

ILPA comments for the evaluation of the Immigration Enforcement Go HOME campaign

The Immigration Law Practitioners' Association (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 and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government committees, including Home Office, and other consultative and advisory groups.

The document received from Immigration Enforcement is unclear as to whether it is inviting comments only on the reporting centre pilot or also on Operation Vaken. We have therefore in this response commented on both.

The Home Office has already been called upon to defend this campaign, not only in the media, in parliament¹, in meetings such as the 9 September 2013 National Stakeholder Forum and in private meetings and emails, but in response to a letter before action² and before the Advertising Standards Agency³. It is stated in the conclusion of the Advertising Standards Agency

“The Home Office said they had received a great deal of interest from those with no legal right to be in the UK wanting to return to their home country; they considered that indicated the campaign had worked in the way they had planned.”

What then is left for this evaluation to do? And how easy would it be for it to draw a different conclusion than that presented to the Advertising Standards Agency in the course of its investigation? We have nonetheless sought below to indicate what we should like to be learned from the evaluation. Mr Carney explained at the National Asylum Stakeholder Forum on 9 September 2013 that the report would be published and we shall study it with interest. The quality of the evaluation will itself be a measure of the competence of Immigration Enforcement.

We have had no feedback at all on “vehicle livery” and are thus unable to comment on this.

¹ See e.g. in Westminster 13 August 2013, answers to questions HLI977-1979 (Lord Greaves), HLI986-1987 (Lord Roberts of Llandudno) and in Scotland Motion S4M-07552: Condemning the Home Office's Go Home Poster Pilot.

² See the letter of David Wood, Head of Immigration Enforcement to Deighton Pierce Glynn solicitors of 8 August 2013 in response to the letter before action sent on behalf of their clients.

³ Recorded in the Agency's ruling Complaint Ref: A13-237331 of 10 October 2013.

MESSAGING AND APPROACH

The call for evidence says that Immigration Enforcement was tasked “...to increase the visibility of our work and promote voluntary departure as a whole.”

Mr Carney of Immigration Enforcement gave a presentation of both campaigns at the National Asylum Stakeholder Forum on 9 September 2013. He said that they were designed to provide a way out for persons living in the UK illegally, vulnerable to exploitation and being exploited, who wanted to return but did not have the means or documents but at the same time also emphasised that they were designed to give a high profile to Immigration Enforcement and its work. The Parliamentary Under-Secretary of State, Lord Taylor of Holbeach, in response to a written question from Lord Greaves on 13 August 2013⁴ stated that the Home Office was improving the visibility of its immigration law enforcement.

The evaluation could usefully consider whether these two objectives sit comfortably together within the same campaign and also what is recorded about the purpose of the campaign and its target audience, whether that changed over time and if so why.

Operation Vaken

Vans

We concur with Pukkah Punjabi, writing in The Guardian

*You don't need to be an expert in graphical communication to realise that these billboards – with their dark background, pictures of handcuffs and threats of arrest – are designed to be menacing rather than to offer assistance.*⁵

We suggest that people are in general less likely to get in touch with those who intimidate or threaten them than with those who do not. Any suggestion that immigration enforcement has to parade posters around the streets to find persons without lawful leave who might consider voluntary departure is simply inaccurate. There are significant numbers of persons, at known addresses, who maintain contact with the Agency. **The evaluation should consider whether the vans increasing the visibility of immigration enforcement militated against their increasing the number of voluntary departures.**

The number of departures may be a measure of the visibility of Immigration Enforcement, as well as of the campaign's success in encouraging voluntary departures. Whether reporting on the number of departures itself is relevant to “improving” or simply to increasing that visibility is likely to depend on what the numbers are. A low number may make Immigration Enforcement visible, but fail to increase confidence in its work.

⁴ HL1977.

⁵ *The day I asked the Home Office to help me go home – to Willesden Green*, Pukkah Punjabi, The Guardian, 28 July 2013.

We find it difficult to overstate the distress the vans caused, not only to migrants and refugees, whether with leave, on temporary admission or not, but also to the settled and black and minority ethnic British population in the areas affected and beyond. We highlight in particular the effect on refugees. It is very easy to turn a place of safety into a “hostile environment⁶.” For those who have known no place of safety for many years, to do so is a profound unkindness.

The question of bad publicity falls to be evaluated. In the event the campaign received widespread media coverage. We suggest that the evaluation could look, as suggested by Lord Taylor (see above) at whether the campaign “improved” the visibility of immigration enforcement rather than just “increased” it. For many persons their first encounter with the campaign was through a media article that lampooned it⁷, and it would be a very po-faced evaluation that failed to acknowledge that some of these were witty⁸, not least because that led to their being repeated many times and thus increased the visibility of immigration enforcement.

Harm to the reputation of Immigration Enforcement was not confined to the UK. We recall that the European Commissioner, Celia Malström tweeted “Not impressed by the UK adverts on migration. They are disturbing and offensive⁹.”

Some of the lampoons born of out of spoofs of the van have continued¹⁰. These have implications for perceptions of Immigration Enforcement in the future. **An evaluation should examine whether these consequences were identified as possible risks at the outset and whether the assessment of risk corresponded with the reality. Has long term damage been done to the reputation of Immigration Enforcement? Has the bad publicity made it more difficult for Immigration Enforcement to escape the long shadow of the UK Border Agency? Will it have a knock-on effect in the way in which proposals such as landlords checking tenants’ immigration status or checks on immigration status to access health care are perceived? If so, what will those effects be?**

Among the targets of the mockery:

- The premise upon which the campaign was based, that those unlawfully in the UK would text Immigration Enforcement and thus more generally the competence of Immigration Enforcement¹¹;
- The nastiness of the approach which was spoofed as corresponding to low intelligence¹².

⁶ See media reports of the Inter-Ministerial “Hostile environment working group”, subsequently renamed e.g. Ex-minister Sarah Teather: government wants to make UK ‘hostile’ to immigrants, The Telegraph, 13 July 2013.

⁷ See for example the articles at <http://www.huffingtonpost.co.uk/tag/racist-van> (accessed 12 October 2013).

⁸ See e.g. *Memo: next steps on the “#racistvan”*, Financial Times, 31 July 2013, and some of the examples recorded at <http://observers.france24.com/content/20130807-british-humour-lambasts-racist-government-billboard-vans> (accessed 12 October 2013).

⁹ See <https://twitter.com/MalmstromEU> (accessed 12 October 2013).

¹⁰ See for example <https://twitter.com/UKGoHomeOffice> (accessed 12 October 2013).

¹¹ See e.g. *Memo: next steps on the “#racistvan”*, *op.cit* “Something about turkeys not voting for Christmas.”

¹² See e.g. <https://twitter.com/UKGoHomeOffice>, *op. cit*.

The image thus projected of Immigration Enforcement was reinforced by questions over the lawfulness of the campaign.

A letter before action sent on behalf of two clients represented by Deighton Pierce Glynn solicitors alleged that the vans breached the public sector equality duty under section 149 of the Equality Act 2010. The solicitors reported¹³

Following our letter to the Home Office, threatening legal action of the decision to pilot a campaign driving large vans around London which displayed messages telling migrants to 'go home', the Government has confirmed that if any further campaigns of a similar nature are planned, they would carry out a consultation with local authorities and community groups. The Government accepted that the purpose of consulting would be so that it could have 'due regard' to the effect a campaign of this nature would have on the communities living in the affected areas.

Our clients' legal challenge was based on the Government's failure to comply with the public sector equality duty under the Equality Act 2010. This duty requires the Government to have due regard to the need to eliminate discrimination and harassment based on race and religion, as well as to foster good relations between people from different racial and religious groups.

The 8 August 2013 letter of David Wood, Director General of Immigration Enforcement to Deighton Pierce Glynn¹⁴ gives an undertaking to comply with the duty in future without acknowledging or denying whether it did so in the particular case. The Agency has nowhere set out with whom it consulted, and at what stage. We are aware of local bodies, local police and local organisations which were not consulted, in the areas in which the campaign took place. **The evaluation should set out who was consulted and at what stage and consider whether any consultation that took place was sufficient to ensure compliance with the duty under section 149 of the Equality Act or not. The evaluation should consider whether the decision not to carry out an equality impact assessment was the right one. Had the risks of not doing, including reputational risks and vulnerability to legal challenge, been identified and assessed?**

Next came the discovery that the typeface "Plane Crash" used on the vans had been used without permission and concerns at a breach of copyright law. These were widely reported¹⁵. The reports suggested carelessness and a lack of accountability by those behind the campaign. **Both whether a typeface was used without permission and the contractual and copyright consequences of this, and the reputational damage, should be considered in the evaluation.**

The Advertising Standards Authority upheld two of the five heads of complaint made against the Agency. We suggest that the question of the approach to the public

¹³ *Success in challenge to Home Office decision to display adverts on vans telling migrants to go home*, Deighton Pierce Glynn, 12 August 2013.

¹⁴ Available at http://www.deightonpierceglyn.co.uk/news/news_docs/2013%2008%2013%20PAP%20Letter.pdf (accessed 13 October 2013).

¹⁵ See e.g. *Font designer could sue over 'go home' vans*, BBC, 13 September 2013.

sector equality duty and the extent of consultation, and the breaches identified by the Advertising Standards Agency as well as their comments in areas where they did not find a breach, are suggestive of carelessness, but, more particularly, of carelessness where the matter of race relations and ensuring that people of any ethnicity feel safe, are concerned. We suggest that this is of particular gravity in an given the role of Immigration Enforcement.

Had the proposals been considered in the context of advertising standards? Had those matters subsequently identified as breaches by the Agency, the approach to the 106 arrests, and those the subject of critical comment by the agency, “Go Home” been identified as giving rise to such risks.

The Advertising Standards Agency said:

We concluded that the poster was unlikely to incite or exacerbate racial hatred and tensions in multicultural communities, and that it was not irresponsible and did not contain anything which was likely to condone or encourage violence or anti-social behaviour.

We recognise that the Home Office is entitled to rely on the conclusions of the Advertising Standards Authority but would emphasise that the Agency’s conclusions that the poster was “unlikely” to cause serious or widespread offence and distress or exacerbate racial hatred are not determinative of the question, which those conducting the evaluation will be in a better position to assess when they have weighed all the evidence, of whether they did so in practice.

We also highlight the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have due regard to the need to safeguard and promote the welfare of children. The duty extends to all children affected by the actions of Immigration Enforcement be they British, settled or under immigration control.
Was the effect of the vans on children considered at the outset?

The Advertising Standards Agency did find a breach of the Code “where the 106 arrests in your area” was concerned. We consider that this is linked to the question of promoting good race relations. The figure risked making people feel that they were surrounded by persons with no leave to be in the UK. As identified by the Advertising Standards Agency, the circumstances of the presentation of the figure, where the number was based on a large area but the impression was of a much smaller one, exacerbated, if it did not cause, this effect.

For those without leave, not to mention many with, the figure may well have served to increase their fear of arrest. But does this translate into increasing their willingness to contemplate voluntary departure? That is not our experience and if the project made that **assumption the evaluation should examine whether that was the right assumption to make.**

In our view an insufficiently careful approach was also evidenced if a person did text HOME because of the approach to “re-entry bans¹⁶”. This we deal with under our discussion of the language used in the leaflet below.

As explained at the National Asylum Stakeholder Forum on 9 September 2013, an unintended, unforeseen consequence was around employers’ perceptions of whether refugees have permission to work. A risk assessment needs to be undertaken and clear guidance on the rights of refugees and migrants needs to be in place before a campaign of this type starts. **The evaluation should consider whether this was done in this case, and whether the risk to perception of employment rights was considered.**

The leaflet

Was the leaflet specifically designed for Operation Vaken or was an earlier leaflet used? The leaflet does not raise the visibility of immigration enforcement. It includes no branding that identifies it as a Home Office document, although internal evidence (Crown Copyright, a Home Office email address and one mention of the Home Office) might suggest to the reader that it is. There is no clear statement as to the provenance of the leaflet. We question whether this is likely to achieve the aim of causing people to take the first step toward making a voluntary departure. A person in the UK unlawfully might question whether the leaflet had been put in place by a far right-wing group wanting to obtain their email address or phone number, not because of any particular content in the leaflet, but because of its anonymity. This risk might be different depending on where they came across the leaflet: less in a trusted community centre and more where it was placed, for example, in a newsagent. **It would be instructive for the evaluation to consider the effect of the relative anonymity of the leaflet.**

We have no information on the range of languages used on different versions of the leaflet, this should be included in the evaluation report.

The reporting centres

At the National Asylum Stakeholder Forum on 10 September 2013 two representatives of the Refugee Women’s Strategy Group in Glasgow described their experience of the material within Brand Street reporting centre and we trust that this has been relayed and taken into account.

There are posters on the walls, on the floor, on the chairs. The atmosphere is well-described in the Scottish Parliament regret motion¹⁷:

That the Parliament strongly condemns the actions of the Home Office in, it considers, trying to intimidate and harass asylum seekers, many of whom have fled their homeland in terror, into going back to their home country; understands that its Brand Street office in Glasgow is part of a pilot scheme in which leaflets and posters with slogans such as "Go Home" are plastered across a room where asylum seekers

¹⁶ HC 395, rule 320(7B).

¹⁷Motion S4M-07552: Condemning the Home Office's Go Home Poster Pilot.

have to wait to sign on and from which the public is barred; further understands that there is even a poster of an aeroplane with the message "The plane can take you home. We can book the tickets" and another showing a person sleeping on the streets with the message "Is life here hard? Going home is simple"; deplores what it considers this attempt to instil fear and intimidate some of the most vulnerable people in society; urges the UK Border Agency to immediately cease what it considers this abhorrent pilot scheme, which is also taking place in Hounslow, London, and believes that Scotland should have a humane asylum system that recognises the inherent worth of all human beings, regardless of where they used to call home, and supports them in making a life here in Scotland.

The images show misery – a woman sleeping rough, for example. Persons whose lives may be full of misery have no choice about viewing these images and no way to avoid them as they must wait in the reporting centre for as long as it takes for the Home Office to deal with them. The approach is not appropriate.

Among those signing at the reporting centre are persons whose claims for asylum have yet to be determined, persons for whom the country of origin is a place of persecution or torture. There are others whose claims have been refused but who continue to fear return. The Home Office may not consider those fears to be well-founded but they are nonetheless real for that.

Mr Carney of Immigration Enforcement spoke at the National Asylum Stakeholder Forum of wanting to move away from “passive marketing”. But it appears that being “proactive” has been confused with an aggressive saturating approach that people could only close up against, not reach toward.

THE ACTUAL LANGUAGE USED.

The language cannot be separated from the medium: there is a difference between writing something in a letter and writing it on a billboard many feet high, between including it in a leaflet available at a reporting centre and plastering it over walls, floor and chairs and our comments in this section should be read in the context of our comments above.

Operation Vaken

Vans

The Advertising Standards Agency wrote

We recognised that the poster, and the phrase "GO HOME" in particular, were likely to be distasteful to some in the context of an ad addressed to illegal immigrants, irrespective of the overall message conveyed, and we recognised that wording less likely to produce that response, such as "RETURN HOME ..." could have been used. However, we concluded that the poster was unlikely to cause serious or widespread offence or distress.

As stated above, this is not determinative of the question of what distress it did cause. Many people, mainly British and settled, exclaimed when they saw the vans

“But that is a National Front Slogan”. We consider that the slogan would have particular resonance for those who can remember the rise of the National Front in the 1970s. Pukkah Punjabi, writing in The Guardian said:

As a child in the 1970s with migrant parents I remember how "go home" was shouted at us in the streets and graffitied on walls. One of my earliest memories is of the panic I felt when hearing my parents discussing in hushed tones whether we would indeed have to "go home" as we watched the National Front march on TV. So when the government today tells illegal immigrants to "go home", the phrase is not an abstract one: it is rooted in the popular fascism of that period, a fascism we were forced to challenge in order that we could say "we are here to stay".

The propinquity of a white fist clutching handcuffs to the phrase Go HOME did nothing to ameliorate these effects.

All those who work with forced migrants are aware of the particular sensitivities around the word “home”. As a matter of practice lawyers tend to avoid it unless it is introduced by the client. Expressions such as “country of origin” “country fled” or simply the name of the country are preferred. Some who fear persecution speak of home and their longing to go there; others avoid the word studiously. Some resent hearing the UK called home, others welcome it.

With other migrants the question may be less charged but is nonetheless straightforward. Most children think of the place where they live, study and have friends as “home” which indeed, for the time being and whatever their immigration status, it is. Adults too will for the most part regard themselves as having a home in the UK. A voluntary departure involves uprooting yourself and your family, however precarious your status may be and a failure to recognise this is unlikely to play into promoting voluntary departure.

We have commented on the “106 arrests” above. The Advertising Standards Agency describes why it was misleading but does not in our view fully tease out the effects of this upon those seeing the van.

Leaflet

All the languages we have seen used on the leaflet are Asian. The evaluation could usefully consider whether only Asian persons came forward. It could also usefully compare the perceptions of the Asian population, British, settled and under immigration control, of Operation Vaken with those of other groups.

The leaflet is misleading when it says

If they leave voluntarily they are not barred from re-entering the UK for a period of up to 10 years (depending on the circumstances of the departure)

Only those leaving within 28 days of a re-entry ban do not face a re-entry ban¹⁸.

¹⁸ HC 395, paragraph 320(7B).

One lawyer who texted HOME transcribed her conversation when she was 'phoned back:

I received a call back from the Home Office this morning. I told them I was a rep and that I was calling on behalf of my clients who wanted to know more about how they can be assisted to go home. Here are the minutes from the conversation (this is not a direct transcript, I have pieced together my notes – he spoke very fast! I have tried to keep the notes as close to the information provided on the phone as possible so I have not written in full sentences)

- They are still handing out leaflets and are targeting
 - o restaurants
 - o places of worship
 - o businesses
- It is not their intention to drive people out, it's people who are being exploited – slave labour
- People wanting to get back
- Communities where people gather
- Homeless
- Home Office are happy to pay for people to get back
- If someone can't pay, the Home Office will help
- Leaflets targeted in certain areas to see how operation goes, if successful – will go wider
- Leaflet says "return with dignity without fear of arrest"
- If return voluntarily, avoid being arrested
- Not barred if they ask for help returning
- They will be questioned to make sure they are not wanting a holiday
- Ban if arrested
- When I asked him for his name he replied – Not allowed to give name as get accused of being racist, if you saw me you would not think of English Defence League, get curses when don't get chance to explain

I then pushed him further on the topic of bans from the UK, as he seemed to give the impression that if someone contacted the Home Office asking for help, and the Home Office paid for their return, that they wouldn't be banned and that a ban would only follow if someone was arrested. I told him that the immigration rules state that, even where they leave the UK voluntarily, if this is at the expense of the State, this would leave to a mandatory five years ban. I asked him to clarify why his advice differs from the rules so that I could advise my clients accordingly. He then when to speak to his supervisor, at which point he came back and told me to tell my clients to text the 78070 then he ended the call.

When this was put to Mr Carney at the National Asylum Stakeholder Forum on 9 September 2013 he said that re-entry bans were not mentioned at the initial stage but at a later stage in the process. **The evaluation should look at when the question of re-entry bans arises and whether the information given is accurate.**

The leaflet also says “without fear of being detained.” **The evaluation should examine the accuracy of this – how many people who come forward have been detained at any stage following their coming forward?**

Reporting centres

“This plane can take you home” – again, the same controversial word “home” is used and it is repeated widely throughout the material which is described in the request for comments for the evaluation as

*We can help you return home
Is life in the UK what you expected? You can choose to go home
Is life here hard? Going home is simple.
This plane can take you home, we can book your tickets
Ask about going home
Going home is as easy as 1.2.3*

See our comments above.

Going back to the country of origin for most people is not simple, is not as simple as 1, 2, 3. There may be fears of persecution, torture and other violations of human rights. There may be the stigma of failure. Remittances, however small, sent back to those in the country of origin will cease. Ties to the UK will be broken, friends left behind. Possessions may have to be abandoned. Slogans such as “life is hard; going home is simple” trivialise the very real struggles people have undergone over months and years. In short, the language is crass.

FEEDBACK FROM CLIENTS

ILPA has followed the Go Home campaign from its earliest days. Those who have been in touch with us have included community organisations, individual activists and members of the public. They have been British or settled, in the UK with limited leave, on temporary admission, seeking asylum, or with no leave at all. Those with no leave have been persons whose claims for asylum have failed and overstayers.

Vans

The impression that those who got in touch with us had was that the vans were designed primarily to increase the visibility of immigration law enforcement among the population, and not only of the migrant population, of the areas around which they drove.

The overwhelming majority found them intimidating and offensive. Ethnic minority British citizens and settled persons described finding them intimidating. Who would it be assumed needed to “go home”? Those whose families did not originate from these islands. Who would those persons be assumed to be? Those who are black or of ethnic minority.

However, there was another thread running through the feedback: that the vans showed the Home Office to be cack-handed. We have discussed this above. One

lawyer reported her undocumented client, who lives in Manchester and was thus not directly affected by the pilot, thus:

I just had a chat with a client about this in an appointment. His view is that it's funny the Home Office have spent so much money on something that everyone will ignore anyway.

The underlying premise of the campaign was mocked on many websites and in print and for many outside the affected areas that was the first they knew of the campaign.¹⁹

We are not aware of any clients who texted home. Those who asked their lawyers were as much angry about or intimidated by the vans as contemplating responding to the call.

Reporting centres

The words used to describe the effect of the advertising in the centres by those who had seen it were “humiliating” “stressful” “distressing” “intimidating”. These are people required to report, thus for the most part people on temporary admission, including persons seeking asylum.

SUGGESTED FUTURE APPROACHES INCLUDING WHERE NECESSARY/POSSIBLE A PARTNERSHIP APPROACH.

In members' experience, a realistic assessment of a case by a lawyer trusted and perceived as independent is a relevant factor in causing persons to think seriously about voluntary departure. The removal of legal aid from immigration since 1 April 2013 under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is thus in our view likely to militate against voluntary departure. Other independent persons with whom to discuss returns are also important as is access to the internet and other information to get in touch with people in the country or to find out about conditions there.

The opportunity to work and acquire skills and funds when in the UK are in our experience relevant to whether a person will be willing to make a voluntary departure.

The question of re-entry bans in particular, but opportunities for circular migration in general, are in our experience highly relevant to whether persons make voluntary departures. Much has been written on how the trend since the Commonwealth Immigrants Acts of the 1960s has been of persons fearing to leave because they consider that they will never be able to return. We are aware of a number of people who texted HOME. Some were lawyers who investigated the scheme for their clients. When informed of this at the National Asylum Stakeholder Forum on 9 September 2013 Mr Carney said that the number was “not for lawyers.” This is contrary to what is stated on the leaflet which speaks of getting in touch with the

¹⁹ See e.g. <https://twitter.com/UKGoHomeOffice> (accessed 12 October 2013)

Home Office directly “or through a representative.” Alison Harvey, representing ILPA, pointed out that it was perfectly proper for a lawyer to phone the scheme for clients and that texting HOME was the only way identified on the vans to get in touch. Lawyers had identified themselves as such when called back, and asked their questions the better to inform their clients. Persons who have been in the UK for a long time following an unsuccessful application or appeal may not have a lawyer, but at the point of refusal many will and some will discuss voluntary return with them then. Lawyers first advise on a matter and then, if the client wishes to pursue the case, represent their clients.

There are a significant number of persons who will not make a voluntary departure. They may not consider that they have had a fair hearing from the UK immigration and asylum authorities. They may fear persecution on return, whether it is accepted that that fear has an objective basis or not. They may fear for the health and education of their children and future generations. Those fears and the resultant decisions have parallels in decisions most people make and should not be a basis for vilification.

If the desire for a partnership approach is born of a desire to increase the visibility of Immigration Enforcement then in our view this militates encouraging voluntary departure. It is, as its name suggests, a decision freely made or not made at all.

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Chair
ILPA

15 October 2013