Mr. Stephen Shaw
Independent Advisory Panel on Non-Compliance Management
By email to: IAPNCM@homeoffice.gsi.gov.uk

Dear Mr. Shaw

Re: Training package for detainee custody officers

The Immigration Law Practitioners' Association (ILPA) writes in response to the invitation to submit evidence to the Independent Advisory Panel on Non-Compliance Management which has been tasked with providing independent advice on the quality and safety of a new training package for use by detainee custody officers who escort those being removed from the United Kingdom.

Thank you for asking ILPA to provide evidence on this subject. ILPA is a professional membership association, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training, through disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government bodies, including Home Office consultative and advisory groups among others.

1. Do no harm

The primary task for your panel is to ensure that it does no harm. If the panel is unable to improve standards but its existence is used by the Home Office to avoid scrutiny of its use of force on persons under immigration control, it will do harm. ILPA considers that in the circumstances the challenge of doing no harm is a not inconsiderable one. That is a strong statement but we trust that we shall make it good in the course of our evidence.

The moniker "independent" attaches to the Chief Inspector of Borders and Immigration, to the Family Returns Panel and now to the Independent Advisory Panel on Non-Compliance Management. It serves to distinguish these bodies from subcontractors. In ILPA's view, to earn the title, independent, a body must do more than ensure that the Home Office succeeds by the standards it has set itself. Your panel must go further and ensure that it judges the Home Office, its guidance, manuals and their implementation, not only independently, but by independent standards and on the basis of evidence and experience independently obtained. We hope that we can contribute to this by this evidence.

Not only independence but the perception of independence is important. Your address is care of Ms Emma Ross at the Home Office. We assume that Ms Ross will read this submission before you do. We understand Ms Ross to be giving evidence on behalf of the Home Office at the inquest into the death of Mr Jimmy Mubenga. There may be persons who would otherwise have provided you with evidence who are not comfortable with this.

It was the Home Secretary who described the UK Border Agency as "closed secretive and defensive"[1]. Nowhere more so, in ILPA's experience, than where deprivation of liberty and removal have been concerned. Our main aim in providing this evidence is to imbue the panel with some of the scepticism we feel about what treatment people can expect at the hands of the Home Office and its contractors and some of the determination we feel to ensure that this is challenged.

We are not alone in feeling and voicing such scepticism. The Home Affairs Select Committee has produced a report *Rules governing enforced removals from the UK*[2] and made recommendations. It states:

> *16. Although the Agency and its contractors deny that head-down restraint positions are used, the O'Loan Report noted that "under current Control and Restraint techniques a person's head will be held down to prevent them from biting",[…] and Outsourcing Abuse describes several incidents in which detainees claim to have been restrained with their heads held down or with their bodies bent forwards.[…] It is difficult to believe that all these accounts are complete fabrications.*
>
> *17. It is sensible for a single agency—HM Prison Service—to take the lead in developing and evaluating safe control and restraint procedures. However, there is the danger that the specific needs of other agencies, including the UK Border Agency, might be overlooked. This is particularly true of techniques which can be used safely in the confined, crowded and public space of an aircraft. Reports of head-down restraint positions are troubling in the light of recent evidence which shows that the prolonged use of such positions might carry a risk of death. Equally troubling is the denials by G4S management that such techniques are ever used, by which they appear to mean that staff are not trained to use seated, head-down positions and that the use of such techniques is not reported back to them.[…]*
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> *18.* ***We are not persuaded that head-down restraint positions are never used, even though they are not authorised. We recommend that the Home Office issue urgent guidance to all staff involved in enforced removals about the danger of seated restraint techniques in which the subject is bent forwards. We also recommend that the Home Office commission research into control and restraint techniques which are suitable for use on an aircraft. The use by contractors of unauthorised restraint techniques, sanctioning their use, or failing to challenge their use, should be grounds for dismissal.***

[1] Report 26 March 2013, col 1500ff.
[2] Eighth Report of session 2012-2012, Cm 563, available at http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/563/56303.htm (accessed 3 June 2013).

1.a. Lessons from the case of children

We are aware that children are outside the Panel's remit. However the case of children provides a striking example of promises unfulfilled and of conflicting statements that goes some way to explain ILPA's scepticism. We have therefore set out our experiences as they pertain to the use of force on children at Annexe 1.

1.b Deaths

In 1993, Mrs Joy Garner died being restrained for removal and in 2010, Mr Jimmy Mubenga died during an enforced removal. The inquest into Mr. Mubenga's death is on-going. ILPA considers that their deaths could and should have been avoided.

1.c Inhuman and degrading treatment of the mentally ill

In *FGP v Serco* [2012] EWHC 1804, 5 July 2012, the claimant had been detained at an immigration removal centre staffed by Serco. F was held in handcuffs and a chain when he was taken to hospital. The court held that Serco had breached Article 3 of the European Convention on Human Rights by this unnecessary use of restraint.

The Government has not once but four times in two years been found guilty of breaches of Article 3 of the European Convention on Human Rights for its treatment of foreign national ex-offenders with mental health problems in immigration detention. See for example *R (BA) v Secretary of State for Home Department* [2011] EWHC 2748 (Admin), *R (S) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin)) and *R(HA (Nigeria)) v SSHD* [2012] EWHC 979. In BA's case the judge speaks of the "callous indifference" to his suffering[3].

1.d Abuse and assault

In 2008, a report, *'Outsourcing Abuse'* by Birnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns described an alarming number of injuries sustained by deportees at the hand of private "escorts" contracted to the Home Office[4]. It revealed evidence of widespread abuse and that assault claims had largely been brushed off by the Home Office.

August 2009 saw the publication of *A Short thematic report by HM Inspectorate of Prisons Detainee escorts and removals: A thematic review* that found:

> *Independent inspection of escorts is particularly problematic. Those being escorted are, by*

[3] See also *R (EH) v Secretary of State for the Home Department* [2012] EWHC 2569 (Admin) in which breaches of Articles 5 and 8 of the European Convention on Human Rights were identified and *E v Home Office* [2010] in which exemplary damages were awarded against the Home Office for its treatment of a mentally ill man in detention.

[4] Available at http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf

> *definition, a transient population, many of whom will leave the UK afterwards. The presence of inspectors on escorts is itself likely to influence behaviour. It is therefore essential that there are built-in safeguards to minimise the possibility of over-enthusiastic use of force, or abusive behaviour, and to ensure that those being escorted have the fullest opportunity to complain if they believe they have been ill-treated. This short thematic inspection found, however, that there were considerable gaps and weaknesses in the systems for monitoring, investigating and complaining about incidents where force had been used or where abuse was alleged.*

It is sobering to read this 2009 report and then to realise that the case of *R(HA (Nigeria)) v SSHD* [2012] EWHC 979, mentioned above, deals with periods of unlawful detention from 16 January to 5 July 2010 and from 5 November to 15 December 2010. Mr. Jimmy Mubenga died on 12 October 2010.

Baroness Nuala O'Loan DBE produced a *Report to the United Kingdom Border Agency on Outsourcing Abuse* in March 2010, while HA was being held in detention in conditions that violated Article 3 of the European Convention on Human Rights. Baroness O'Loan highlighted the rhetoric reality gap with specific reference to training:

> *14. Over the period under investigation there was inadequate management of the use of force by the private sector companies. This resulted, on occasion, in failures properly to account for the use of force by recording fully the circumstances and justification for the use of force. The use of force training which officers receive does refer to the legal obligations governing the use of force. However this was not reflected in the bulk of the case papers which I examined. I have therefore made recommendations to address this issue.*

Thus the reports highlighted deficiencies in accountability, training and techniques employed.
We assume that Baroness O'Loan's report is one of the sources of the task in which the Committee is currently engaged. We suggest that one of the most important things that the Committee can draw from that report is that it was written in March 2010 and that it is now June 2013. Nor is it the first report. In 2004 the Medical Foundation for the Care of Victims of Torture published *Harm on removal*. On 16 December 2008 the UK Border Agency's own Complaints Audit Committee published it final annual report, which was severely critical of the Agency's handling of serious complaints. The Panel may wish to ponder which it will do to ensure that its report does not end up on the cutting room floor.

In July 2011, Amnesty International UK's report, *'Out of Control – the case for a complete overhaul of enforced removals by private contractors'*[5], highlighted mistreatment going back many years.

ILPA is aware of numerous substantial settlements in claims for damages involving enforced removals (and false imprisonment) in which aggravated damages and damages for personal injury have been awarded for, *inter alia,* the use of force, restraint and assaults during enforced removals.

[5] http://www.amnesty.org.uk/uploads/documents/doc_21634.pdf

1.e Pregnant Women

The 2012 report of the Chief Inspector of Prisons on the Cedars centre in which families are detained found:[6]

> *HE.18 Substantial force had been used in one case to take a pregnant woman resisting removal to departures. The woman was not moved using approved techniques. She was placed in a wheelchair to assist her to the departures area. When she resisted, it was tipped-up with staff holding her feet. At one point she slipped down from the chair and the risk of injury to the unborn child was significant. There is no safe way to use force against a pregnant woman, and to initiate it for the purpose of removal is to take an unacceptable risk.*

The case of *R (on the application of Yiyu Chen and Others) v Secretary of State for the Home Department* (CO/1119/2013) was an urgent judicial review claim challenging the Secretary of State's failure to have a policy in place in respect of the use of force against children and pregnant women. The claim was issued on 31 January 2013 following the Secretary of State's rejection of the Her Majesty's Inspectorate of Prisons' recommendation, made in the report cited above, that she use force against these two groups only in situations where there is a risk of harm to self or another. The Claimants sought urgent interim relief in the form of an injunction, prohibiting the Secretary of State from using force against these two groups until the issues were determined. On 12 February 2013 Mr Justice Collins granted an injunction prohibiting the Secretary of State's from using force against the four claimants (a pregnant woman and three children, all at risk of an enforced removal).

On 22 February 2013 the Secretary of State reinstated the former policy from Chapter 45 of the Enforcement Instructions and Guidance, which states that the UK Border Agency cannot use force against pregnant women, save to prevent harm.[7]

The Government response to the Home Affairs Select Committee Eighth Report of session 2012-2013: *The work of the UK Border Agency (April - June 2012*) states:

> *The UK Border Agency would prefer that pregnant women, vulnerable adults and under 18s who form part of family groups in Cedars left the UK voluntarily and compliantly. It would not be practical to consider a blanket ban on the use of physical intervention on pregnant women and under 18s as this might encourage non-compliance and render the Agency unable to maintain effective immigration controls.*

Bhatt Murphy solicitors, who acted for the claimants in *Chen,* wrote to the Home Affairs Select Committee[8] on 28 March 2013, saying

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[6] Report on an announced inspection of *Cedars Pre-Departure Accommodation* 30 April – 25 May 2012 by HM Chief Inspector of Prisons.

[7] At the same time they reinstated the former policy for children too – which is in similar terms, but they did not accept that the policy prevents them from using force against children save to prevent harm. And so the claim continued. On Friday 15 March 2013, the Home Office conceded the claim and they accepted that the terms of the policy were not sufficiently clear to permit the use of force against children in circumstances other than to prevent harm.

We are concerned that the policy position set out in that response [the government's response to the Committee, described above] directly contradicts the assurances which have been given to the Court and the parties in this action, which is now reflected in policy guidance published on the UK Border Agency's website, and upon which the Claimants have been invited by the Home Secretary to withdraw their claim for judicial review.

1.f Abuse of power

The theme of 'callous indifference' is recognisable from the earlier case of *Muuse v SSHD* [2010] EWCA Civ 453, which concerned the unlawful detention of a Dutch man of Somali origin, is instructive as to matters any training needs to cover. In that case, the court of appeal held:

> *72. There are a number of factors that show that the unlawful imprisonment of Mr Muuse in this case was not merely unconstitutional but an arbitrary exercise of executive power which was outrageous. It called for the award of exemplary damages by way of punishment, to deter and to vindicate the strength of the law.*
>
> *73. The junior officials acted in an unconstitutional and arbitrary manner that resulted in theimprisonment of Mr Muuse for over three months. The outrageous nature of the conduct is exhibited partly by the way in which they treated Mr Muuse and ignored his protests that he was Dutch, partly by the manifest incompetence in which they acted throughout and partly by their failure to take the most elementary steps to check his documents which they held:*
>
> > *i) The actions of the junior officials who exercised the power to imprison Mr Muuse and keep him imprisoned cannot be explained on any basis other than that the officials were incompetent to exercise such powers on the assumption favourable to ... that they were not recklessly indifferent to the legality of their actions.*
> > *ii) They disobeyed the order of the court to release Mr Muuse for no reason.*
> > *iii) They did not consider the conclusive evidence they held as to his nationality...*
> > *iv) Even if they thought there was a power to deport, they made no enquiries to determine whether detention was necessary pending deportation. It was for the Home Office to justify this, as no person should be deprived of his liberty without proper enquiry. No effort was made to ascertain that his wife and family lived in the UK and no explanation has been given for the failure to do so.*
> > *v) No proper examination was made of the grounds for deportation; his detention was simply ordered without even the Notice of Detention being issued for over a month. No explanation of this illegal and arbitrary act has been given.*
> > *vi) They gave him no reasons in writing of his detention until 1 or 3 November 2006.*

[8] Available at http://www.parliament.uk/documents/commons-committees/home-affairs/130327%20Bhatt%20Murphy%20solicitors%20to%20KV%20re%20Govt%20Response.pdf

vii) They threatened him with deportation to Somalia – a state which they knew was a failed state.
viii) They failed to look at the evidence in their possession even when it was pointed out to them.
ix) They failed to accord him the necessary time to appeal.
x) They did not revoke the Deportation Order when they were sent copies of the documents. This failure is again unexplained. Instead, the officials detained him for a further month without any possible justification.
xi) Although the judge found that his detention was not the result of racial discrimination, he found that the detention to which Mr Muuse was subjected was aggravated by racist remarks such as "look at you, you are an African" and suggestions that he should go back to Africa.

Treatment of this kind which is calculated to degrade and humiliate is typical of abuses which occur when power is exercised by those who are not competent to exercise that power.

1.g. Lack of access to a lawyer

The cases of *Muuse* is a reminder that the European Committee for the Prevention of Torture's statement about police custody is of wider application:

> *18. The possibility for persons taken into police custody to have access to a lawyer is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons. Further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.*[9]

In 2010, the Home Office admitted liability toward John Bosco Nyombi and paid him some £100,000 in damages for his forcible removal to Uganda. His removal involved the use of restraint. He was detained by the Ugandan authorities and subject to ill-treatment. He was ordered by the Administrative Court to be brought back[10] and was subsequently recognised as a refugee by the UK. He has spoken publicly of his experiences and given interviews.

The House of Commons Home Affairs Committee Eighteenth Report of Session 2010-2012 *Rules governing enforced removals from the UK* (17 January 2012) and House of Commons Home Affairs Committee, *The Work of the UK Border Agency, 4th Report of Session 2010-11of* 21 December 2010, contain evidence about Home Office subcontractor Reliance. See, for example Amnesty International's 7 July 2011 briefing: *Out of Control: The case for a complete overhaul of enforced removals by private contractors*[11] and the article of 13 April 2012 D*eportation contractor Reliance faces litany of abuse claims against staff*[12] The Guardian.

See also ILPA's 13 May 2012 *Response to the UK Border Agency letter of 13 March 2012 re waiver of 72 hours' notice of removal in cases where a person consents to the waiver of*

[9] European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment, *CPT Standards*, CPT/Inf/E (2002) 1 - Rev. 2011.
[10] CO/9617/2008.
[11] Available at http://www.amnesty.org.uk/uploads/documents/doc_21634.pdf
[12] The Guardian.

notice[13]. ILPA recommended access to appropriate legal advice in respect of any request for consent to removal.

We wrote therein "We acknowledge a degree of cynicism. But we consider that we have ample reason for this". We make the same observation to the Panel.

2. Training and beyond

In the vast majority of cases, those whose removal is enforced are compliant and that even in the minority of cases where escorts are used, restraint is not used[14].

The Independent Advisory Panel on Non-Compliance Management is undoubtedly alert to the necessity for training to include: the management of anxiety and stress, including of those who present as hostile and aggressive; the management of those with a mental illness and/or medical conditions; health and safety; suicide and self-harm prevention; race relations and cultural awareness.[15]

The cases and reports highlighted in part one above suggest that training must also address the extent to which incidents of non-compliance and the consequent use of restraint could be minimised by addressing prejudices and perceptions of Home Office staff and/or subcontractors/agents. Failures to comply with policy and guidance can be viewed as isolated incidents. The disproportionate use of uniformed officers and escorts, the disproportionate use of restraint and the incidence of assault and racist abuse all merit close attention. The term training is being asked to bear a heavy load if it is suggested that training can address all of these. It must encompass not only those who use or refrain from using restraint, but those who manage, supervise, contract with, monitor and discipline them, and those in their turn to whom such managers report.

Denial or playing down of problems is unhelpful. Any progress in ensuring the safety and security of persons subject to enforced removal and those authorised to effect their removal from the UK will only be achieved by adopting a 'warts and all' starting point. We suggest that the foreword by the then Chief Executive of the UK Border Agency, Lin Homer, to Dame Nuala's report, can be regarded as unhelpful. Her successor, Mr Whiteman's evidence to the Home Affairs Select Committee on the Agency's breaches of Article 3 of the European Convention on Human Rights in the cases discussed above, we regard as similarly unhelpful and worth citing *in extenso*:

> *Q37 Mr **Winnick:** …Regarding those with health difficulties who are being held at Harmondsworth, it appears that the majority of those were not released under the rules. …What is your response?*
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> ***Rob Whiteman**: Within 24 hours of going into detention people are assessed for their medical conditions. If people are deemed not fit for detention then we will release people from detention6. Roughly speaking, approximately 1% of cases7 released from detention are due to that reason. In particular, of course, we screen for mental health issues, and if*

[13] Available at http://www.ilpa.org.uk/data/resources/14699/12.05.13-ILPA-to-UKBA-re-72-hours-pubilc.pdf

[14] Home Affairs Select Committee *Rules governing enforced removals from the UK, op.cit.*

[15] Juxtaposed controls: ILPA note for the Chief Inspector re his inspection of juxtaposed controls, 8 October 2012 at http://www.ilpa.org.uk/data/resources/15539/12.10.08-juxtaposed-controls-ILPA-to-chief-inspector.pdf

the detention screening believes that there are mental health issues, we will refer those to the local mental health services, who can take appropriate action to take people into NHS care or otherwise. There have been some cases where the agency has been criticised for the mental health screening process not working as well as we would wish. In those cases we are reviewing our processes for how health screening works in order that we can improve the quality of it. I would say that in our view the majority of people get appropriately screened. We do not want any cases where that does not happen properly. Therefore, in the light of cases that sometimes come to light, we review those processes with the detention providers.

Q38 Mr ***Winnick:*** *Mr Whiteman, the High Court found in two cases last year that the continued detention of mentally ill detainees at Harmondsworth had subjected them to inhumane or degrading treatment. That is rather a sharp criticism, to say the least, of the organisation, isn't it?*

Rob Whiteman*: It is.*

Q39 ***Mr Winnick:*** *Have you apologised for that?*

Rob Whiteman*: I do apologise, Mr Winnick.*

Q40 ***Mr Winnick:*** *No, previously, not to me. There is no need to apologise to me.*

Rob Whiteman*: We have, yes, sir. If I could make the point that mental health screening works on a large number of occasions. In terms of people released from detention, around 1% to 2% can be because the screening process and the referral to mental health services at the local NHS by the detention services will deem that people are not fit for detention. I am afraid that there have been some cases where that screening has not worked as well as we would wish. We have been criticised by the court in those cases, and we will learn from them by-*

Q41 ***Mr Winnick:*** *When is the last time you went to Harmondsworth to see the situation for yourself?*

Rob Whiteman*: I was there last week, Mr Winnick.*

Q42 ***Mr Winnick:*** *To see this particular aspect?*

Rob Whiteman*: I was at Harmondsworth last week.*

Mr Winnick: *I expect you to be at Harmondsworth pretty regularly.* ***Rob Whiteman****: That included asking questions about the health screening process.*

Q43 ***Mr Winnick:*** *No. Sorry, I did not get that. The last time you were at Harmondsworth-you say last week-did you actually look at this aspect? That is what I am asking you.*

Rob Whiteman*: I did. I met the providers there, as well as our client teams. We went through a number of issues, and this included asking about mental health and health screening.*

Q44 ***Mr Winnick:*** *Are you satisfied that the situation is very different from when the High Court criticised you, as I have just said?*

> ***Rob Whiteman**: Yes, I am. We will continue to monitor the position and we will continue to look at the procedures that are in place. It is clearly very important that the health screening process that is carried out in detention picks up mental-health issues, and we will endeavour to make that as robust as possible.*[16]

Things are always about to improve. To the extent that training will provide the means by which to move from present to the brighter future it bears a heavy burden.

3. Understanding of the context of 'non-compliance'

A more sensitive management of persons subject to enforced removal begins with an understanding of the person's experience and this training must address.

Management of enforced removals must be seen in the context of a person's experience of the Home Office's decision-making and enforcement process.

Firstly, it is important not to make the assumption that persons with no leave to remain in the UK, whose departure there is a power to enforce, are persons who have already been through a lengthy determination process[17]. People may first come to the attention of the immigration authorities when arrested. There will not have been any consideration of whether they have any basis to remain in the UK unless and until they make a claim/application.

For some an immigration decision, such as to remove them and/or to take away their leave to remain, will have come out of the blue, and they will have been detained without warning or a meaningful opportunity to seek legal advice. ILPA has seen British citizens and persons with pending applications wrongly removed. They could not have anticipated the (unlawful) enforcement action against them, just as Mr Muuse, a national of a European Union member state, could not have anticipated being detained as a third-country national

For those who have made claims/applications, the quality of the Home Office's case management and decision-making is relevant[18], including, but not limited to, the limitations and inadequacies of the Detained Fast-track process[19] as is the Home

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[16] HC 603, available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/603/120918.htm (accessed 3 June 2013)

[17] See ILPA response to Ministry of Justice consultation on draft code of practice for adult conditional cautions, 1 November 2012, at http://www.ilpa.org.uk/data/resources/16088/12.11.01-ILPA-to-MOJ-conditional-cautions-1-Nov-2012.pdf

[18] E.g. *Failing the Grade*, UK Lesbian and Gay Immigration Group, April 2010, *Unsustainable: the quality of decision-making in women's asylum claims,* Asylum Aid, January 2011, *A question of credibility,* Amnesty International and Still Human Still Here, April 2013.

[19] *Working against the clock: inadequacy and injustice in the fast track system*, Based on research by Bail for Immigration Detainees at Harmondsworth Immigration Removal Centre (IRC) in March 2006 by Sharon Oakley and Katrina Crew at http://www.biduk.org/423/bid-research-reports/working-against-the-clock-inadequacy-and-injustice-in-the-fast-track-system.html and Independent Chief Inspector of Borders and Immigration 'Asylum: A thematic inspection of the detained fast track', February 2012, at http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf

Office's repeated failure to communicate with the claimant/applicant and/or by-pass the legal representative on record as described above[20].

Consequently, many individuals will not have had their claim/application fully or adequately considered.

Furthermore, the problems created by poor decision-making by the Home Office are increasingly compounded by reduced access to good legal advice and representation caused by year on year cuts in legal aid funding[21]. From April 2013, legal aid is not available for advice on most immigration as opposed to asylum cases, i.e. to those who are not making a claim for international protection or do not have a national security or trafficking case[22]. Legal aid is available for judicial review, but not if, within the previous 12 months, the person has unsuccessfully judicially-reviewed or appealed the same or substantially the same issue, even if legal aid was not available and the person had no legal advice or assistance.

A person who entered the UK without coming to the attention of the immigration authorities, who remained in the UK beyond the duration of their visa (an 'overstayer') or who claimed asylum or another basis of stay but whose application and any appeals failed will be a person with no leave to enter or remain in the UK and in respect of whom there is a power the to enforce their departure from the UK.

As to the circumstances of a person facing removal: a person's circumstances may have changed since the UK Border Agency decided their initial claim/application[23]. A person may at any time claim asylum (including a fresh claim from persons whose previous claim was dismissed but who now have fresh evidence) or may assert that their removal from the UK would breach their human rights, for example, under Article 8 of the European Convention on Human Rights, the right to respect for private and family life.

In most cases, removal from the UK will, at very least, mean personal emotional upheaval and the prospect of insecurity. Many will face destitution and/or a deteriorating medical/mental condition without access to health care. For those who sought asylum in the UK, there may be fears of torture and ill-treatment on return. These may be well-founded, if the decision on their case was wrong, for example because they were disbelieved when they were telling the truth, or the gravity of the situation in their country of origin was under-estimated. ILPA had occasion to write to Mr Justice Ouseley, on 23 October 2012[24] to express our grave concern at changes made to the Home Office's description of its assessment of evidence about the country situation just four hours and eight minutes before a flight to Sri Lanka was due to leave.

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[20] See also the witness Statement of Robert Stephen Symonds, ILPA, in Secretary of State for the Home Department v Medical Justice (Court of Appeal reference C4/2010/2189), July 2011.

[21] http://www.ilpa.org.uk/data/resources/18039/13.06.03-ILPA-response-to-Transforming-legal-aid.pdf

[22] Legal Aid, Sentencing and Punishment of Offenders Act 2013, Schedule 1.

[23] Independent Chief Inspector of Borders and Immigration, UK Border Agency's handling of legacy asylum and migration cases, November 2012 at http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agencys-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf

[24] See http://www.ilpa.org.uk/resource/15983/ilpa-to-mr-justice-ouseley-administrative-court-re-sri-lanka-charter-flight-23-october-2012

There are many who have not had their claims/appeals fully and adequately considered and who remain extremely anxious about returning to their country and may be in fear. Even where that fear is not well-founded it is not less felt by the individual.

Where English is not the person's first language, there are likely to be communication and comprehension difficulties layered on a limited knowledge and awareness of UK systems, procedures and inter-personal dynamics. UK Border Agency letters/notices are not translated and, in any event, people do not usually retain detailed information given to them orally even if in their preferred language but particularly when the situation in which the information is given is stressful. ILPA has previously recommended the provision of written translations and interpreters.[25]

4. Enforcement Action

In many cases, although a person may have been given written notice to leave the UK, 'enforcement action' starts with a 'dawn raid' on their home, and/or arrest and detention on an immigration raid or 'stop and search' operation, and/or arrest and detention on compliance with reporting conditions. In cases where the person is not already in prison, enforcement action will have included a sudden and often alarming and frightening experience of arrest. They may have had no or very little time to collect personal belongings together and/or say goodbyes; they may already have encountered large numbers of uniformed officers and have been restrained and/or transported in caged vans.

People have usually been given no opportunity and/or assistance to establish contact with friends, family or organisations in the country of origin to try to make arrangements for their return.

Those facing enforced removal have usually been detained pursuant to immigration act powers prior to removal and have had limited contact with the outside world at all. Successive reports by HM Inspector of Prisons and/or the Independent Chief Inspector of Borders and Immigration have detailed inadequate conditions in removal centres, including the use of isolation as 'punishment', the use of handcuffs to attend hospital appointments etc.[26]

Adrian Berry
Chair
ILPA
7 June 2013

[25] ILPA response to Ministry of Justice consultation on draft code of practice for adult conditional cautions, 1 November 2012 at http://www.ilpa.org.uk/data/resources/16088/12.11.01-ILPA-to-MOJ-conditional-cautions-1-Nov-2012.pdf

[26] Independent Chief Inspector of Borders and Immigration, 'The effectiveness and impact of immigration detention casework', December 2012 http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf

Annexe 1: The example of children

Statements about training

ILPA recalls the fulsome promises given in 2006 as to training that would be undergone by private contractors searching vehicles at "juxtaposed controls" in France:

> *Security checks will be undertaken, and training will include cultural awareness, race relations, the legal framework, interpersonal skills and care for vulnerable detainees.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC229-230
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> *We talked in Grand Committee about the strict safeguards that will apply to the recruitment and the work of the contractors. These include security checks, which will be undertaken in both the UK and France. The training will include cultural awareness, race relations, the legal framework, interpersonal skills and care for vulnerable detainees, including—perhaps I would say especially—unaccompanied minors.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186
>
> *The training that must be included involves, among other things, managing detention anxiety and stress, including the detention of vulnerable trainees; health and safety; suicide and self-harm prevention; and race relations, cultural awareness, and human rights issues. The safety and security of those who will be in the care of the authorised person is of the utmost importance—I want that to be on the record—and must not be jeopardised.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC231
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> *I can give an assurance that the Home Office will ensure that cultural issues are fully addressed as part of the training.* Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col.225
>
> *…we will ensure that there is a period of training before authorisation that will include the care of vulnerable persons, including children.* The Baroness Ashton of Upholland, Parliamentary Under- Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232
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> *We have to make a differentiation here. On training in relation to children, we want to make sure that those who will deal with such children or people in a vulnerable situation are properly trained in issues like human rights, racial awareness, dealing with vulnerable people in traumatic circumstances, and of course all the issues around children. That is quite different from the kind of* skills *needed by immigration service officers as a part of their professional training. While they will have the skills I have outlined, they will have other skills as well. I want to differentiate between those carrying out reasonably mundane and regular tasks, but who need to be professional in how they deal with people when they come across them, and those undertaking far more detailed and challenging tasks in order to ascertain where people are and so forth*. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC235

> *One issue to address is to ensure that staff are properly trained to hold a child. The noble Earl knows well from our discussions on children with special needs and behavioural issues that this is an important point.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC237

ILPA has invited the Chief Inspector of Borders and Immigration to identify how many if any of these promises have been fulfilled[27].

*Sta**tements about the Use of Force***

ILPA recalls the attendance of Chris Spencer, Chair of the Family Returns Panel on 20 September 2011 at ILPA's children's subcommittee. Mr Spencer indicated that the panel had been asked to give a view on a UK Border Agency physical restraint and management policy in relation to children because the Agency did not have one. The panel had been told that if a child held on to a barrier or refused to come out of a van the removal/dawn raid would be cancelled. ILPA members present expressed extreme scepticism and pointed out that it appeared inconsistent with reports published by the Children's Commissioners, whose *The Story so far: the evidence, of November 2011, prepared for the* UK Children's Commissioners' 2011 Midterm Report to the UK State Party on the UN Convention on the Rights of the Child states

> "The statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children62 However, the Children's Commissioners' attention has been drawn to cases where, in attempting to get children and their parents onto a plane, restraint has been used either on children or on their parents in sight of the children. In other cases children have been 'split' form parents in order to try and ensure the family travels. Such actions may, in our view, conflict with or breach the section 55 duty. However, once on the flight, the duty ceases although as a matter of policy there is still a requirement to have regard to the duty. We do not have any information on the guidance or instructions given to overseas escorting contractors in respect of their section 55 duty, or the associated policy in respect of the journey."

Members' scepticism was well-founded, as illustrated by the 2012 report of the Chief Inspector of Prisons on the Cedars centre in which families are detained found:[28]

> HE.16 Force had been used in relation to six of the 39 families held since the centre opened, with handcuffs used on adults on five occasions. On two occasions minimal force that involved staff taking hold of elbows and escorting had been used to cajole children to the departures area. If the children had been more resistant, the situation might have escalated, raising the risk of injury. Children had become very distressed during forced removals and it was not possible to measure the psychological impact of removal on them. This was despite their needs being anticipated and actively managed by Barnardo's staff.

That report also discussed pregnant women, who are discussed in the main text above.

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[27] Juxtaposed controls: ILPA note for the Chief Inspector re his inspection of juxtaposed controls, 8 October 2012.

[28] *Report on an announced inspection of Cedars Pre-Departure Accommodation* 30 April – 25 May 2012 by HM Chief Inspector of Prisons