State departs from her published policy in a particular case, e.g. where she decides that exceptions to her policy on detention in Chapter 55 of the Enforcement Instructions and Guidance should not be applied in a particular case, that she provides reasons for her decision in this regard.

Although the hearing of the case of *SK* preceded that of *Lumba*, judgment followed the latter. *SK*'s case related to the failure on the part of the UK Border Agency to conduct monthly internal reviews of detention on several occasions during the course of a detention.

By a 3-2 majority the Supreme Court found that detention was unlawful for the periods during which detention had not been reviewed in accordance with UK Border Agency policy. Detention reviews were seen as "not only commendable; they are necessary", and they serve as the means by which the authority to detain is renewed. As with the decision in the case of *Lumba*, there is no causation defence whereby the UK Border Agency would argue that the person would in any case have been detained had a review been carried out. Regardless of the justification for detention, detention will be unlawful until the next review is carried out. Detention is also rendered unlawful by a factual error in a detention review, or where the review is itself so inadequate in content as to make continued detention unjustified. Where the sole flaw is that a review was not carried out at the correct grade, this was not a material public law error.

However following the reasoning in *Lumba*, where in such circumstances detention would have been maintained had the reviews in fact been conducted the claimant would only be entitled to nominal damages. Conversely, there would be substantial damages had the failure to carry out a review caused the continued detention. The burden would otherwise be on the Secretary of State to argue that the failure to conduct a review did not cause the continued detention.

**Anonymity:** The court also found that in future it will be for applicants to apply and explain why they should be granted an anonymity order. The simple fact that they may have made an asylum claim will not be sufficient in itself. So applications for anonymity need to be justified by the individual.

Subsequent to the decisions in *Lumba* and *SK* the new long awaited *Immigration judge Bail Guidance* (Presidential Note 1 of 2011) was issued on 11 July. It is essential that everyone working with immigration detainees familiarises themselves with the guidance. Mr. Clements, the President of the First-Tier Tribunal has opened a consultation on the guidance and invited comments by 6 December as part of his review of its implementation. If ILPA members have any issues of

concern that they wish to raise, they should contact the convenors of the sub-committee as soon as possible.

The guidance otherwise includes:

- more detail than its predecessor on foreign nationals who have completed their criminal sentences but who are then detained under Immigration Act powers. It includes a recommendation that bail be granted where a judicial review claim of unlawful detention is likely to be successful (paragraph 5). While the document finds that there is no presumption to liberty under the UK's immigration laws, it emphasises that reasons for detention must be consistent with the UK Border Agency's policy, which itself notes that there is a presumption to liberty.
- There is a requirement that the UK Border Agency, and indeed applicants, provide evidence wherever this can be produced. The UK Border Agency is required to evidence their claims that a person presents a particular level of risk to the public if released. There is a requirement that the UK Border Agency discloses evidence that may be favourable to a detainee such as a previous good record of reporting (paragraph 28).
- But persons presenting a real risk (paragraph 29) should normally be refused bail, while the document examines issues of risk (e.g. paragraph 10).
- The welfare of children who may be affected by detention is paramount (paragraph 20), and alternatives to detention must always be considered (paragraph 19).
- There must be good reasons for bail to be refused (paragraph 26) and the lack of evidence with respect to any argument weakens that part of either party's case (paragraph 27). The document notes that variation of conditions or renewal of bail is the responsibility of the Tribunal where there is an appeal pending (paragraphs 34, 54-56), and otherwise the responsibility of the UK Border Agency (paragraphs 34 & 54 & 56-57).
- Bail must not be granted on terms that more lenient than restrictions provided in license conditions (paragraph 37.iv) and paragraph 37 outlines issues that an IJ must take into consideration when deciding whether or not to grant bail.
- The purpose, responsibilities, forfeiture and examination of sureties is detailed in paragraphs 38-42.
- There is also a section on granting bail in principle, where the main issues are decided by an IJ and only certain outstanding issues need to be resolved (paragraph 45). The reasons for granting bail in principle must be outlined by an IJ on the Tribunal's file (paragraph 46), whilst bail in principle will only be granted for a period of 48 hours pending receipt of specific documents, and where the documents are not received, it will be assumed to be refused (paragraphs 47-48).
- The document deals with the issue as to when bail ends (paragraphs 59-62), and the circumstances when any recognisance is to be forfeited (paragraphs 63-65).
- Restrictions are to be placed on the length of hearings, the evidence that may be heard and the length of consultation with a representative where a hearing has already taken place with the previous 28 days and where there is no new evidence or new grounds for release (paragraph 66).
- Para 67 deals with the issue of immigration judges *keeping* records of proceedings where bail is granted or refused, and *issuing* legible decisions reasons for refusing bail.
- There are also a number of annexes, listed at paragraph 70, including guidance on video hearings, electronic monitoring, extracts from decisions of the higher courts etc.

One of the most important issues that lawyers should bear in mind from the *Lumba* and *SK* cases, from cases that have followed them this year such as the cases of *Amin Sino* [2011] EWHC 2249

(Admin) or *Mounir Raki* [2011] EWHC 2421 (Admin) (both cases involving long term detention), and from the new bail guidance, is the need to ensure disclosure of adverse evidence in detention matters, so as to also ensure accountability on the part of decision makers in matters relating to detention. Without disclosure of such information, the Hardial Singh principles, and their protective role against unlawful detentions, are weakened or rendered meaningless.

*Co-convenors: Pierre Makhlouf, Steve Bravery and Kay Everett*

## EUROPEAN SUBCOMMITTEE REPORT

This sub-committee met regularly throughout the 2010-11 year. The key issues which it addressed over the period are as follows:

### ***Third country national family members of EEA nationals residing in the UK***

There was substantial jurisprudence from the Court of Justice of the European Union in the year on the rights of third country national family members of EEA nationals exercising treaty rights in a host Member State. In particular the decisions of *Zambrano* (C-34/09) and *McCarthy* (C-434/09) raised very serious questions about the right of EU nationals who have not exercised a movement right, nonetheless to reside and enjoy the presence of third country national family members in a host Member State. The *Zambrano* judgment recognized a wide right of EU national children to reside in the EU (even if this residence has been restricted to their Member State of nationality) even where this entails the presence of their third country national presence. It had been thought that the so-called wholly internal to one Member State rule, which limits the application of EU free movement law where there has been no movement, applied also in these cases but this is now refuted. The basis of the refutation is the rights of citizenship. The *McCarthy* decision, coming fast on the heels of *Zambrano* pushes in quite a different direction and appears, at least on its face to be inconsistent with it. The Sub Committee has requested and obtained clarification from UK Border Agency on its application of the *Zambrano* decision. A further reference *Dereci* (C-256/11) is pending which may provide more certainty.

The Upper Tribunal Immigration and Asylum Chamber AIT referred a series of very helpful questions to the Court of Justice of the European Union on the rights of other family members to live with an EEA principal in the UK. This case is still pending (*Rahman* C-83/11). Further two Finnish courts have referred the question whether a resources requirement can be applied to third country nationals' residence where there is an EEA national child (*S & O* C-356/11).

### ***The end of transitional arrangements***

EU 8 nationals were finally relieved, on 1 May 2011, of the transitional arrangements which required them to obtain working registration certificates. The UK lifted the requirement (which now only applies to Bulgarian and Romanian workers in the UK). However the right to reside test continues to be in force. As all UK nationals have an automatic right to reside in the UK, the application of a right to reside test as a qualification for access to social benefits is either directly or at the very least indirectly discriminatory against nationals from other Member States. Fortunately the European Commission is cognizant of the problem and has maintained its infringement proceedings.

One of the problems a number of EU 8 nationals have had is in obtaining permanent residence after five qualifying years in the UK. There has been some resistance at UK Border Agency to

counting periods of residence before individuals became EU nationals however this was resolved in *Lassal* (C-162/09). In *Dias* (C-325/09) the Court of Justice of the European Union held that qualifying periods for the five years to enjoy permanent residence had to be in accordance with the Directive nonetheless, periods could be aggregated over very substantial periods of time. There are still some questions about qualifying residence, some of which may be resolved in the outstanding reference *Ziolkowski* (C424/10). EU 2 still encounter substantial problems in accessing the labour market.

ILPA and the AIRE Centre have sought clarification from UK Border Agency on the treatment of EU 8 nationals throughout the year and provided substantial amounts of information to the European Commission on the consequences of the right to reside test.

### ***Practices***

There have been fewer complaints this year about unreasonable delay in the processing of applications though problems still occur. Thanks to the hard work of Meghan Vozila, Irene McMillan and others, very substantial progress was made in our concerns regarding the UK Border Agency forms relevant to all applications for EU nationals and their family members. It is clear that the forms have been adapted from those applicable to any third country national and they seek substantial private information which is irrelevant to the application. Substantial representations were made indicating all the problems with the forms. When the forms were revised, ILPA's advice was sought but sadly the forms still reveal substantial problems.

### ***Service Suppliers and Third Country Agreements***

Following the seminal judgment of the Court of Justice of the European Union in *Vander Elst* (C-43/93), many Member States had difficulties adjusting their national law to incorporate the right of businesses to move third country national employees around the EU in the capacity of providing services under the same conditions as applicable to businesses bases in only one Member State and providing services. The UK has been among those countries which continues to require visas for employees being sent to the UK by an employer based in another Member State for the purpose of providing services (contrary to the *Vander Elst* principle and subsequent rulings). Adrian Berry produced an extremely valuable outline of the rights of businesses to send their employees for service provision and the problem areas. ILPA is awaiting a response from UK Border Agency on the weaknesses of the UK's compliance in this regard.

### ***Damages Cases***

As reported last year, the subcommittee has sought to diminish the risk of immigration detention for EU nationals by familiarising practitioners with the UK jurisprudence on damages for unlawful imprisonment. This work has continued with a close eye kept on the cases coming before the courts and discussion on quantum in the subcommittee. In fact the problem of unlawful detention of foreigners has become much more generalized recently.

### ***The Second Phase of the Common European Asylum System***

The UK Government has notified the Commission that it will not participate in substantial parts of the revised Common European Asylum System – in particular the Receptions Conditions Directive recast, the Qualification and Procedures Directives recasts. However, the UK intends to remain part of the Dublin II Regulation on allocation of responsibility. It seems that some other Member States may not be saddened by the UK's departure as its contribution in some of the negotiations appears to be less than constructive. It seems clear, though that the UK authorities accept that the UK continues to be bound by the existing directives and regulations. The European Court of Human Right's judgment in *MSS v Belgium and Greece*, of 21 January 2011 was welcomed. The

European Court of Human Rights found that not only was Greece in breach of Article 5 of the European Convention on Human Rights (liberty and security of the person) as a result of the terrible detention conditions of migrants, but that Belgium was also in breach of Article 5 by sending asylum seekers back to Greece in knowledge of the lack of reception conditions. This was a most welcome judgment, which confirmed the halt which the UK courts had placed on return to Greece more than eight months previously. Adam Weiss who has been very active in many of the sub committee's actions, flagged up that the conditions of the Asylum Screening Unit may be inconsistent with the UK's obligations under the Common European Asylum System.

### ***Family Life***

The European Court of Human Rights has been particularly active on cases of foreigners and their claims to family life in European countries on the basis of Article 8 ECHR. The subcommittee welcomed the judgment in *Nunez v Norway* (Application no. 55597/09) where the irregularity of the individual's immigration status was not held as an insurmountable obstacle to her right under Article 8 to live with her child, a national of Norway in that country.

### ***Consultation with UK Border Agency***

Over the year there have been meetings with officials from UK Border Agency to highlight problems or areas of concern to the Association. Many thanks are due to Nick Rollason, Valsamis Mitsilegas and others for attending meetings on behalf of ILPA and preparing the discussions.

The subcommittee has produced regularly the European Updates which can be found on the ILPA website and contain a more detailed overview of the work of the subcommittee and the development of EU law.

*Co-convenors: Alison Hunter and Elspeth Guild*

## **ECONOMIC MIGRATION SUBCOMMITTEE REPORT**

The remit of the Economic Migration Subcommittee has been at the receiving end of the bulk of the Government's measures to implement its commitment to reduce net migration to the "tens of thousands".

The first half of the year was notable for the numerous changes to Tiers 1 and 2 of the Points Based System, many by means of guidance notes rather than changes to the immigration rules, which were accordingly susceptible to challenge under the *Pankina* [2010] EWCA Civ 719 doctrine. It has as a result been a challenge for practitioners to keep fully up to speed with all the technical amendments to the structure and details of the Points-Based System.

The changes included the legacy of the imposition of the interim limit to Tier 2 Certificates of Sponsorship in June 2010, which led to uncertainty and inconsistency in the allocation of Certificates of Sponsorship. This culminated in a successful court challenge in December 2010 (*R (JCWI) v SSHD, R (English Community Care Association v SSHD* [2010] EWHC 3524 (Admin)), only for the interim limit to be immediately reintroduced by an emergency change to the immigration rules laid before Parliament.

There continues to be developing jurisprudence in relation to challenges to the rigours of the Points-Based System and there have been some cases where human rights arguments have

prevailed where strict compliance with the requirements of the Points-Based System has not been achieved.

As a result of litigation, *R (JCWI) v SSHD* [2010] EWHC 3524 (Admin) there was the surprise closure of Tier 1 (general) for entry clearance applications in December 2010, followed by the closure of this route to all new applicants in April 2011.

As part of a drive to attract and reward those who contribute to economic growth, changes to the rules for Tier 1 (investors) and (entrepreneurs) were introduced in April 2011. However the members of the subcommittee did not consider that the changes were in themselves likely to lead to a significant increase in migrants. A meeting with the then head of policy for Tier 1, Ian Robinson, was arranged in July, following which a detailed letter suggesting a number of policy changes was drafted and submitted to the UK Border Agency. A substantive response is awaited. This drive to attract the “brightest and best” was continued with the introduction, in August 2011 of the new Tier 1 (exceptional talent) route, which is subject to an initial annual limit of 1000.

Other notable events relating to Tier 2 include:

- February 2011 - Statement of intent in respect of the proposed permanent cap
- April 2011: -
  - introduction of permanent cap by means of restricted Certificates of Sponsorship – subject to limit of 20,700;
  - increase of skills criteria to graduate level;
  - raising the level of English language ability;
  - introduction of short term and long term Intra-Company Transfers
- October 2011 - reduction in number of jobs on the shortage occupation list

The subcommittee has consulted with its members in connection with these changes at meetings held every six weeks.

The subcommittee has continued to engage with external agencies concerning the frequent changes to the Points-Based System. This involved regular meetings and discussions with the UK Border Agency and written submissions to it

Working groups were set up to assist with the responses to various consultation exercises by the UK Border Agency. The groups consisted of ILPA members volunteering their time to arrange meetings, collating information and preparing the responses. We would like to express our appreciation to all those who dedicated a huge amount of time to these tasks.

We would like to thank all ILPA members for their participation and support to the committee. A special thank you to Shazmeen Ali for her invaluable contribution made as a convener of the committee. Shazmeen stepped down as a convener in July this year and we are pleased to report that Smruti Patel has agreed to take her place.

*Co-convenors: Philip Barth, Philip Trott, Shazmeen Ali (to June 2011) and Smruti Patel (from October 2011)*



## **FAMILY & GENERAL IMMIGRATION SUBCOMMITTEE REPORT**

The subcommittee has met seven times during the year, one meeting being a joint one with the Economic Migration subcommittee to respond to the UK Border Agency consultation on work-related settlement. The year feels full of consultations and of the UK Border Agency policy statements issued while the consultations were still pending. It has been a depressing year, with changes in the law announced, and consultation documents published, where the UK Border Agency and Ministers appear even more than usual to have made their minds up in advance. The year also saw the demise of the Immigration Advisory Service, less than a year after the end of Refugee and Migrant Justice, leaving a huge hole in the availability of representation for migrants. But it has also seen the publication of hard-hitting reports by the Chief Inspector of the UK Border Agency, such as that on the UK Border Agency's questionably illegal practices in dealing with visa applications from Pakistan, the ending of Certificates of Approval for marriage and the Supreme Court upholding the decision in *Quila* [2011] UKSC 45 that the change in the age for marriage sponsorship was disproportionate to its aim in deterring forced marriage, and successful cases on the illegality of the initial immigration cap. Most recently, the immigration rules have been changed to allow civil partner fiancé(e)s to change status in the UK after marriage, and for separated, divorced or never-married elderly parents to be treated in the same way as widows and widowers. The subcommittee continues to fight for justice for families affected by immigration control.

### **Marriage and families**

The rules and practice on marriage have been an issue for the subcommittee through the year. The case of *Quila* on the minimum age for marriage was successful in the Court of Appeal and the UK Border Agency's appeal to the Supreme Court on 8 and 9 June failed. The UK Border Agency has laid immigration rules to return the age to 18. Certificates of Approval for marriage were finally ended in May 2011, after substantial pressure from the Joint Committee on Human Rights and others, but there have been more instances since then of registrars asking for more documents evidencing nationality before fixing marriage dates. The UK Border Agency consultation on family-related settlement made other worrying proposals of how registrars would be brought still further into the mechanisms of immigration control. ILPA has written to the UK Border Agency Independent Chief Inspector, who is carrying out a generic investigation into marriage and immigration, drawing his attention to points of conflict and urging him to consider them.

ILPA had opposed the precipitate introduction of a new English language requirement for spouses applying for entry clearance last year and our concerns were realised. The UK Border Agency made inconsistent initial decisions when there were no test centres in the country, and problems continued. These included the non-recognition of certain levels of certain exams on the UK Border Agency approved list, even when external evidence shows the person meets the requirements, (e.g. IELTS has no equivalent on the UK Border Agency list below B1 level); the practical problems in learning English in a Sudanese or an Afghan village, or in Pakistan where the person's mother tongue is Pashtun but all language teaching is in Urdu, and the problems in taking a test, when the relevant test centres in several countries do not have enough applicants and put off the tests for months in succession, and other test centres are complicated and costly to reach, the fact that only rich people have the chance of coming to the UK as visitors to take the test. The subcommittee is collating evidence in order to write to the UK Border Agency to press for change.

ILPA opposed the April 2011 change in the immigration rules prohibiting people with unspent criminal convictions from gaining settlement, in particular, for those applying under the domestic violence rule. The UK Border Agency was surprised at the force of the opposition but did not

change the rule. ILPA has commented on changes to the instructions to officials on dealing with domestic violence cases, which are not helpful. ILPA has continued to campaign on the domestic violence rule, including pressing for the continuation of funding under the Sojourner Project, which was successful, and for legal aid to continue for domestic violence applicants, which has been partially successful.

Court decisions on children and families such as *ZH (Tanzania)* [2011] UKSC 4 and *Ruiz Zambrano* (Court of Justice of the European Communities Case C-34/09) have changed the context of many children's cases – but have also fuelled the UK Border Agency and Ministers' hostility to the Human Rights Act, culminating in the catflap kerfuffle. But perhaps it is a sign of progress that the greatest media hostility was about the influence of the cat rather than about the fact that the couple involved were gay.

Developments for students have also been significant. The introduction of Tier 4 and its lack of flexibility caused serious problems. ILPA has raised with UK Border Agency and English UK the situation of students refused entry at ports when immigration officers decide that their standard of English is inadequate for the course and then contact the students' colleges, which then withdraw the Certificate of Acceptance for Studies. This practice has now been condoned by the High Court in *Kose v SSHD* [2011] EWHC 2594 (Admin).

ILPA responded to the UK Border Agency consultation on changes for students but saw our response disregarded along with 30,000 others, with the UK Border Agency announcing its changes the day after the consultation closed. The rule changes from 6 April 2011 meant that many students were unable to finish their courses and fell foul of regulations dealing differently with in-time and out-of-time applications (in particular in the disproportionately-different amounts of money required) and adding increased complexity to their situation. It is very hard to understand which students are permitted to work and for how many hours, and where it is permissible to have dependants. The situation for students who are not permitted dependants under the rules but who have children born to them in the UK while they are studying is anomalous, though probably covered by paragraph 319 of the rules, – until it is changed.

### **Administration of immigration controls**

ILPA strongly opposed the Ministerial Authorisation of February 2011 giving the UK Border Agency widespread power to discriminate on nationality grounds, beyond that permitted under the immigration rules, but not revealing which nationalities were involved. ILPA feared that this authorisation was made in order to deflect further criticism after the Chief Inspector's reports on Abu Dhabi and Pakistan, and on the use of intelligence, and continues to press through Freedom of Information requests for the details to be made public.

The commitment from the UK Border Agency International Group last year to experiment with sending allowed overseas appeal decisions to posts abroad by email resulted in a trial of doing so at one hearing centre at the beginning of 2011. No results of this trial have been announced but long delays continue, especially in Pakistan/Abu Dhabi.

The subcommittee wrote a detailed letter to UK Border Agency about its practice in declaring applications invalid and its lack of common-sense in dealing with them or in accepting applications where there was a small omission or inaccuracy, thus making people over-stayers through no fault of their own. ILPA urged reinstatement of the pre-2007 position, which gave applicants 21 days in which to provide the information or evidence needed.

## **Responses to consultations**

At the end of 2010 the subcommittee, together with the Access to Justice subcommittee, responded to the Ministry of Justice consultation on imposing fees for immigration appeals. The questions were about when and how, rather than whether, to impose fees; ILPA opposed the proposal to impose fees altogether but a statutory instrument came into effect in October 2011, providing for a fee of £80 for a paper hearing and £140 for an oral hearing. We will attempt to monitor how it works and if people are discouraged from lodging appeals.

The subcommittee led on ILPA's response to the UK Border Agency's consultation on withdrawing the UK's immigration reservation to the UN Convention on Disability. ILPA urged that it should be withdrawn as it is no more justifiable than that to the Convention on the Rights of the Child, which has been withdrawn. The Disability Law Association endorsed ILPA's response.

The subcommittee also led on ILPA's response to the UK Border Agency's employment-related settlement consultation, together with the Economic Migration subcommittee, and held a joint meeting on 29 June to discuss this. ILPA opposed the changes proposed to make settlement more difficult and opposed in particular the proposal either to end the domestic worker visa, or to make it for six months only and to prohibit changing employers. Both measures would have very serious effects on the workers and would increase exploitation, and we worked with Kalayaan and others on this part of the response.

Most recently, the subcommittee has prepared ILPA's detailed response to UK Border Agency's family settlement consultation which proposed deeply worrying changes – increasing the financial requirements for sponsorship, increasing the probationary period for spouses to five years, giving dependent children leave until they are 17½ and they having to qualify later under the other relatives rule, and removing family visitor appeals. The document is imbued with the Government's hostility to the ECHR and attempts not to be bound by it. ILPA will use its powerful response for informing other groups and for campaigning to raise awareness of the dangers and opposition to them,

As usual, grateful thanks to all ILPA members who have come to subcommittee meetings or participated in other ways and who have done vast amounts of work. All ILPA members are welcome to get involved.

*Co-convenors: Sue Shutter and Pat Saini*

## **LEGAL AID SUBCOMMITTEE REPORT**

*“Things are going to get a lot worse before they get worse.”<sup>1</sup>*

### **Tendering**

The fifteenth of November 2010 finally saw the commencement of the 2010 Standard Civil Contracts, delayed from earlier in the year by problems and then litigation over the tendering process. In the end only the litigation brought against the Family tender was widely successful and the old Family contract had to be extended. Those challenges brought against the immigration tender have largely been unsuccessful and the contracts continued largely as announced. The main

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<sup>1</sup> Lily Tomlin

arguments have been about the points for caseworker accreditation and for sex discrimination in points allocated for part-time supervisors. Alison Harvey provided a witness statement of the history of the tender negotiations for use in litigation. There have also been a number of individual challenges based on obvious errors in tender documents submitted, which resulted in the revelation that a lawyer for the Legal Services Commission gave false information in court about opportunities given to some applicants but not to others to correct their errors.

The tender process and outcomes continued to cause problems throughout the year. No contracts were awarded in Kent and Plymouth and second tender rounds had to be held for those areas. At the time of writing a further tender round is in process for City of Bristol, South Gloucestershire & North Somerset, City of Plymouth, Norfolk and Suffolk as a result of the fallout from IAS going into administration.

Now, in November 2011, the Legal Services Commission is auditing suppliers against their target of having used 85% of their allocated matter starts by the end of year one. Many firms who bid for and got increased numbers of matter starts but who have failed to make the target are facing potential contract notices (warning of sanctions including potentially contract termination). Some of those will have guessed incorrectly in the tender that rationing would mean that they would get a reduced number matter starts. Others will have expected to do more work during the year but found that forces, internal or external, have thwarted them. And is it possible that some overbid recklessly or even intentionally, perhaps to stop other suppliers locally from getting the work? We shall probably never know.

## **Legal Aid, Sentencing and Punishment of Offenders Bill**

*“Nothing's ever so bad that it can't get worse”<sup>2</sup>*

At the time of the last AGM and annual report the Ministry of Justice had just published its consultation Green Paper *“Proposals for the Reform of Legal Aid in England and Wales”*. “Reform” in the title was a euphemism for “slash and burn”. The central proposal was that availability of legal aid should be turned on its head. No longer would legal aid be available unless excluded (as for example conveyancing and personal injury were) but instead legal aid would only be available in prescribed categories of cases. The government thereby aimed to save £350 million and “take back control” of legal aid so it could not proliferate as had happened up until then. For our clients and areas of work the main issues were:-

- asylum would remain within scope, as would legal aid to challenge detention;
- immigration would generally be out of scope, although legal aid for judicial review generally would remain in scope and there was a saving clause allowing for funding of exceptional cases where *the lack of funding* would be a breach of human or European rights.;
- reductions in remuneration including prescribed rates for experts and barristers (for higher court work) ;
- tightening of financial eligibility criteria;
- a proposed a universal telephone gateway to access legal aid advice (it was intended most advice would be given by telephone only);
- Advice on asylum support would be out of scope.

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<sup>2</sup> Anonymous Legal Aid Lawyer

A well-attended and vigorous members meeting was held on 13 December 2010 to consider our response. Members were able to articulate plenty of arguments to undermine the proposals and the claimed justifications for them. There were difficult decisions to take about the tactics to be adopted. We opted not to offer any sacrificial lambs in responding (there was for example discussion about whether we should concede no legal aid for student applications) but agreed with the tactic other groups were proposing; that anything that made it look like we were concerned primarily with protecting our incomes would be badly received by the public/media (for example the fee reductions) would be given least emphasis.

ILPA put in an early response (having been warned that Ministers were likely to be considering responses as they came in) and a detailed response in February with great strength of argument (our submissions are as always on the ILPA website). Alison Harvey gathered a devastating collection of case studies showing the crucial importance of legal aid in a variety of cases. A detailed analysis of all the Article 8 case law from the higher courts was compiled by barrister members at Mitre House Chambers demonstrating why these cases are not straightforward. Many people contributed greatly to the response and again our early drafts were circulated and influenced the thinking of other representative bodies. Our response was one amongst more than 5000 most of which will have raised criticisms of the proposals. Many members also submitted their own responses.

In addition Steve Symonds and Alison briefed early, widely and spoke to anyone who would listen (and many who would not) to inform the debate.

And when the Ministry of Justice finally published their response and the draft bill: – there were few concessions. Asylum support advice was brought back into scope where the claim included accommodation. Asylum and any immigration cases left in scope (mainly detention or judicial review) were excused from compulsory telephone advice.

And one thing was worse. In their response to the consultation the Judges Council had decried what they saw as a major problem with improperly brought immigration judicial reviews. Demonstrating that the consultation was a genuine process the Government responded with a special (and badly thought through) limitation banning “second” judicial reviews in immigration brought within a year and judicial reviews of removal directions brought within a year of a decision to remove or an appeal.

At the time of writing the Bill is about to transfer to the Lords. ILPA has spent endless hours drafting amendments, lobbying, briefing and monitoring throughout the Bill’s passage through the Commons. Relatively little headway has been made given the overwhelming strength of the arguments marshalled on our side. The main real victory has been to get the Government to agree to reinstate legal aid for victims of domestic violence who are in the UK with spouse or partner probationary leave to remain and, most recently, probably also to include EU spouses/partners in that. Other than that immigration has scarcely been mentioned by members of the Commons or by the other groups lobbying generally against the Bill. ILPA’s briefings have on occasion been quoted from in debate but with the word “immigration” replaced by “welfare benefits” or other categories of law.

Priorities for ILPA for the bill have become:-

- Reinstatement of legal aid for *all* victims of domestic abuse;
- Prioritise other vulnerable groups for re-inclusion particularly children, trafficked persons and those with mental health problems;

- Reinstatement of legal aid for refugee family reunion (which was the subject of an amendment at third reading by Simon Hughes MP);
- Remove or at least amend the restriction on immigration judicial reviews (it includes perverse situations such as that you cannot bring a second judicial review even if you won the first one but the UK Border Agency has again acted illegally);
- Legal aid for onward appeals (also picked up by Simon Hughes MP);
- Push for better coordination between representative groups on amendments and briefings to maximise impact.

Obviously we should like to get much wider categories of case reinstated, such as those facing deportation and for Article 8 cases generally, and for the work done to make a bail application to be able to include work on the substantive case (as the strength of the substantive case affects your chances of bail). Realistically we shall be lucky if our main priorities are met. The Government is not interested in the strength of the case for amending the Bill. This is an ideological Bill.

### **Funding Rates Cut**

The 10% funding rate cuts, limits on enhancements of certificated rates, limits on experts fees and the codification and reduction of barristers fees in the higher courts all came in by regulation on 3 October 2011. These generally apply to new certificates and new controlled worked matters after that date. Lord Bach secured a debate in the Lords seeking to cancel the cuts but without any expectation of success (and nor was there any). The transitional provisions mean that the impact of these cuts will be felt only gradually but as they do bite we can perhaps expect further examples of suppliers withdrawing from the market and perhaps some suppliers remaining in the market but cutting the quality of the work done on each case.

### **Engagement with the Legal Services Commission/Ministry of Justice**

The Legal Services Commission is dead long live the Legal Services Commission! In September 2010 it was announced that the Legal Services Commission was to be thrown onto the “bonfire of the quangos” and would be brought in-house to the Ministry of Justice as an executive agency. It would lose its independence other than in casework decisions (some thinking they had actually handed it back some time ago). They were immediately (by diktat) stripped of policy making responsibility. If we thought engaging with the Legal Services Commission was frustrating before, imagine how it is with them repeatedly refusing to discuss anything deemed to be “policy”. Especially as the Ministry of Justice itself has not been keen to step into the breach. If the Ministry of Justice is attend a meeting it is usually only to observe. Where there has been direct engagement with the Ministry Of Justice their lack of information and understanding has too often been the most noticeable feature.

The structure of meetings between the practitioner side and the Legal Services Commission has been pruned back. The Representative Bodies meetings (useful for getting those actually dealing with immigration and asylum on both sides around the table) have been disbanded as “unnecessary” and the remit transferred to the Civil Contracts Consultative Group, (which covers all civil categories of law and therefore can be unwieldy). The Representative Bodies meeting can be reconvened as an *ad hoc* group when there is enough to discuss to warrant it, and that is likely to have to happen if anything about immigration/asylum needs to be discussed in detail.

Many of the senior Legal Services Commission staff we have been engaged with over many years and many more junior staff doing the day-to-day Legal Services Commission work around immigration and asylum have been made redundant or otherwise moved on. On casework and in meetings the impact of the staff reductions are making themselves felt and will continue to do so.

Service levels at the Legal Services Commission are deteriorating. Delays are frequent and often severe. We should not expect things to get better anytime soon.

The Legal Services Commission has though decided to start on a process of pre-consultation consultation over a “simplified” tender process for the next tender for contract for 2013 (that has come around quickly hasn’t it?). This will of course only be a consultation on the organisation of the contracts and tender process– not policy! It will be difficult to know precisely how to engage with that process given the immense impact that removing immigration from legal aid scope will have. Will significant numbers of suppliers stop doing legal aid altogether? Probably ,given the huge reduction in the number of matters in scope. Some will concentrate purely on asylum legal aid, others may move to solely privately funded work. Some will run down their existing immigration cases gradually whilst others may stop close all their legal aid cases to clear their decks once there is no further new work for them.

### **Engagement with Other Practitioner Organisations**

We have continued to seek to engage with and influence other like-minded groups on legal aid issues. In particular by attending the Specialist Practitioner Group meetings convened by the Law Society at which most of the other associations are represented. We also seek to circulate our draft responses and briefings with those organisations where the information shared may help. As an organisation that has members across the legal spectrum we have been disappointed that on legal aid issues the Law Society and Bar Council do not currently cooperate. Each would, it seems, consider the other as seeking to feather its own nest at their expense. We do not know or care which “side” started this and which wish to perpetuate it, but in the end it does not help on most issues and we would prefer it if they could co-operate on the big legal aid issues affecting our clients whom we all seek to serve.

### **Immigration and Asylum Accreditation Scheme**

After the débâcle the previous year over caseworker reaccreditation a new Chief Assessor for the immigration scheme was appointed by the Law Society; Jawaid Luqmani. A useful (at least for us and we hope for him) meeting was held with Jawaid to discuss the way forward for the scheme. However, with most existing caseworkers now being reaccredited through until 2015 and with the likelihood there will be little legal aid funding for immigration for which to be accredited for, there seems to have been little progress since then in revising the scheme.

### **Immigration Advisory Service closure**

On 8 July 2011 IAS went into administration. IAS blamed the government’s intention to cut 10% off fees and to remove immigration work from scope for damaging its revenue potential too severely for it to continue, following a contract compliance audit carried out by the Legal Services Commission which resulted in a demand to repay “millions” of pounds. This assessment seemed to be largely due to inadequate documentation of financial eligibility for clients.

The headline figures were 8,000 live files and more than 300 staff made redundant. Again Alison Harvey has made the running on this issue, bringing to bear all the experience gained from the mess resulting from the winding up of Refugee and Migrant Justice (which was still causing problems this year).

The closure of IAS is a dramatic illustration of just how narrow the margins are in legal aid work, especially in immigration and asylum where cases often conclude slowly (and so are paid slowly) and disbursements are high.

We were all concerned that IAS clients would be left unrepresented; that there were not enough other suppliers with sufficient capacity to take up so much slack in the system. That fear appears to have been unfounded as all the live files were transferred out by the end of August 2011. There is something of a dichotomy here; legal aid is so badly remunerated and the bureaucracy of the system so crushing that many good practitioners are being forced out of it and yet when the opportunity is there for more work a significant number of suppliers jump at the chance and declare that they will do the extra cases. We should hopefully soon see the figures for matter starts (new legal help cases) in the last year so that we have some clearer idea whether the capacity lost really was recreated. We have no real information (and won't have, given the limited extent of the peer review process) about what is happening to quality even if quantity is being provided. There will be no detailed analysis of what the overall experience was of the IAS clients affected.

### **General Work of the Subcommittee**

As always throughout the year members have been involved in clarifying and sharing information and understanding about the Legal Services Commission contracts and the rules and guidance covering them, much of which is ambiguous or otherwise badly drafted. Thank you to members who have taken the time to come forward with issues, offered details of their own experience and suggest solutions. This is essential as a way of promoting good practice and consistency of approach by the Legal Services Commission.

### **Some Thanks**

As always a huge amount of work has been done this year by the General Secretary, Alison, together with Steve Symonds, who has been the backbone of the work on the Legal Aid, Sentencing and Punishment of Offenders Bill. We extend particular thanks to Elizabeth Storey and Solange Valdez and all those mentioned in this annual report who have attended often tedious and frustrating meetings to represent ILPA there

*Co-convenors: Sonia Routledge and Jackie Peirce*

## **IMMIGRATION OFFENCES SUBCOMMITTEE REPORT**

The work of the subcommittee has largely been overshadowed by the range of other developments over the last year but its membership continues to grow with an opportunity for dialogue between practitioners providing expertise over a range of disciplines: crime, prisoners' rights, immigration and unlawful detention.

The subcommittee has not met as regularly as had been hoped over the last year but continues to seek views and provide informed debate on issues pertinent to those subject to dual regulation between the criminal justice and immigration regime.

The last 12 months have seen the very significant decisions in *R( Lumba) v SSHD* [2011] UKSC 12, *Kambadzi* [2011] UKSC 23 in terms of the availability of damages for those detained in breach of public law duties where detention was said to be justified by reason of unlawful policies and the question of whether damages are available on anything other than a nominal basis. The next 12 months is likely to see the ramifications of these judgments with the Secretary of State seeking in a very large number of cases to attempt to characterise any detention as giving rise to no more than nominal damages notwithstanding the fact that often damages would be available on a proper compensatory basis.



Just before the last AGM, in *R v Mohammed et ors* [2010] EWCA Crim 2400, the Court of Appeal Criminal Division overturned a number of convictions of refugees who had pleaded guilty having not been advised on the statutory defence in s. 31: the very public “naming and shaming” in that judgment resulted in long overdue publicity amongst criminal lawyers of the statutory defence available to refugees. The Court however failed to take the opportunity to clarify the law in relation to section 31(2) of the Immigration and Asylum Act 2011. Under the ILPA umbrella, training continued to be provided to criminal lawyers and court officials about these protections.

Changes to the scope of legal aid are as yet unclear but it is certainly believed that funding will continue to remain available for at least some aspects of detention work for the future even though it may not be available for the underlying immigration decisions in all cases.

*Co-convenors: Richard Thomas and Jawaid Luqmani*

## **ILPA SOUTHWEST SUBCOMMITTEE REPORT**

The ILPA South West subcommittee was established in the autumn of 2008. Its aim was to develop a two-way system of information dissemination, support and feedback, as well as to hold training events and meetings for ILPA members distributed over this large geographical region.

Practitioners in the South West and their clients can face particular issues arising from their geographical location and are sometimes working in fairly isolated settings. The ILPA South West region encompasses the area from Southampton and Bournemouth in the east, to Exeter, Plymouth, and locations in Cornwall in the west and also includes Bristol, Gloucester and Cheltenham, as well as Newport, Cardiff and Swansea in Wales.

The work started in 2008/2009 has been developed further with the following being achieved in the last year:

- Conducting membership audit to ensure all members’ contact details and continued wish to participate in ILPA South West were reconfirmed.
- Two successful members events were held during the year both in Bristol:
  - An ILPA training event and meeting on the Points Based System took place in February 2011. Andrew Tingley and Gillian Brownlee provided excellent training and a presentation was then given by Matthew Gregory, UK Border Agency South West Points Based Sponsorship Manager sponsorship manager which was followed by a members meeting.
  - In October 2011, a joint event was held with Advice Network South West and a number of speakers gave presentations and took questions. Louise Parcell, Immigration Lead for the South West and contract manager for the Legal Services Commission gave an update on the South West position and took questions which focused mainly on the tender exercises and the lack of legal provision which has been on-going in Plymouth and precipitated in Bristol by the closure of IAS. Kenny Chapman, the UK Border Agency Local Immigration Team Manager for the South West also attended to give an update and take questions. Issues discussed included legacy, Compass tendering and communication channels between representatives and the UK Border Agency. Dr Nick Gill gave a presentation on proposed research on the disparity in asylum appeal success rates revealed by a freedom of

information request and which are particularly stark between Newport and Taylor House. Adam Hundt from Pierce Glynn solicitors very kindly gave a presentation on current community care issues affecting migrants.

- In addition we have undertaken work to establish and maintain some lines of communication with the UK Border Agency – Rosie Brennan with Kenny Chapman, Local Immigration Team Manager for SW and Natasha Gya Williams with the Public Enquiry Office Cardiff Senior Case work team, as well the regional Points-Based System compliance team in Portishead (led by Matthew Gregory).
- Rosie and Natasha regularly attend relevant other meetings with a view to feeding back any relevant information – e.g. South West Asylum Seeker and Refugee Forum/South West Migration partnership, Front Line Forum in Plymouth, and Employment Lawyers Association Cardiff.
- Liaising with the Advice Network South West, Association of International Student Advisors South West/Wales, and College of Law Bristol Pro Bono team.
- Contact point for ILPA South West members who require referral information or wish to discuss particular legal issues.

#### Future Steps:

- It is hoped that a Plymouth stakeholder group will be set up to deal with issues particularly arising in Plymouth.
- Continued lobbying and liaising nationally regarding immigration tender exercises for city of Plymouth and city of Bristol, South Gloucestershire and North Somerset
- Organising further ILPA training and networking events in South West
- Potential contact with First Tier Tribunal in Newport (in association with Nick Gill, University of Exeter)
- Liaise with the University of Bristol's Migration and Citizenship postgraduate department

*Co-convenors: Rosie Brennan and Natasha Gya Williams*

## **ILPA YORKSHIRE AND NORTH-EAST SUBCOMMITTEE REPORT**

This year has been an extremely busy year for most practitioners in the region, with much change and upheaval for both clients and practitioners alike; especially with the IAS' sad closure a few months ago, following on from Refugee and Migrant Justice's demise last year. The closure of the IAS has had a more pronounced effect in Yorkshire & the North East than in London and some other regions, as IAS presence in the region was substantial.

The Yorkshire & the North East subcommittee has had a moderately quiet year in terms of formal meetings given the casework pressures on most practitioners following closure of the IAS, but the subcommittee remains, as always, active in the region.

The subcommittee met twice, on 19 July 2011 (minutes of which can be viewed on the ILPA website) and 27 June 2011 following the result of judicial reviews of last year's tender results and demise of the IAS.

The meeting in July was attended by Alison Harvey, who was able to provide useful information about how the Legal Services Commission proposed to deal with the aftermath of the IAS' closure

in the region. This meeting was well attended and led to the proposal of a number of efforts to try to learn from the demise of Refugee and Migrant Justice the previous year.

The demise of the IAS has had a profound effect in the region, both in terms of access to justice for asylum-seekers and representation before the higher courts. The IAS had a dedicated Upper Tribunal and Higher Courts team based in Bradford, which has closed, as well as the IAS offices in Bradford, Leeds, Middleborough and Sheffield. Sadly, we have lost some highly experienced and dedicated practitioners in the region.

On a more positive note, following the closure of the IAS, some firms in the region have regained their immigration contacts, with two highly regarded firms in the West Yorkshire region now doing immigration publically funded work once again.

We hope that a further meeting can be arranged before the end of the year in order to discuss 10% cuts to legal aid, restrictions on disbursements, the Legal Services Commission's Electronic Appointment System and the rather conflicting advice being sent out by the Legal Services Commission about the Electronic Appointment System. We also hope to share information on the guidance following the cases of *Quila* [2011] UKSC 45 and *Zambrano* (Case C-34/09)

The Yorkshire and North East subcommittee has invited representatives of the Legal Services Commission to attend a meeting in order for them to clarify the position with respect to the Electronic Appointment System and to discuss regional issues more generally. Unfortunately the Regional Contract Manager is unable to commit to attend any of our meetings at present as provider engagement is not seen as 'business critical' by the Legal Services Commission at this time of re-structuring for them. This is very disappointing but we will keep trying to get the Legal Services Commission to meet with us.

We continue to publicise and encourage members to attend local training events. There is an appetite for local training and we hope that this appetite will translate into attendance at local events, in spite of the busy schedules, so that we can continue to ask for more local training.

The subcommittee continues to receive and circulate monthly UK Border Agency Stakeholder Updates and continues to encourage feedback on training. The subcommittee continues to benefit from information from the other subcommittees, which is shared on a monthly basis. Members believe the sharing of information from other subcommittees is extremely helpful. We hope in the coming year to meet more regularly.

*Best Wishes, co-convenors Ish Ahmed & Christopher Cole*



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